

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.85 of 2020

in Crl.A.5 of 2020

P.Natesan

... Petitioner

Versus

The State represented by
The Inspector of Police,
Erode All Women Police Station,
Erode District.
(Crime No.19 of 2017)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence imposed on the petitioner / appellant by the judgment dated 22.11.2019 made in Spl.S.C.No.14 of 2018 passed by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode till the disposal of the Criminal Appeal.

For Petitioner : Mr.Ashok Kumar
Senior Counsel

For Respondent : Mr.C.Raghavan
Government Advocate [Crl.Side]

ORDER

The petitioner accused in Spl.S.C.No.14 of 2018 was convicted by the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode for the offence under Section 3 r/w 4 of the Protection of Children from Sexual Offences Act, 2002 and sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default three months Simple Imprisonment.

2. The gist of the case is that P.W.1/victim was residing along with her mother Shanthi/P.W.4 and with the petitioner. Earlier her mother was married to one Ramasamy and later on she was living with the petitioner. The petitioner was identified by P.W.4 as her father. The victim was studying 12th standard at Government Higher Secondary School. The petitioner and P.W.4 met an Astrologer to know the horoscope prediction of P.W.1. The Astrologer said that the first marriage of P.W.1 would not be successful and in the second marriage she will live in prosperity. From then, the petitioner approached P.W.1 with wrong intention and to have physical contact.

P.W.1 refused the same for which P.W.1 was made to stand outside the house all over the night in the rain. The petitioner removed her dress and pressed her breast. The petitioner compelled her to drink a medicine. The victim felt drowsy after drinking the same. On 19.12.2017, at about 11.30 p.m., the petitioner advanced towards P.W.1. P.W.1 hide herself behind the cylinder, the petitioner pulled her out and pressed her on the private parts with his male organ. The next day, P.W.1 gone to the school and she was in a sober state. The class teacher noticed the same and enquired the reason with her. She revealed the happenings of the previous night. Thereafter, the class teacher took P.W.1 to the Head Mistress and Head Mistress informed the same to P.W.5/ Kavitha, Office Assistant of the District Child Protection Office. P.W.5 took P.W.1 to the Superintendent of Police, who directed them to approach All Women Police Station, Erode.

3. On 21.12.2017, they lodged a complaint before the Police, All Women Police Station, Erode and the same has been marked as Ex.P1. Thereafter, the Police gone to the house of the P.W.1 and enquired P.W.4/Mother of the victim, who admitted that P.W.1 was made to stand outside through out the night. P.W.1 had also given 164 statement before the Magistrate, which has been marked as Ex.P2. The School Head Mistress was examined as P.W.2, Teacher was examined as P.W.3 and the Office Assistant of District Child Protection Officer was examined as P.W.5. P.W.6 is the neighbour of P.W.1. All these witnesses have stated about the advancement made by the petitioner on P.W.1. P.W.4/Mother of the victim has not supported the case of the prosecution. P.W.7 is the Observation Mahazar witness. P.W.8, P.W.9 and P.W.12 are the Doctors who examined P.W.1 as well as the petitioner. P.W.10 is the Sanitary Inspector and P.W.11 is the Investigating Officer. From Ex.P3/school certificate and Ex.P7/age certificate, it is seen that the petitioner was minor aged about 17 years and after obtaining medical evidence, charge sheet came to be filed. The petitioner had filed Ex.D1/love letter written by the victim to support his contention. In this case, P.W.1 to P.W.12 were examined, Ex.P1 to Ex.P20 and M.O.1 were marked on the side of the prosecution. Ex.D1 has been filed on the defence side. The Trial Court on considering the evidence and materials produced had convicted the petitioner as above.

4. The contention of the learned counsel for the petitioner is that P.W.1 was informed by P.W.4 that the petitioner is her father. Since P.W.1 was having relationship with unknown boy, the petitioner question about the same. Despite the same P.W.1 continuing her activity, the petitioner reprimanded her to correct herself from going into wrong path due to her infancy for life and adolescent age. This has caused enmity between the victim and the petitioner. Further, he submitted that in Ex.P1/complaint and Ex.P14/FIR there is no mention about any penetrative sexual assault by the petitioner. It is also to be seen that the alleged date of occurrence is on 19.12.2017 and she had informed about the incident to P.W.2 and P.W.3 on 20.12.2017. Thereafter P.W.2, P.W.3 and P.W.5 on 21.12.2017 lodged a complaint with a delay of two days. On 20.12.2017, P.W.1 came back to the house and stayed along with P.W.4 and the

petitioner. If the allegations brought in were true, P.W.1 would not have stayed with them. Further P.W.2, P.W.3 and P.W.5 would not have permitted the same. In the meanwhile, she had given a tutored version of statement before the Magistrate, which has been marked as Ex.P2.

5. He further submitted that the Trial Court without considering the admitted circumstances, convicted the petitioner merely based on the evidence of P.W.1, which was motivated against the petitioner. P.W.4 is the mother of the victim who categorically stated that P.W.1 was reprimanded for her love affair. Ex.D1/love letter written by P.W.1 has been marked to prove the same. The Trial Court had failed to consider and advert to Ex.D1. Further from the evidence of P.W.12/Doctor and medical reports/Ex.P19 and Ex.P20, it is seen that there is a tear in hymen and no reason has been given for the same. Admittedly, the petitioner is not the cause for the same. P.W.1 to cover up her fault and misdeeds had made false allegations against the petitioner. In this case, P.W.8/Doctor through Ex.P7 had given opinion that the age of the victim would be between 18 to 22 years. It is admitted that P.W.10/Sanitary Inspector had stated that the birth of P.W.1 has not been registered. P.W.4 admitted that the age of the victim was recorded by school authority by themselves. He further submitted that the case is a motivated one and the petitioner was falsely implicated. The Trial Court failed to consider the circumstances and convicted the petitioner. The Lower court without considering these aspect had convicted the petitioner based on the presumption under Section 29 of the POSCO Act.

6. He further submitted that when the case came up on 20.02.2020, this Court directed the petitioner to deposit a sum of Rs.5,00,000/- in the name of the victim girl on a fixed deposit. In compliance to the order of this Court, the petitioner made two deposits of Rs.2,50,000/- lakhs, totalling Rs.5 lakhs on 28.02.2020 in the name of the victim in Oriental Bank of Commerce and the receipt of fixed deposit has been produced. Hence, he prayed for grant of bail to the petitioner.

7. The learned Additional Public Prosecutor submitted that in this case P.W.1 is the victim who was a school going child. She informed to her teacher about the happenings took place on 19.12.2017. Thereafter she was taken to the Head Mistress/ P.W.2. P.W.2 informed the same to the P.W.5/ Office Assistant from the District Child Protection Office. P.W.5 took P.W.1 to the Superintendent of Police, who directed them to approach All Women Police Station, Erode. On receipt of the complaint, the respondent Police visited the house of P.W.1 and after investigation prepared observation mahazar and rough sketch. P.W.1 was produced before the Magistrate and 164 statement was recorded. P.W.1 was consistent and categorically stated about the sexual assault made by the petitioner. P.W.6 is the neighbour who supported the prosecution case. P.W.8 is the Doctor who examined the victim and had given medical report/Ex.P6 and Ex.P7. P.W.9 is the Doctor who had examined the victim as well as the petitioner. On completion of the investigation, P.W.11 filed the final report.

8. He further submitted that the Trial Court on considering the evidence and materials produced had rightly convicted the petitioner. The petitioner is none other than the father of the victim and the victim has no reason to falsely implicate the petitioner in this case. Hence, he opposed for granting bail to the petitioner.

9. Considering the rival submissions and perusal of the materials it is seen that in this case P.W.1 is the victim. P.W.4 is the Mother of the victim. In Ex.P1/complaint there is no mention about any penetrative sexual assault under Section 4 of POSCO Act. In this case, P.W.1 in her evidence has made no allegations of sexual assault against the petitioner. In Ex.P4, there is no mention of the same. The other witnesses namely P.W.2 and P.W.3 are the Head Mistress and Teacher who informed about the happenings to P.W.5. P.W.1 initially disclosed the incident to one Manonmani, Chemistry Teacher and to Gnanasekar her class teacher, who were not examined as witnesses. The evidence of P.W.2, P.W.3 and P.W.5 are in the nature of hearsay. P.W.4/Mother of the victim had given reason about the activities of P.W.1. As per the medical report the hymen was torn and there is no reason given for the same. Further with regard to the age of the petitioner P.W.8/Doctor has given opinion that the age of the victim would be between 18 to 22 years and P.W.10/Sanitary Inspector evidence is that the birth of P.W.1 was not registered. The Trial Court had not adverted to Ex.D1. The trial Court convicted the petitioner by holding presumption under Section 29 of the POSCO Act, which on the facts and circumstances of the case, has been dislodged. Hence, this Court finds that there are arguable points involved in the appeal, as the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Court), Erode within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. till the disposal of the appeal.

-sd/-
09/11/2020

This order, on being produced, be punctually observed and carried into execution by all concerned
TRUE COPY

TO

1 THE SESSIONS JUDGE,
MAGALIR NEETHI MANDRAM,
(FAST TRACK MAHILA COURT),
ERODE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ERODE ALL WOMEN POLICE STATION,
ERODE DISTRICT.

+1 C.C. to M/S. P.PALANINATHAN Advocate on payment of necessary
charges SR.No.7458

Order

in
CRL MP.85/2020

in
CRL.A.5/2020

Date :09/11/2020

From 7.2.2001 the Registry is issuing certified
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