

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.08.2020

DELIVERED ON: 20.08.2020

CORAM :

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.M.P. No.1677 of 2020 in Crl.A. No.82 of 2020

S. Selvendran

Petitioner

vs.

State represented by
The Inspector of Police
All Women Police Station
Nannilam
Thiruvarur District
(C. No.7/2016)

Respondent

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C., seeking to suspend the sentence imposed on 26.09.2019 by the Sessions Judge (Fast Track Mahila Court), Thiruvarur in Special S.C. No.11 of 2017, pending final disposal of Crl.A. No.82 of 2020.

For petitioner Mr. S. Kumaradevan

For respondent Mr. K. Madhan
Govt. Advocate (Crl. Side)

ORDER

This is a petition for suspension of sentence.

2 The petitioner has been convicted of the offence under Section 376 IPC, alternatively under Section 6 of the POCSO Act and sentenced to undergo 10 years imprisonment and pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of four weeks, in S.C. No.11 of 2017 vide judgment and order dated 26.09.2019 by the Sessions Court (Fast Track Mahila Court), Thiruvarur.

3 Challenging the aforesaid conviction and sentence, the petitioner has preferred Crl.A. No.82 of 2020 along with the instant criminal miscellaneous petition seeking to suspend the sentence.

4 Heard Mr. S. Kumaradevan, learned counsel for the petitioner and Mr. K. Madhan, learned Government Advocate (Crl. Side) appearing for the respondent police.

5 The learned counsel for the petitioner submitted that the prosecution has not satisfactorily proved that the victim girl "X" was less than 18 years of age. Placing reliance on the evidence of Sivalingam (D.W.1), he further submitted that, in the panchayat that was held in the village, the victim girl "X" implicated one Manikandan and not the petitioner. He further pointed out that there are contradictions in the testimony of the victim girl "X", which goes to the root of the prosecution case.

6 Per contra, the learned Government Advocate (Crl. Side) refuted the aforesaid contentions.

7 This Court gave its anxious consideration to the rival submissions.

8 On a cursory reading of the evidence of the victim girl "X" (P.W.1), it is seen that she was 15 years old when she was examined as a witness in the Court; after she was ravished, she conceived and delivered a male child. On the orders of the Court, DNA profiling was done by Mahalakshmi (P.W.15), Scientific Officer, TNFSL, and her report (Ex.P.16) shows that the petitioner had fathered the child. Even in the evidence of the victim girl "X" (P.W.1), she has stated that the petitioner had threatened her by saying that she should not implicate him and therefore, she falsely implicated Manikandan in the village panchayat. The prosecution has examined Vijaya Gowri (P.W.13), Headmistress of the school, to prove that the date of birth of the victim girl "X" is 18.06.2002. The incident had taken place in 2016 and hence, it cannot be stated that the prosecution had failed to satisfactorily establish the age of the victim girl "X".

9 Taking into consideration the facts and circumstances of the case, this Court is of the view that this is not a fit case to suspend the sentence imposed on the petitioner. However, it is made clear that whatever is observed in this order is only for the limited purpose of deciding this miscellaneous petition.

Accordingly, this criminal miscellaneous petition seeking suspension of sentence is dismissed. The Registry is directed to call for the records, prepare the typed set of papers and post Crl.A. No.82 of 2020 for final disposal immediately after resumption of physical hearing.

-sd/-

20/08/2020

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

TRUE COPY

TO

1 THE SESSIONS JUDGE
(FAST TRACK MAHILA COURT),
THIRUVARUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON,
TRICHARAPPALLI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NANNILAM, THIRUVARUR DISTRICT.

5 THE SECTION OFFICER
CRIMINAL SECTION,
HIGH COURT, MADRAS.

+1 C.C. to M/S.S.KUMARA DEVAN Advocate on payment of necessary
charges SR.No.5978

Order

in
CRL MP.1677/2020

in
CRL A.82/2020

Date :20/08/2020

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cs 28/08/2020

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