

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Third day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION NO.2864 OF 2020

IN CRL.A.NO.151 OF 2020

PALANISAMY @ VELU

[PETITIONER / APPELLANT]

Vs

THE STATE REP.BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
AWPS, PERUR POLICE STATION,
COIMBATORE.

CR.NO.02/2017.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.151 OF 2020 on the file of the High Court, the High Court will be pleased to suspend the order of sentence dated 12.02.2020, made in Spl.C.C.No.14 of 2019, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore pending disposal of the CRL.A.NO.151 OF 2020 [IN CRL.MP.NO.2864 OF 2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.151 OF 2020 on the file of the High Court and upon hearing the arguments of M/S.A.E.RAVICHANDRAN, Advocate for the petitioner and of MR.T.SHUNMUGARAJESWARAN Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

The Appellant/Accused has filed the present Appeal against the Judgment of conviction and sentence passed by the Special Court for POCSO Cases (Sessions Court), Coimbatore in Spl. C.C. No. 14 of 2019 dated 12.02.2020. The Appellant/Accused has also filed this Petition to suspend the sentence awarded by the Trial Court.

2. The case of the prosecution is that on 30.12.2016 at about 3.30 p.m. when the Victim Girl, aged about 6 years was playing in front of her house, the Appellant/Accused came there and took the Victim Girl to his house and removed her jatty and touched her private part with fingers and also pinched the same, and hence, the Appellant/Accused is liable to be punished under Sections 7, 8 and 5(m) read with Section 6 of the Protection of the Children From Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act for brevity).

3. The Trial Court by the Judgment dated 12.02.2020 found guilty of the Appellant/Accused for the offence punishable under Section 7 read with Section 8 of the POCSO Act and sentenced him to undergo 3 years imprisonment and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) in default to undergo 6 months simple imprisonment, however, it has acquitted the Appellant/Accused for the offences under Section 5(m) read with Section 6 of the POCSO Act.

4. Aggrieved by the aforesaid Judgment of conviction and sentence passed by the Trial Court, the Appellant/Accused has filed the present Appeal.

5. The learned Counsel for the Appellant/Accused has submitted that as per the prosecution case, the Victim Girl was subjected to sexual assault on 30.12.2016 at about 3.30 p.m., but the complaint was lodged only on 03.01.2017, and the said delay has not been properly explained. He further submitted that P.W.-3, who is the Father of the Victim Girl, has deposed that on 30.12.2016 itself, he took the Victim Girl to the Primary Health Centre as she was suffering from fever, and thereafter, on 02.01.2017 also he took the Victim Girl to a Private Hospital for taking treatment for fever only, and on those days, he has not requested the Doctor to examine whether the Victim Girl sustained any injury on her private part and give treatment for that. He further submitted that P.W.-1, who is the Mother of the Victim Girl, also has deposed that on 02.01.2017, she took the Victim Girl to a Private Hospital along with her husband only for giving treatment for fever, and she also has not made any request to the Doctor to examine whether the Victim Girl sustained any injury on her private part. He further submitted that P.W.-1 has deposed before the Court that on 02.01.2017, after taking treatment for the Victim Girl for fever from the Private Hospital, she subjected the Victim Girl for bath with warm water, and at that time, the Victim Girl informed her that she is having some pain on her private part, and also she noticed that the Victim Girl's private part was congested, but immediately she has not taken any steps to get treatment for the said complaint. He further submitted that even though it is stated that the complaint was lodged on 03.01.2017, the Victim Girl was sent for medical examination by the Police only on 05.01.2017, and at that time, the Doctor did not notice any external injury on the private part of the Victim Girl. He further submitted that due to land dispute, P.W.-3 and his relatives attacked the Appellant/Accused on 02.07.2017 and caused head injury and they themselves took the Appellant/Accused to a Private Hospital, and fearing that the Appellant/Accused may lodge a complaint against P.W.-3 and his relatives, P.W.-3 belatedly lodged a false complaint as if the Appellant/Accused has sexually assaulted his child. He further submitted that the Appellant/Accused is having a chance of success in the Appeal and there are material contradictions in the evidence of the prosecution witnesses and there is no possibility of taking up of the Appeal in the near future, and therefore, he prayed to suspend the sentence.

6. Per contra, the learned Government Advocate (Criminal Side) appearing for the Respondent has submitted that the Victim Girl has not immediately informed to her parents with regard to the sexual assault made by the Appellant/Accused, and only on 02.07.2017 at evening, the Victim Girl informed her mother that the Appellant/Accused has sexually assaulted her, and hence, on the next day, i.e., 03.01.2017, complaint was lodged before the Police. He further submitted that after receipt of the complaint, the Investigating Officer has registered an F.I.R. immediately, and thereafter, took the matter for investigation and went to the place of occurrence and arrested the Appellant/Accused, and thereafter, the Investing Officer has made a request to the Judicial Magistrate to record statement under Section 164 of Cr.P.C. with the Victim Girl, and only thereafter, on 05.01.2017, she made a request to the Medical Officer to examine the Victim Girl, and by that time, even if any injury has been sustained by the Victim Girl due to the act of the Appellant/Accused, the injury might have been healed, and that was the reason for not noting any injury on the private part of the Victim Girl by the Doctor. He further submitted that on 02.01.2017, after knowing the fact that the Appellant/Accused has sexually assaulted the Victim Girl, P.W.-3 and his relatives asked the Appellant/Accused as to why he has behaved like that, and at that time, the Appellant/Accused ran away and fell down and sustained injury, hence, in order to save his life, P.W.-3 himself took the Appellant/Accused to a Private Hospital and gave treatment and the said fact has not been suppressed by the prosecution. He further submitted that the Appellant/Accused has not stated during questioning under Section 313 of Cr.P.C. that he was assaulted by P.W.-3 and caused injury and taking into consideration of the aforesaid facts, the Trial Court has rightly convicted the Appellant/Accused, and therefore, he opposed to suspend the sentence.

7. Taking into consideration of the submission made by the learned Counsel for the Appellant/Accused that even though the Victim Girl was taken to the Hospital on 30.12.2016 and also on 02.01.2017, on those days, the parents of the Victim Girl have not made any request to the Doctors to examine whether the Victim Girl sustained any injury on her private part, and on the contrary, they took the Victim Girl only for getting treatment for fever and also the fact that the Victim Girl was subjected to medical examination with regard to the sexual assault made on her only on 05.01.2017, and also the fact that the Doctor who examined the said Victim Girl has not noticed any injury on her private part and also the fact that the Accused is in custody from the date of Judgment of the Trial Court, i.e., 12.02.2020, and also the fact that there is no possibility of taking up of the Appeal in near future, this Court is inclined to suspend the sentence of the Appellant/Accused by imposing the following conditions:-

- (i) that the Appellant/Accused shall deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as compensation before the trial court as directed by the Trial Court.
- (ii) that on such deposit, the Appellant/Accused is directed to be released on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of whom, one should be blood relative, each for a like sum to the satisfaction of the learned Special Court for POCSO Cases (Sessions Court), Coimbatore;
- (iii) that the Appellant/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the trial court may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities;
- (iv) that the Appellant/Accused shall appear before the Trial Court on the first working day of every month at 10.30 a.m., until the disposal of the Appeal, and if he is not able to appear before the Trial Court on any day, due to unavoidable circumstances, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the Trial Court. Such an application shall not be entertained often; and
- (v) on the failure of the Appellant/Accused, depositing the said amount, it is open to the Trial Court to commit the Appellant/Accused into custody for undergoing the sentence.

-sd/-

23/03/2020

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

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL COURT FOR
EXCLUSIVE TRIAL OF CASES UNDER POCO ACT,
COIMBATORE.

2 THE SPECIAL COURT FOR POSCO CASES
(SESSIONS COURT), COIMBATORE.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 THE INSPECTOR OF POLICE,
AWPS, PERUR POLICE STATION,
COIMBATORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1C.C. to M/S.A.E.RAVICHANDRAN Advocate on payment of
necessary charges SR NO.5615

Order

in
CRL MP.2864/2020
in
CRL A.151/2020

Date :23/03/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:23/03/2020

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