

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 5352 of 2020

in Crl.A No. 355 of 2020

Manickam

... Petitioner

-vs-

The State rep. by

... Respondent

The Inspector of Police,
Anthiyur Circle, Erode District.

Petition filed under Section 389(1) Cr.P.C. to suspend the sentence passed in Special S.C.No.7 of 2014 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Erode dated 13.03.2015.

For Petitioner .. Mr.S.Pushpakaran

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner has been arrayed as the sole accused in S.C.No. 7 of 2014 on the file of Court of Sessions, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, Erode District. The trial Court, by judgment dated 13.03.2015 convicted the petitioner for the offence punishable under Section 370(4) I.P.C. and Section 4 r/w 18 of the Protection of Children from Sexual Offences Act, 2012. For the offence punishable under Section 370 (4) I.P.C, sentenced to undergo life imprisonment and to pay a fine of Rs.100/-, in default, to undergo six months simple imprisonment and for the offence punishable under Section 4 r/w 18 of Protection of Children from Sexual Offences Act, 2012 sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.100/-, in default, to undergo six months simple imprisonment. Seeking suspension of

sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the petitioner with the intent to sexually assault the victim girl attacked her. Thereafter, she came out of the place of occurrence and shouted. Upon hearing, the other witnesses namely, P.W.6 and P.W.7. gathered and accordingly they deposed about the occurrence.

3. Mr.S.Pushpakaran, the learned counsel appearing for the petitioner submitted that the conviction rendered as early as 13.03.2015. Now, more than five and half years have elapsed. The victim is well known to the petitioner. Even according to the prosecution, it is only an attempt to molest. The learned counsel appearing for the petitioner further submitted that the offences as attributed against the petitioner has not been made out. The alleged occurrence is in a crowded place and therefore, it is improbable that it would have happened. The petitioner has got substantial issues to be decided in the appeal and, therefore, contends that the suspension of sentence will have to be granted.

4. Mr.K.Prabhakar, the learned Additional Public Prosecutor appearing for the State submitted that the presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012 would apply. The evidence of the victim, namely, P.W.2 has been correctly taken into consideration by the trial Court. Thus, the suspension of sentence will have to be dismissed especially when the same has been corroborated by P.W.6 and P.W.7.

5. Upon hearing the submissions made, we find considerable issues involved in the appeal to be decided. The case of the prosecution is that the petitioner had made an attempt to molest the victim girl. Thereafter, she escaped, shouted and ran away. Now, the petitioner has been under incarceration for more than five and half years. Thus, considering the above facts, especially the period of incarceration, as aforesaid, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the Magalir Neethi Mandram (Fast Track Mahila Court), Erode and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

07/10/2020

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

TRUE COPY

TO

1 THE MAGALIR NEETHIMANDRAM
FAST TRACK MAHILA COURT,
ERODE, ERODE DISTRICT.

2 THE INSPECTOR OF POLICE,
ANTHIYUR CIRCLE,
ERODE DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

+1 C.C. to M/S.S.PUSHPAKARAN Advocate on payment of necessary
charges SR.NO.6674

Order

in
CRL MP.5352/2020

in
CRL A.355/2020

Date :07/10/2020

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TA-08/10/2020

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