

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.6414 of 2020 in

CrI.A.No.419 of 2020

Manikandan

... Petitioner

Vs.

The State,
Represented by the Inspector of Police,
All Women Police Station,
Sooramangalam,
Salem District.
(Crime No.3 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 / Accused in Old Spl.S.C.No.51 of 2017, New Spl.S.C.No.54 of 2019 dated 13.08.2020 by the learned Special Court for Cases under the Protection of Children from Sexual offences Act, Salem and enlarge the Petitioner/ Appellant / Accused on bail pending disposal of the appeal.

For Petitioner : Mr.R.Chakkaravarthy

For Respondent : Mr.C.Raghavan
Government Advocate

O R D E R

The petitioner/accused in Old Spl.S.C.No.51 of 2017 and New Spl.S.C.No.54 of 2019 has filed this petition seeking Suspension of Sentence. The trial Court had convicted the accused by judgment dated 13.08.2020 for offence under Section 11 (1) r/w. 12 of the POCSO Act and sentenced him to undergo Rigorous Imprisonment for 3 years with fine of Rs.20,000/-, in default to undergo further period of 3 months Simple Imprisonment.

2. The case of the prosecution is that the de facto complainant had lodged a complaint on 09.02.2017 stating that on 08.02.2017, at about 5.30 p.m., when his grand daughter P.W.2, who is studying Class 10 in Government High School at Vallalapatti, was returning home after the school near Chinnayeri Vattakkadu, the petitioner who is

also residing in the same area had restrained his grand daughter, winked at her and had called her towards the lake area to be happy with her. His grand daughter had refused and raised alarm. Nadesan P.W.6 who was residing nearby, on hearing the voice had questioned the accused for his act. Thereafter P.W.1, grandfather of P.W.2, P.W.3 and P.W.4, the parents of P.W.2 had come there. By that time, the accused had left the place. Thereafter, the case came to be registered under Section 11 (1) r/w. 12 of the POCSO Act. The prosecution on completion of investigation had filed a charge sheet against the accused.

3. The trial Court had examined P.W.1 to P.W.9 and marked Exs.P.1 to P.8 and M.O.1 in this case and on conclusion of trial, had convicted the petitioner as stated above.

4. The petitioner further submits that in this case P.W.1 is the grand father of the victim girl P.W.2, P.W.3 and P.W.4 are the parents of P.W.2. P.W.5 is a relative of P.W.1, who is a witness to the Observation Mazahar. P.W.6 another relative who is said to have questioned the petitioner about his act on 08.02.2017. P.W.7 is the Sub-Inspector of Police who received the complaint and registered the F.I.R. P.W.8 is the Investigating Officer who conducted investigation and filed the charge sheet in this case. P.W.9 is the Head Master of the Government School in which P.W.2 studied.

5. The contention of the petitioner is that the petitioner has been falsely implicated in this case. The petitioner's father had passed away one year before and his mother is working as a coolie. He has a sister who got married and living elsewhere. The petitioner was working as a Room Boy in the Hotel Sung near the New Bus stand, Salem. The petitioner studied upto IX standard and he belongs to Hindu Aadi Dravida Community, the petitioner, normally, to attend nature's calls, would go to the lake area. On 08.02.2017, at about 5.30 p.m., when he was near the lake area, at that time one Kittu and Chinnapaiyan had questioned the petitioner's presence there and he was beaten, dragged and the petitioner sustained injuries. On reaching home, the petitioner found that his salary amount of Rs.8,000/- was missing. The pain due to the injuries sustained got aggravated and thereafter, on the next day, he was taken to Government Hospital, Salem, by his mother and he was admitted in the NMS Ward. Thereafter, from the Hospital, a message was sent to the Sooramangalam Police Station and one Thangavel, Head Constable had come and recorded the statement of the petitioner and thereafter, informed the same to the Sub-Inspector of Police B.Jaganathan, who had registered the case in Crime No.79 of 2017 for offences under Sections 323, 379 IPC and Section 3 (2) (va) of the SC/ST Act on 09.02.2017. Coming to know about the case, using his relatives, the accused herein had foisted a false complaint against the petitioner.

6. The petitioner further submits that the petitioner hails from SC Community and the witnesses herein all belong to Vanniyar Community, who are inimically disposed against the petitioner. All the witnesses belong to one family and no independent witnesses have been examined in this case. He further submitted that in this case, except P.W.2, all the other witnesses are in the nature of hearsay. P.W.1 is the grand father of P.W.2, who admits that he was informed about the incident and thereafter, he came to the scene of occurrence along with P.W.3 and P.W.4 the parents of P.W.2, by the time, the accused had left the scene of occurrence. P.W.6, the cousin of P.W.1 states that he came to the scene of occurrence, on seeing P.W.2 being restrained by the petitioner which was questioned by P.W.6 and there was a fight between them. Thereafter, on seeing the other relatives coming there, the petitioner had left the scene of occurrence. Thus, P.W.2 and all the other witnesses namely P.W.1 Grand father, P.W.3 and P.W.4 parents of P.W.2, P.W.6 Cousin, have all reached the scene of occurrence and none was aware of the conversation and the act alleged against the petitioner.

7. The petitioner further submits that P.W.1 admits that he is not aware of the contents in Ex.P.1 complaint and he had only affixed the signature. Later, he gives an explanation that the complaint was written down by his grand daughter P.W.2 as stated by P.W.1. Thus, the very origin of the complaint itself becomes doubtful coupled with the fact that earlier to it, the petitioner was assaulted by the relatives of P.W.1 to P.W.6 and the petitioner was admitted in the Government Hospital and taking treatment as an inpatient. From the F.I.R. in Crime No.79 of 2017, it is recorded that the complaint has been received when the petitioner was taking treatment as an inpatient in the Government Hospital, NMS Ward. P.W.3 the mother of P.W.2 admits that the accused in Crime No.79 of 2017 namely Kittu, Chinnapaiyan and Nadesan are relatives of the de facto complainant. The petitioner submits that as a counter blast to the petitioner's complaint, a false complaint has been lodged against the petitioner. The respondent police without conducting proper investigation had mechanically filed a charge sheet against the petitioner. Thus, it is evident from the charge sheet as well as charges framed against the petitioner by the trial Court, that the alleged occurrence is said to have been taken place on 28.02.2017 at about 8.30 p.m., which is contra to the evidence let in, in this case, wherein witnesses have stated that the occurrence had taken place on 08.02.2017 at about 5.30 p.m. P.W.2 admits that her school gets over at 5.30 p.m., and thereafter, it takes one hour to reach her residence and only at about 6.30 p.m., she would reach her home. In such circumstances, the presence of P.W.2, in the scene of occurrence at 5.30 p.m., is not possible. The petitioner submits that P.W.2, in her evidence as well as in her 164 statement has stated that the petitioner had approached P.W.2 and represented that he wanted to talk with her and spend happy moments with her, since he is in love with her. Other than this, there is nothing more and the trial Court failed to look into the fact that all the witnesses are interested witnesses and as a counter blast the petitioner had been falsely implicated in this case and the words uttered by the petitioner would not attract Section 11 (1) of the POCSO Act, which is without any intention.

8. The petitioner further submits that the petitioner hails from poor family and the petitioner is unable to pay the fine amount of Rs.20,000/- and due to non payment of fine amount, the sentence would not be suspended by the trial Court and he is confined in Central Prison, Salem, from the date of his conviction.

9. Learned Government Advocate submitted that in this case on a complaint of P.W.1, P.W.7 had registered an F.I.R., Ex.P.4. P.W.8 - the Inspector of Police had taken up the investigation, visited the scene of occurrence, prepared the observation mazahar and rough sketch. Thereafter, proceeded to record statements from witnesses. P.W.2's statement was recorded under 164 Cr.P.C. which is Ex.P.7 and thereafter, on completion of investigation had filed the final report. In this case, P.W.1 is the grand father of the victim who had lodged the complaint, P.W.3 and P.W.4 are the parents of P.W.2, P.W.5 is the witness for observation mazahar, P.W.6 is the cousin of P.W.1 who questioned the petitioner. P.W.9 is the Head Master who had produced Ex.P.8 - the school certificate. The trial Court on the evidence of the witnesses and the material produced had convicted the petitioner.

10. Considering the rival submissions and on perusal of the materials it is seen that the P.W.2 is the victim in this case. P.W.1 grand father, P.W.3 and P.W.4 parents of P.W.2, P.W.6 cousin, their evidence are only in the nature of hearsay. Though P.W.6 reached the scene of occurrence and questioned the petitioner, he had not seen the petitioner winking and calling P.W.2 to the lake side. Thereafter, P.W.1, P.W.3 and P.W.4 had reached the scene of occurrence. Hence, it is certain that except for P.W.2 there are no witnesses for the occurrence proper. From the evidence of P.W.2, it is seen that there is contradiction in the statement of P.W.2 before the Court as well as in her 164 statement Ex.P.2 as well Ex.P.1 Complaint. The only aspect against the petitioner is that the petitioner had restrained P.W.2 and revealed that he was in love with her and called her aside towards the lake side and winked at her. This will not amount to an act or gesture with any intention, more so, an act of sexual harassment. The petitioner lodging a complaint against the relatives of P.W.1 to P.W.7 cannot be lost sight of. From the F.I.R., in Crime No.79 of 2017, it is seen that the complaint is received when the petitioner was taking treatment in NMS Ward and the statement of the petitioner recorded in the Government Hospital, Salem.

11. Further from the submissions made by the petitioner, this Court finds that there are arguable points in this appeal and further, it would take some time for the appeal to be taken up for final hearing and in view of the same, this Court is inclined to grant suspension of sentence and grant bail to the petitioner.

12. Accordingly, the sentence of the petitioner 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.5,000/-(rupees Five thousand only) with two sureties each for a like sum to the

satisfaction of the learned Special Court for Cases under the Protection of Children from Sexual offences Act, Salem, 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 English Calendar Month at 10.30 a.m. till the disposal of appeal.

-sd/-
28/10/2020

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 CASES
UNDER THE PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES ACT, SALEM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SOORAMANGALAM, SALEM DISTRICT.

C.C. to M/S.R.CHAKKARAVARTHY Advocate on payment of necessary charges

WEB COPY

Order
in
CRL MP.6414/2020

in
CRL A.419/2020

Date :28/10/2020

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CS 02/11/2020