

Crl. MP. No. 13283 of 2019
in
Crl. A. No. 615 of 2019

P. RAJAMANICKAM. J.,

This Appeal has been filed by the Appellant/Accused against the Judgment of conviction and sentence passed by the Mahila Court, Chengalpattu in Spl. C. No. 16 of 2017 dated 11.07.2019.

2. The Trial Court has convicted the Appellant herein under Section 354(B) of I.P.C. to undergo rigorous imprisonment for 3 years and also to pay a fine of Rs.5,000/- (Rupees Five Thousand only) in default to undergo simple imprisonment for 3 months, under Section 506(1) of I.P.C. to undergo rigorous imprisonment for 2 years and also to pay a fine of Rs.5,000/- (Rupees Five Thousand only) in default to undergo simple imprisonment for 3 months and under Section 4 of the Protection of Children from Sexual Offences Act, 2012, to undergo rigorous imprisonment for 10 years and also to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) in default to undergo simple imprisonment for 6 months. The Trial Court has also ordered that the aforesaid sentences shall run

concurrently and also gave set off under Section 428 of Cr.P.C. for the period of detention already undergone. Challenging the said Judgment of conviction and sentence, the Accused has filed the present Appeal.

3. The learned Counsel for the Appellant has submitted that as per the prosecution case, the occurrence took place on 19.07.2016 at about 18.30 hours, but FIR was lodged only on 26.07.2016. He further submitted that in the FIR, it has been stated that the matter was referred to panchayat and the head of the panchayat has dragged the matter, and hence, there was a delay in lodging complaint before the Police. He further submitted that the Mother of the Victim has lodged a complaint before the Police, and she was examined as P.W.-1 before the Trial Court and during her cross examination, she has deposed that on the very next day of the occurrence, she has lodged a complaint before the Police, but the said complaint has not been produced before the Court. He further submitted that the head of the panchayat was examined as P.W.-5 and he has deposed that he advised the P.W.-1 to lodge the complaint immediately, and hence, the explanation given in the FIR for not lodging the complaint immediately is not

acceptable. He further submitted that the Doctor's evidence also would show that there was no injury on the body of the victim girl. He further submitted that there are material contradictions in the evidence of the prosecution witnesses and the Appellant is having arguable points in the Appeal and he is having chance of success in the Appeal. He further submitted that there is no possibility of taking the Appeal in the near future. He further submitted that the Appellant has already paid the total fine of Rs.20,000/- (Rupees Twenty Thousand only) before the Trial Court. He further submitted that the Appellant is in custody from the date of Judgment, i.e., 11.07.2019. He further submitted that this Court by the order dated 17.02.2020 has directed the Appellant to deposit a sum of Rs.2,00,000/- (Rupees Two Lakh only) to the credit of S.C. No. 16 of 2017 before the Trial Court, and in compliance of the said order, the Appellant has deposited the aforesaid amount of Rs.2,00,000/- (Rupees Two Lakh only) before the Trial Court, and has also produced a xerox copy of the said receipt to show that he had deposited the aforesaid amount in the Trial Court, and therefore, he prayed to suspend the sentence.

4. In support of the aforesaid contentions, he has relied upon the orders passed by this court in Crl. M.P. No. 9863 of 2019 in Crl. A. No. 454 of 2019 dated 20.12.2019 and in Crl. M.P. No.18003 of 2019 in Crl. A. No. 218 of 2019 dated 02.01.2020.

5. Per contra, the learned Government Advocate (Criminal Side) appearing for the Respondent has submitted that in the complaint, P.W.-1 clearly explained the delay in lodging the FIR. He further submitted that the Trial Court taking into consideration of the fact that P.W.-1 is an illiterate lady and she has deposed in her chief examination that the complaint was lodged only on 26.07.2016 and in the interregnum period, there was a panchayat. He further submitted that since complaint was lodged with a delay, the Doctor could not find any symptom with regard to committing rape on the body of the victim girl. He further submitted that the evidence of the Head Master would show that the Victim was aged about 15 years at the time of occurrence. He further submitted that the victim girl gave a statement under Section 164 of Cr.P.C. before the Judicial Magistrate, and

the said statement corroborate her evidence. He further submitted that since charges are very serious, he opposed for suspending the sentence.

6. Taking into consideration the aforesaid submissions made by the learned Counsel for the Appellant that there are material contradictions with regard to the date and time of occurrence and also lodging complaint before the Police and also evidence of the Doctor that no injury was noticed by her on the body of the victim girl and also the fact that the Appellant is in custody from 11.07.2019 and also the fact that as per the directions of this Court, the Appellant has deposited a sum of Rs.2,00,000/- (Rupees Two Lakh only) before the Trial Court, this Court is inclined to suspend the sentence alone by imposing the following conditions:-

- i. The Appellant/Accused shall deposit a sum of Rs.1,50,000/- (Rupees One Lakh Fifth Thousand Only) to the credit of Spl. C. No. 16 of 2017 before the Trial Court, on or before 26.03.2020;
- ii. On such deposit being made, the Trial Court shall re-deposit the said amount in a Fixed Deposit Account, in any one of the Nationalized Banks, renewable thereafter periodically. the

disbursal of this amount shall be decided at the culmination of the Appeal;

- iii. Thereafter, the Appellant/Accused is ordered 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 Sessions Judge (Mahila Court), Chengalpattu;
- iv. The Appellant/Accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities;
- v. 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

- vi. 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.

11.03.2020

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Note: Issue order copy by 13.03.2020



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Crl.M.P.No.13283 of 2019

P. RAJAMANICKAM, J.

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**Crl. MP. No. 13283 of 2019
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(1/2)**

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and

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P.RAJAMANICKAM.J.,

This petition is posted today under the caption "for being mentioned."

2. The learned counsel for the petitioner has submitted that already as per the directions of this Court, the petitioner/appellant has deposited a sum of Rs.2,00,000/- before the trial Court and only taking into consideration of the said fact, this Court has passed an order to suspend the sentence but again it has imposed a condition that the petitioner/appellant shall deposit a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) to the credit of Spl.C.No.16 of 2017 before the trial Court, on or before 26.03.2020 and the said condition No.1 is onerous. Hence, he requests to delete the said condition.

3. Considering the fact that the petitioner has already deposited a sum of Rs.2,00,000/- before the trial Court, condition No.1 is deleted. The Registry is directed to make necessary amendment in the order and issue fresh copy.

16.03.2020

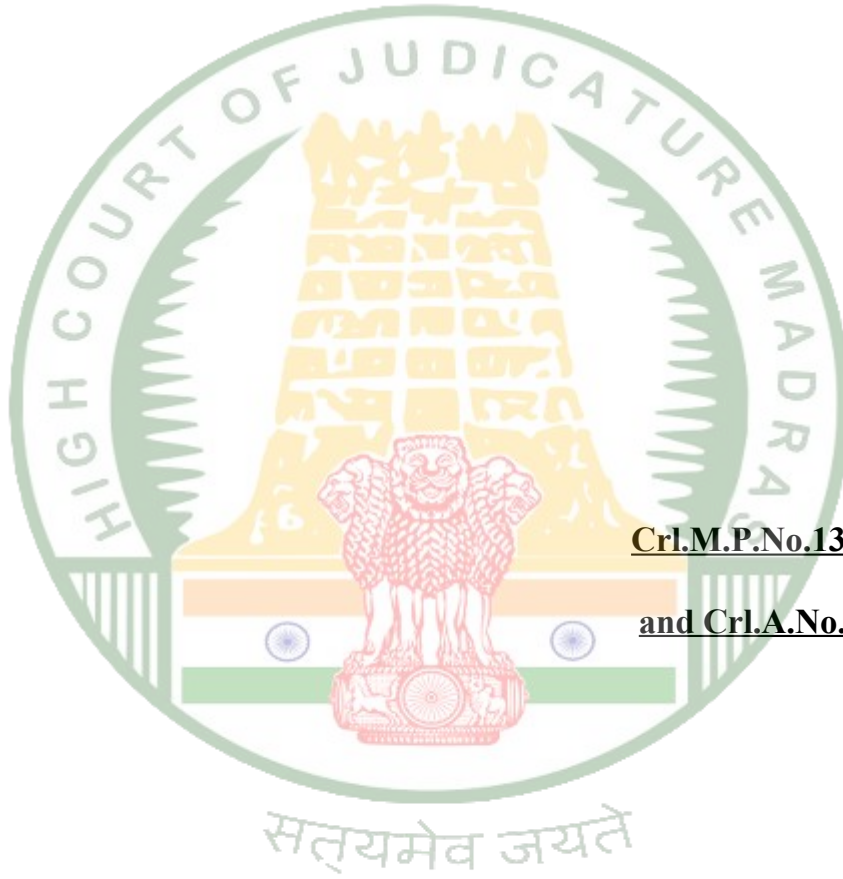
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