



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Sixteenth day of December Two Thousand and Twenty

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.2589 of 2020
IN
CRL A(MD) No.138 of 2020

MUNIYANDI

... PETITIONER/APELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
KURANGANI POLICE STATION,
THENI DISTRICT.
CRIME No.22 OF 2013

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the petitioner by the Sessions Judge, Mahalir Neethimandram, Theni in FTC in S.S.C.No.1 of 2015 by his Judgment, dated 23.02.2017 and enlarge the petitoner on bail pending disposal of the above appeal.

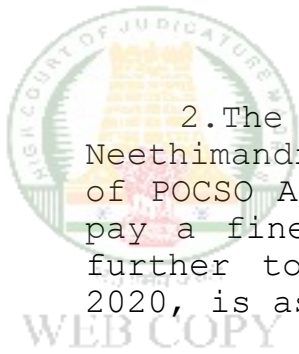
Prayer in CRL A(MD) No.138 of 2020:

To call for the records in S.S.C.No.1 of 2015 on the file of the Sessions Judge, Mahalir Neethimandram, FTC Theni and set aside the conviction passed by judgment dated 23.03.2017.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.E.SATISH RAJKUMAR, Advocate for the petitioner and of Mr.K.K.RAMAKRISHNAN, Additional Public Prosecutor on behalf of the Respondent, the Court made the following order:-

(Order of the Court was made by K.KALYANASUNDARAM.,J)

Heard Mr.E.Satish Rajkumar, learned counsel appearing for the Petitioner and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent/State and perused the materials placed before this Court.



2.The judgment and order of the Sessions Judge, Mahalir Neethimandram(FTC), Theni, convicting the accused under Section 4 of POCSO Act and sentencing him to undergo life imprisonment and to pay a fine of Rs.10,000/- and in default to pay the said amount, further to undergo one year rigorous imprisonment in S.C.No.1 of 2020, is assailed in this Criminal Appeal.

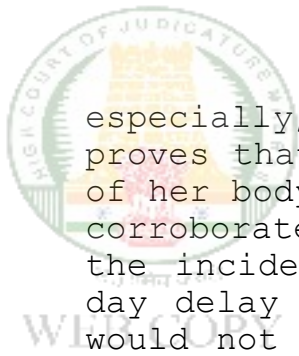
3.The case of the prosecution is that on 29.4.2013 at 6.30 p.m., when the daughter of P.W.1 and P.W.4 went to grazing their cattle, the accused kidnapped her and committed rape on her.

4.The prosecution examined the victim as P.W.2, P.W.1 and P.W.4 are her parents, P.W.8 and P.W.11 are the Doctors who treated P.W.2. P.W.1, P.W.2 and P.W.4 have given evidence stating that the accused has sexually assaulted P.W.2. The evidence of P.W.1, P.W.2 and P.W.4 has been corroborated by the evidence of P.W.8 and P.W.11. Relying upon those evidence, the trial Court convicted the accused and imposed the sentence as stated above. Aggrieved over the conviction, the present appeal has been filed. Pending appeal, the Petitioner seeks for suspension of sentence.

5.The learned counsel for the Petitioner would argue that though the occurrence said to have been taken place at 6.30 p.m. on 29.4.2013, but the complaint was preferred only on the next day. According to the learned counsel, the delay in preferring the complaint remains unexplained by the prosecution. It is also contended that P.W.6-Panchayat President of the village has given evidence stating that on 29.3.2013, the incident was informed to her. It is also contended that material objects M.O.1 to M.O.4-dresses of P.W.2 and the accused were sent for chemical analysis, however, no semen was found in those material objects. He further added that the Petitioner has been under incarceration for more than three years and nine months and hence, he is entitled for suspension of sentence.

6.Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent/State vehemently opposed the application,contending that this is a case of rape of a ten year old child. It is the submission of the learned Additional Public Prosecutor that on the very next day of the occurrence P.W.11 examined the victim and found injuries on her private part and backside of her body. After two days, when P.W.2 was examined by P.W.8, wounds were not healed. It is also submitted that the Parliament taking serious view of sexual assault on the minor girls amended the law and as per the amendment, the accused has to undergo minimum period of ten years of imprisonment and the said amendment came into effect from 16.8.2019 and hence no mercy can be shown on the Petitioner/accused.

7.We entirely agree with the submissions of the learned Additional Public prosecutor. When we go through the records,



especially, the evidence of P.W.8 and P.W.11, their testimony proves that the victim had injury on her private part and backside of her body. In this case, P.W.2 is the victim and her evidence is corroborated by the evidence of P.W.8 and P.W.11. P.W.2 narrated the incident that has taken place on 29.11.2013. In our view, one day delay in preferring the complaint for the offences like this would not have any consequence. Therefore, we are of the opinion that the Petitioner is not entitled for suspension of sentence.

8. In such view of the matter, this Criminal Miscellaneous Petition stands dismissed.

sd/-

16/12/2020

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1. THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM (FTC), THENI.
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
3. THE INSPECTOR OF POLICE,
KURANGANI POLICE STATION, THENI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL MP(MD) No.2589 of 2020

IN

CRL A(MD) No.138 of 2020

Date : 16/12/2020

vsn

AE/SMA/SAR-II (23.12.2020) 3P / 5C