



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

Wednesday, the Second day of September Two Thousand Twenty

PRESENT

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

CRL MP (MD) No.3862 of 2020

IN

CRL A (MD) No.244 of 2020

RAVICHANDRAN

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ALANGULAM,
TENKASI DISTRICT.
CRIME NO.16 OF 2016

... RESPONDENT/ RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the conviction and sentence imposed against the petitioner to undergo life imprisonment for the offence u/s 6 of POCSO (Protection of Children from Sexual Offences Act), 2012 and to pay a fine for a sum of Rs.2,00,000/- in default to undergo one year simple imprisonment, and direct the Government to pay a sum of Rs.2,00,000/- as compensation to the child of the victim girl under section 357(A) of Cr.P.C. by depositing the said amount through P.W.15 and to undergo six months rigorous imprisonment for an offence under section 506(i) of IPC and to pay a fine for a sum of Rs.1,000/ in default to undergo one month simple imprisonment passed by the learned Mahila Court, Tirunelveli in Special Case No.68 of 2017 on 14.11.2019 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.V.SASIKUMAR, Advocate for the petitioner and of Mr.R.ANANDHARAJ, Additional Public prosecutor on behalf of the Respondent, the court made the following order:-



[Order of the Court was made by **K.KALYANASUNDARAM, J.**]

The petitioner is the sole accused in Special Case No.68 of 2017, on the file of the Mahila Court, Tirunelveli. He was charged for the offence under Sections 6 of Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act") and 506(i) I.P.C. The Trial Court, vide Judgment dated 14.11.2019, convicted and sentenced the petitioner to undergo life imprisonment and to pay a fine of Rs.2,00,000/- (Rupees two lakhs only), in default to undergo one year simple imprisonment for the offence under Section 6 of POCSO Act and to undergo six months rigorous imprisonment and to pay a fine of Rs.1,000/- (Rupees one thousand only), in default to undergo one month simple imprisonment for the offence under Section 506(i) I.P.C.

2. Aggrieved over the conviction and sentence, the petitioner has preferred the present criminal appeal. Pending appeal, the petitioner has filed this criminal miscellaneous petition seeking to suspend substantive sentence of imprisonment imposed on him by the Trial Court.

3. The case of the prosecution is that the victim (P.W.2), after completing Tenth Standard and Diploma in Nursing, was working as a Staff Nurse at Suseela Hospital in Pavurchatiram. The petitioner was working as an Accountant in Ramya Dairy Farm, which was run by the paternal uncle of P.W.2. It is the further case of the prosecution that the Dairy Farm is situated very near to the house of P.W.2 and when the petitioner was coming for his employment, they had an acquaintance and they were moving very closely for the past 1 ½ years. Whiles, on 12.03.2016, P.W.2 was taken by the petitioner in a motorcycle from Suseela Hospital and on the way to Melapavur, it is alleged that at about 08.30 p.m., the petitioner committed rape on P.W.2. It is also stated that till 07.08.2016, the petitioner committed rape on many occasions, thereby, P.W.2 got conceived and thereafter, it was informed to her mother (P.W.1).

4. Mr.V.Sasi Kumar, learned counsel for the petitioner, would argue that though the prosecution had come with a story that from 12.03.2016 to 07.08.2016, the petitioner committed rape on P.W.2 on many occasions, P.W.1, in her evidence, has categorically deposed that the petitioner committed rape only on 12.03.2016. The learned counsel, taking aid of the evidence of P.W.13, the Doctor, would argue that if the petitioner had committed rape on P.W.2 on 12.03.2016, child could not have been born to her in the month of February, 2017. It is further contended that P.W.1 has deposed that her daughter (P.W.2) was born in the Tamil month of "Maasi", which would prove that P.W.2 was major on the date of occurrence, so, the provisions of POCSO Act cannot be invoked to the case on hand.



5. The learned counsel for the petitioner further contended that the petitioner had deposited the fine amount of Rs.2,00,000/- (Rupees two lakhs only) and to that effect, he has also produced the receipt.

6. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would submit that the prosecution proved its case that P.W.2 was a minor through School Transfer Certificate (Ex.P5) and the evidence of the Headmistress (P.W.11). It is further contended that the D.N.A.Test Report (Ex.P10) would also indicate that the petitioner is the father of the child born to P.W.2 and hence, no indulgence can be shown on the petitioner.

7. A perusal of the records would reveal that as per the prosecution case, P.W.2 and the petitioner were friends for more than 1 ½ years prior to the occurrence and P.W.2 was also aware of the fact that the petitioner was already married. P.W.2, in her evidence, has deposed that only one occasion i.e. on 12.03.2016, the petitioner committed rape on her. P.W.13, the Doctor, has deposed that P.W.2 would not have conceived in the month of March, 2016, had she delivered the child in February, 2017.

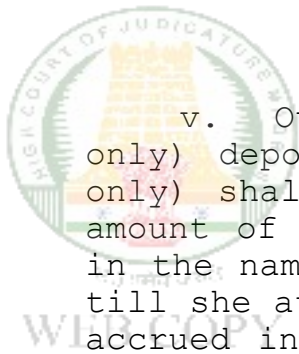
8. Considering the above facts and circumstances of the case, we are inclined to suspend the substantive sentence of imprisonment imposed on the petitioner. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended, subject to the following conditions:

i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Court, Tirunelveli.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.

iii. The petitioner shall appear before the learned Sessions Judge, Mahila Court, Tirunelveli, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iv. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.



v. Out of the fine amount of Rs.2,00,000/- (Rupees two lakhs only) deposited by the petitioner, Rs.1,00,000/- (Rupees one lakh only) shall be paid to the victim girl (P.W.2) and the remaining amount of Rs.1,00,000/- (Rupees one lakh only) shall be deposited, in the name of the minor child, in anyone of the Nationalized Bank till she attains the age of majority and thereafter, the amount with accrued interest shall be paid to the child directly by the Bank. It is made clear that no further orders in this regard is required.

sd/-
02/09/2020

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

TO

1. THE SESSIONS JUDGE,
MAHILA COURT, TIRUNELVELI.
 2. THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI.
 3. THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
ALANGULAM, TENKASI DISTRICT.
 4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADRURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1 CC to M/s.V.SASI KUMAR, Advocate (SR-6239[I] dated 03/09/2020)

ORDER
IN
CRL MP(MD) No.3862 of 2020
IN
CRL A(MD) No.244 of 2020
Date :02/09/2020

MS/VR/SAR-3/09.09.2020/4P.6C