



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

Tuesday, the Fifteenth 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.10045 of 2019
IN
CRL A(MD) No.288 of 2019

KARTHIK

... PETITIONER/APELLANT

Vs

STATE REP.BY
THE DEPUTY SUPERINTENDENT OF POLICE,
THENKARAI POLICE STATION,
THENI DISTRICT.
(CRIME NO.777 OF 2015)

... RESPONDENT/COMPLAINANT

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 order dated 08.01.2019 passed in Spl. S.C.No.61 of 2016 on the file of the learned Fast Track Mahila Court, Theni pending disposal of the above CRL.A.(MD) No.288 of 2019.

Prayer in CRL A(MD) No.288 of 2019:

To call for the records pertaining to the Judgment made in Spl. S.C.No.61 of 2016 dated 08.01.2019 passed by the learned Fast Track Mahila Court, Theni and set aside the same by allowing this appeal.

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.G.KARUPPASAMY PANDIAN, Advocate for MR.M.S.JEYAKARTHIK, 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.]

The present Criminal Appeal has been filed by the Petitioner aggrieved over the conviction and sentence imposed by the Fast Track Mahila Court, Theni in Special S.C.No.61 of 2016, dated



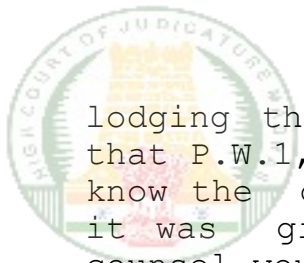
2.The Petitioner was charged for the offence punishable under Sections 364, 506(i) IPC and Section 4 and 6 of Prevention of Children from Sexual Offences Act, 2012. The learned Sessions Judge, accepting the case of the prosecution, has convicted the Petitioner and sentenced him to undergo 7 years rigorous imprisonment under Section 366 IPC with fine of Rs.5,000/- and in default, to undergo one year rigorous imprisonment, one year rigorous imprisonment under Section 506(i) IPC with fine of Rs.1,000/- and in default, to undergo three months rigorous imprisonment and life imprisonment for the offence under Section 6 of the POCSO Act, 2012 with fine of Rs.5,000/- and in default, to undergo two years rigorous imprisonment and ordered the sentences to be run concurrently. Challenging the conviction and sentence, the present appeal has been filed.

3.The case of the prosecution is that P.W.1 is the mother of P.W.2. P.W.2 was 15 years old at the relevant point of time and she was studying 10th standard in a Government Higher Secondary School at Saruthupatti. It is the further case of the prosecution that about four months prior to the date of occurrence i.e., on 30.11.2015, while P.W.2 going to the school and return back to her house, the accused expressed his love affair with P.W.2 and stated that after marriage, they can settle at Thiruppur. By saying these words, he had sexual intercourse with P.W.2 on that day and thereafter on many occasions. When she became pregnant through the accused, he refused to marry her and also threaten her with dire consequences.

4.The prosecution in order to substantiate the charges, examined as many as 26 witnesses and produced 15 exhibits. On appreciation of evidence, the trial Court held that the prosecution succeeded in establishing the charges levelled against the accused and convicted and sentenced him, as stated supra.

5.Mr.G.Karuppasamy Pandian, learned counsel appearing for the Petitioner would argue that according to the prosecution, P.W.2 was 15 year old and the accused was 21 year old at the relevant point of time, but the prosecution has failed to prove the age of the victim/P.W.2. According to the learned counsel, P.W.4, father of P.W.2 has categorically stated that he is having Birth Certificate of P.W.2 and it was given to the Investigating Officer during the course of investigation, but the document was not produced before the Court. It is the submission of the learned counsel for the Petitioner that the prosecution has deliberately suppressed the material evidence and hence they are guilty of suppressing the material facts.

6.He further added that even though the occurrence is said to have taken place on 30.11.2015, but the complaint was preferred on 03.12.2015, i.e., four days after the occurrence. <https://hccservices.mca.gov.in/hccservices/>



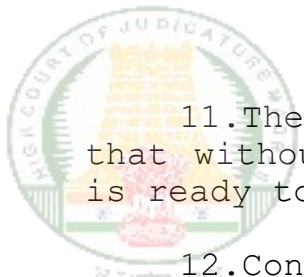
lodging the complaint remains unexplained. It is also contended that P.W.1, who is the mother of P.W.2 has stated that she does not know the contents of the complaint nor it was read over to her and it was given through their community leader P.W.8. The learned counsel would state that the complaint Ex.P1 itself is doubtful as it was lodged after due deliberations with the leader of the community. The learned counsel drawing the attention of this Court to the evidence of P.W.2, would submit that physical relationship even according to P.W.2, is a consensual relationship and the evidence of P.W.2 would show that she is matured to give consent. It is also stated that the Investigating Officer has admitted in his examination that the occurrence took place in an open place and the petitioner has been in judicial custody for more than two years and he can be granted bail pending this appeal.

7. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the State would vehemently oppose the bail petition by contending that it is a case of aggravated penetration of sexual assault and under Section 5(j)(ii) of the POCSO Act, if the victim girl becomes pregnant, the ingredients of the offence are made out. The prosecution has successfully established the case before the trial Court. It is further contended that to prove the age of the victim girl P.W.2, the prosecution examined P.W.10, who is the Headmaster of the School, where, P.W.2 was studying and Ex.P3-Transfer Certificate shows that P.W.2 was born on 10.1.2001. The evidence of P.W.21 reveals that the victim was between the age of 14 to 16.

8. In reply, the learned counsel for the Petitioner would urge that according to the Investigating Officer(P.W.26), abortion was conducted by P.W.21, who in her evidence, had categorically stated that she did not conduct abortion to P.W.2 and hence the story of pregnancy was not established by the prosecution.

9. Heard the rival submissions made on either side and perused the materials placed before this Court.

10. In this case, the law was set in motion on the basis of the complaint preferred by P.W.1, which has been marked as Ex.P1. P.W.1, in her evidence, would state that she does not know the contents of the complaint. It is further seen from the evidence of P.W.3 and P.W.4, that P.W.1 instead of directly going to the Police, approached P.W.8, who is the leader of their community and with the help of P.W.8, the complaint was given to P.W.23. P.W.4, has admitted in his evidence that he is having the Birth Certificate of P.W.2 and it was also given to P.W.26, the Investigating Officer, but the Birth Certificate was not produced before the Court. Therefore, we find some force in the contention of the learned counsel for the Petitioner. It is also seen that the petitioner has been under incarceration for more than two years.



11.The learned counsel appearing for the Petitioner would state that without prejudice to his rights in this appeal, the appellant is ready to pay Rs.50,000/- to the victim girl/P.W.2.

12.Considering the above aspects, we are of the opinion that the accused is entitled for suspension of sentence during pendency of the appeal. 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:

- 1.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 Judicial Magistrate, Periyakulam, Theni District.
- 2.The Petitioner shall take a Demand Draft for a sum of Rs.50,000/-(Rupees fifty thousand only) in the name of P.W.2/Ganga and shall hand over the same to her in the presence of the respondent Police. In case, if P.W.2/Ganga refused to receive the same, the Petitioner shall deposit the said amount to the credit of Special S.C.No.61 of 2016, on the file of Fast Track Mahila Court, Theni.
3. 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 pass book to ensure their identity.
4. The petitioner shall appear before the learned Judicial Magistrate, Periyakulam, Theni District, at 10.30 a.m. on the first working day of every English Calendar month until further orders.
5. 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.

sd/-
15/12/2020

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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



TO

1 THE JUDICIAL MAGISTRATE,
PERIYAKULAM, THENI DISTRICT.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.

3 THE JUDGE,
FAST TRACK MAHILA COURT, THENI.

4 THE DEPUTY SUPERINTENDENT OF POLICE,
THENKARAI POLICE STATION,
THENI DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.M.S.JEYAKARTHIK Advocate SR.No.8227

ORDER
IN
CRL MP (MD) No.10045 of 2019
IN
CRL A (MD) No.288 of 2019
Date :15/12/2020

VSN
JM/PN/SAR IV/21.12.2020/5P/8C