

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.05.2021

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.M.P.No.5652 of 2021

in Crl.A.No.229 of 2021

K.V.Ramanujam

... Petitioner/Appellant/Accused

Vs.

The State of Tamilnadu,
Rep by the Inspector of Police,
W-22, All Women Police Station,
Mylapore,
Chennai - 600 004.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence awarded to the petitioner by the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, in S.C.No.124 of 2017 dated 16.04.2021.

For Petitioner : Mr.V.Karthik, Senior counsel
For Mr.L.Murali Krishnan

For Respondent : Mr.Raj thilak
Government Advocate (Crl side)

O R D E R

(The case has been heard through video conference)

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence awarded to the petitioner by the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai, in S.C.No.124 of 2017 dated 16.04.2021.

2. This is the case of suspension of sentence. The learned counsel for the petitioner submits that the parents of the victim girl had admitted that she is not mentally matured and learned counsel had invited the attention of this court to the deposition of D.W.1 and the Investigation Officer. The Investigation Officer alleged to have seized the mobile phone and the computer and now the incriminating evidence against the accused has been received from the forensic expert office. Therefore, the conviction ordered by the learned Special Judge is unwarranted. The Investigation Officer had also in his cross-examination has stated that the victim girl was not subject to any psychotic test regarding her mental status.

3. The learned Public Prosecutor has vehemently objected to suspend the sentence and to set aside the conviction on the ground that this is the case of conviction under POCSO Act to give the presumption to the court regarding the allegation made against the accused. It is for the accused to lift the evidence and to disprove the allegation. In this case, the accused had not examined himself as D.W.1, however, a different person by name Kureshi, son of Raman was examined as D.W.1.

4. The learned Public Prosecutor has invited the attention of this Court on the evidence of D.W.1 and he has also drawn the attention of this Court on the cross-examination of D.W.1. In the cross-examination, DW-I has admitted that he has to attend the class along with the child and his child was encouraged in performing in the music competitions by the accused. Therefore, the Court can draw the presumption that he is an interested witness and he is no way connected with the case. He has also admitted that he does not sit along with the other students of music class in the music session. Therefore, his evidence has no validity. After all, the learned Special Judge has accepted the evidence of the victim and arrived at the irresistible conclusion that the petitioner herein, as an accused, had indulged in sexual offence attracting under Sec 10 of POCSO Act 2012 and imposed a fine of Rs.25,000/- and to undergo Rigorous Imprisonment for five years.

5. The learned Public Prosecutor also submitted a counter affidavit of Investigation Officer stating that it is the case of prosecution on the offence, which had been proved. The learned Public Prosecutor had further submitted that the victim girl is not mentally equal to the age of physical health. Therefore, she was unable to express any cogent expression regarding this act committed on her by the accused. That cannot be exploited by the Accused/petitioner. The learned Public Prosecutor has also submitted that only the punishment below five years alone can be suspended and the imprisonment above five years and the fine amount of Rs.2 lakhs cannot be suspended.

6. Considering the offence alleged to have taken place, the relationship of the accused to the victim, the nature of the victim girl, which is not mentally equal to the age of her physical age, that was observed by the learned Trial Judge and taken judicial notice of the same, the learned Judge had accordingly convicted the accused for the offence under Sections 10, 6, 14(3), 14(5) of the Protection of Children from Sexual Offences Act 2012, and Sec 506(i) of IPC and on considering the vehement objections of the learned Public Prosecutor, this Criminal Miscellaneous Petition stands dismissed.

-sd/-
26/05/2021

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 SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT CASES, CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
W-22, ALL WOMEN POLICE STATION,
MYLAPORE, CHENNAI-600 004.

C.C. to M/S.L.MURALI KRISHNAN Advocate on payment of necessary charges

Order

in

CRL MP.5652/2021

in

CRL A.229/2021

Date :26/05/2021

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