



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

Monday, the Eighteenth day of January Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.216 of 2021
in
CRL A(MD)No.37 of 2020

KUMUDHAVALLI

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
KARUR, KARUR DISTRICT.
CRIME NO.14 OF 2017

... 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 by the Additional Sessions Judge/Fast Track Court/Mahila Court, Karur passed in S.C.No.17 of 2018 dated 19/11/2019 pending disposal of the Criminal Appeal and thus render justice.

PRAYER IN CRL A(MD)No.37 of 2020:

Pleased to call for the records pertaining to the order dated 19.11.2019 in S.C.No.17 of 2018 on the file of Additional Sessions Judge/Fast Track Court/Mahila Court, Karur and to set aside the same by allowing this Criminal 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.S.SIVAPRAKASH, Advocate for the petitioner and of Mr.R.ANANDARAJ, 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.S.Sivaprakash, learned counsel appearing for the petitioner and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

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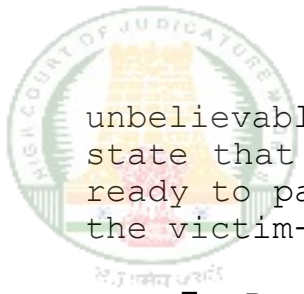
2. This Criminal Appeal is preferred by the Petitioner/A2 in Special S.C.No.17 of 2018, on the file of the learned Additional Sessions Judge (Fast Track Mahila Court), Karur, wherein, she was tried along with six other accused for the offence punishable under Sections 366(A), 120(B) & 344 IPC and Section 4(1) of Immoral Traffic(Prevention)Act r/w Section 14(2)(3) and Section 17 of Protection of Children from Sexual Offences Act.

3. The Trial Court, on appreciation of evidence, found the accused A1 to A3 and A6 and A7 guilty while acquitting the accused No.4 and 5. Challenging the conviction and sentence, the present Criminal Appeal is filed.

4. The case of the prosecution is that P.W.1 and P.W.3 are Sri Lankan refugees and P.W.2 is their daughter. Both P.W.1 and P.W.2 are living at Kamaraj Nagar, Vengamedu along with their children. When P.W.2 was 13 years old, on 18.11.2017, at about 8.00 a.m., the first accused, who is the neighbour of P.Ws1 and 2 enticed the minor girl P.W.2 and abducted her along with accused No.2 and 3 to Thiruppur to a brothel house run by them and induced P.W.2 to involve in brothel. It is the further case of the prosecution that A5 and A6 are the customers of P.Ws. 1 to 4 and they sexually assaulted P.W.2.

5. The learned counsel for the petitioner would submit that there are lot of contradictions in the evidence of prosecution witnesses which creates suspicion over the allegation made against the accused. It is submitted by the learned counsel for the petitioner that according to the prosecution, P.W.2 was found missing from 18.11.2017 and she returned back to her house only on 30.11.2017 and Ex.P1-complaint was preferred by P.W.1 to P.W.20 on 6.12.2017, but, the evidence on record would reveal that P.W.1 preferred a complaint on 19.11.2017 to Vengamedu Police and within a period of three days, P.W.2 also returned to Vengamedu Police Station, wherefrom, they were referred to the respondent/Police. It is also argued that as per the prosecution, all the accused were arrested on 18.12.2017 but even before the registration of the case on 6.12.2017, the accused were said to have been present in the Police Station. The learned counsel has also drawn the attention of this Court to the evidence of P.W.2 to show that P.W.2 could not identify the place where she was sexually assaulted by the accused. Further, P.W.2 implicated A5 in her statement given to the learned Judicial Magistrate under Section 164 of Cr.P.C, but, in the Witness Box, she has not spoken about P.W.5, however, implicated only A6 and only on that basis, the accused was convicted.

6. It is the contention of the learned counsel that the earliest statement of the Prosecution witnesses have been suppressed and the testimony of P.W.s 1 to 3 are untrustworthy and



unbelievable. The learned counsel for the petitioner would also state that the petitioner/A2 without prejudice to her defence, is ready to pay Rs.3 lakhs (Rupees three lakhs only) as compensation to the victim-P.W.2.

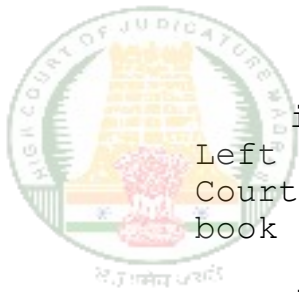
7. Per contra, the learned Additional Public Prosecutor would submit that even though P.W.1 had preferred a complaint on 19.11.2017 to the Station House Officer at Vengamedu Police Station, but, the present complaint was given on 06.12.2017 only after P.W.2 returned to her house on 30.11.2017. It is also contended that the witnesses are illiterates and they could not give the exact date of lodging the complaint. According to the learned Additional Public Prosecutor, the medical evidence also supported the evidence of P.W.2 and prays to dismiss this miscellaneous application.

8. In the matter on hand, the case of the prosecution is that on 18.11.2017, the accused 1 to 4 along with the assistance of A7, abducted P.W.2 to Thiruppur to involve her in brothel. A perusal of the evidence of P.W.1 to P.W.3 would show that a complaint was preferred on 19.11.2017 itself to Vengamedu Police Station, P.W.3 has admitted in his evidence that on the very next day, Vengamedu Police had informed him and they identified the accused and on the next day, P.W.2 was also present in Vengamedu Police Station and the Police obtained the statement from her. It is not in dispute that initially, P.W.2 implicated A5 also in this crime. But for the best reason known to her, no evidence was adduced to support the allegation against A5. Hence A4 and A5 were acquitted. A perusal of the records would also indicate that all the accused were present in the Police Station even before registration of the complaint and they were seen by P.W.2, hence the identification parade conducted by the prosecution becomes meaningless.

9. Considering the above aspects, we are of the opinion that the petitioner/A2 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/A2 alone is suspended, subject to the following conditions:

i. The petitioner is directed to be enlarged on bail on her executing a bond for a sum of 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 No.I, Karur.

ii. The Petitioner/A2 shall pay a sum of Rs.3 lakhs (Rupees three lakhs only) to P.W.2/victim towards compensation, by way of Demand Draft drawn on any one of the nationalised Bank in favour of P.W.2/victim.



iii. 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.

iv. The petitioner shall appear before the learned Judicial Magistrate No.I, Karur, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

v. 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/-

18/01/2021

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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 ADDITIONAL SESSIONS JUDGE,
(FAST TRACK MAHILA COURT), KARUR.
2. THE JUDICIAL MAGISTRATE No 1, KARUR.
3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, KARUR DISTRICT.
4. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, KARUR, KARUR DISTRICT.
5. THE SUPERINTENDENT,
CENTRAL PRISON FOR WOMEN, TRICHY.
6. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.SIVAPRAKASH, Advocate (SR-253[I] dated 18/01/2021)

ORDER IN
CRL MP(MD) No.216 of 2021
in
CRL A(MD)No.37 of 2020
Date :18/01/2021

SKN

TK/VR/SAR.1/20.01.2021/4P/8C

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