



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

Tuesday, the Thirtieth day of March 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.1184 of 2021
in
Crl.A(MD)No.73 of 2021

J.AJIT BABU

... PETITIONER/ APPELLANT/
SOLE ACCUSED

-Vs-

STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THIRUVAIYAR WOMEN POLICE STATION, THANJAVUR.
CRIME NO.2 OF 2017.

... 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 by the Judgment dated 28.02.2020 passed in S.C.No.129 of 2019 on the file of the Learned Sessions Judge for the Sexual Offences against the Children Special Court, Thanjavur and enlarge the Petitioner on bail, pending disposal of the Criminal Appeal.

Prayer in Crl.A(MD)No.73 of 2021:

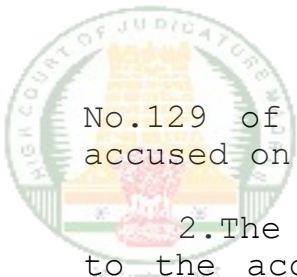
To set aside the judgment dated 28.02.2020 passed in S.C.No.129 of 2019 on the file of the Learned Sessions Judge for the Sexual Offences against the Children Special Court, Thanjavur and acquit the Appellant/ Sole Accused of the charge.

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.SOMASUNDARAM, 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 **G.ILANGO VAN, J**)

This Criminal Miscellaneous Petition is filed to suspend the substantive sentence passed by the Sessions Judge for the Sexual Offences against the Children Special Court, Thanjavur, in SC

<https://hcservices.ecourts.gov.in/hcservices/>



No.129 of 2019, dated 28.02.2020 and enlarge the petitioner/Sole accused on bail, pending disposal of the criminal appeal.

2.The case of the prosecution is that the victim girl was known to the accused, who is the petitioner herein. On 19.05.2017, the victim after completing her 11th standard, was in the house, during vacation. On 09.05.2017, the accused, who is the petitioner herein, kidnapped her to Chennai and kept her illegally in his relatives house. During that period, he had sexual intercourse with the victim girl forcibly and thereby, committed the offence under Sections 366 IPC and Section 5 (1) r/w 6 of POCSO Act.

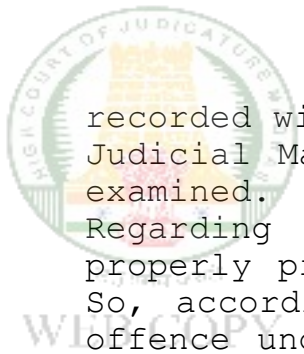
3.To prove the charge, the prosecution had examined 13 witnesses and marked 14 documents. On the side of the accused, no witness was examined and no document was marked.

4.The trial court, after considering the materials available on record, came to the conclusion that the charge framed against the accused has been proved beyond all reasonable doubt and convicted the accused and sentenced him to undergo Rgorous Imprisonment for a period of 10 years with a fine of Rs.5,000/-, in default, to undergo 1 year Simple Imprisonment for the offence under Section 366 IPC and sentenced him to undergo Life Imprisonment with fine of Rs.5,000/- in default, to undergo 1 year Simple Imprisonment for the offence under Section 5 (1) r/w 6 of POCSO Act and ordered both the sentences to run concurrently under Section 428 Cr.P.C. Challenging the conviction and sentence of the trial court, the present appeal has been preferred by the petitioner and pending the appeal, seeking suspension of sentence, this criminal miscellaneous petition is filed.

5. Heard both sides.

6. The learned counsel for the petitioner would submit that it is a case of love affair between the victim and the petitioner herein and only because of the consent given by the victim, she was taken by him and a false case has been foisted against him. The victim stayed with him for 2 ½ months. During that period, there was no complaint. Only after a long delay, complaint has been given by the defacto complainant. During the course of evidence, P.W.1 admitted that she along with the petitioner and voluntarily surrendered before the Police, on the complaint, made by the defacto complainant, who is the father of the victim. The defacto complaint has also filed a Habeas Corpus Petition before this Court. By that time, P.W.1 was secured and at that time, she wanted to go along with her father.

7. The learned counsel for the petitioner would further submit that the date of birth of the victim is also heavily disputed. There is a contradiction between the evidence of P.W.1 and P.W.5, over the date of birth of the victim and the statement under Section 164 Cr.PC was not



recorded within 24 hours as mandated under the provision of Act. The Judicial Magistrate, who recorded the statements of P.W.1, was not examined. So, there was violation of Section 25 of POCSO Act. Regarding the date of birth, the School records has not been properly proved in accordance with law by examining the informant. So, according to him, it was purely a love affair, for which, no offence under Section 366 as well as Section 5 (1) r/w 6 of POCSO Act will be attracted and he is entitled for suspension of sentence.

8. Per contra, it is the contention on the part of the State that since P.W.1 was below 18 on the date of occurrence, even if there was any consent, the petitioner cannot escape from the criminal prosecution and conviction and sentence. So, according to the learned Public Prosecutor, no case, has been made out by the petitioner to enlarging on bail, after suspending the sentence.

9. A perusal of entire records as well as the judgment of the Trial Court and a reading of the evidence of P.W.1, the victim girl shows that she voluntarily left her parental home and went along with the petitioner and stayed in Chennai for 2 ½ months with the petitioner. During that time, she did not contact either her parents or relatives. She would also admit that she was not harassed by anyone, when she stayed in the relative's house of the petitioner in Chennai. In pursuance of the complaint made by her father, she and the petitioner had voluntarily came to the native place and surrendered before the Police.

10. As rightly contended by the learned Additional Public Prosecutor, even though, there was consent on the part of the victim girl, the petitioner cannot escape from the criminal prosecution. But, however, from the facts and circumstance of the case and in the light of the admission made by the victim girl that she voluntarily went out from the parental house along with the petitioner whether in the light of this admission, the offences under Section 366 and Section 5 (1) r/w 6 of POCSO Act are attracted or not is a matter for consideration, during argument in the main appeal.

11. In the light of the above submissions made by the learned counsel appearing for the petitioner, we are of the considered view that there are arguable points involved in this case and it may not be possible that the criminal appeal is likely to be taken up for hearing at the earliest point of time, So, we are inclined to grant suspension of sentence to the petitioner with certain conditions.

12. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs. **10,000/- (Rupees Ten Thousand only)** with two sureties each for a like sum to the satisfaction of the learned Sessions Judge for the Sexual Offences against the Children Special Court, Thanjavur, and on



further condition that the petitioner shall appear before the said court once in a month i.e., the first working day of every English Calendar month at 10.30 am pending appeal, till further orders.

sd/-
30/03/2021

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

TO

1 THE SESSIONS JUDGE FOR THE SEXUAL OFFENCES
AGAINST THE CHILDREN SPECIAL COURT, THANJAVUR.

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THIRUVAIYAR WOMEN POLICE STATION,
THANJAVUR.

3 THE SUPERINTENDENT, CENTRAL PRISON,
TRICHY.

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

+1 CC to M/s.E.SOMASUNDARAM, Advocate (SR-2723[I] dated 30/03/2021)

ORDER
IN
CRL MP(MD) No.1184 of 2021 IN
Crl.A(MD)No.73 of 2021
Date :30/03/2021

DSS
MS/PN/SAR-1/01.04.2021/4P.6C