



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

Thursday, the Seventh 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.2377 of 2020
IN CRL A(MD) No.128 of 2020

A.JEGANATHAN ... PETITIONER/ SOLE ACCUSED
- Vs-

STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT.
CRIME NO.04/2017

... 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 and grant Bail to the Appellant/Sole Accused against the Judgment dated 19.08.2019 in Special S.C.No.55 of 2017 on the file of the District Sessions Judge(Mahila Court) Tirunelveli District in Crime No.04 of 2017 on the file of the Respondent pending disposal of the instant Criminal Appeal.

PRAYER IN CRL A(MD) No.128 of 2020:

To call for the records of the judgment dated 19.08.2019 in Special S.C.No.55 of 2017 on the file of the District Sessions Judge (Mahila Court), Tirunelveli District in Crime No.04 of 2017 on the file of the Respondent and set aside the same and Acquit the Appellant/ Sole Accused.

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.I.PINAYGASH, 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.**]

The sole accused in Spl.S.C.No.55 of 2017 on the file of the Mahila Judge (District and Sessions Judge), Tirunelveli was tried for an offence under Section 6 of POCSO Act.



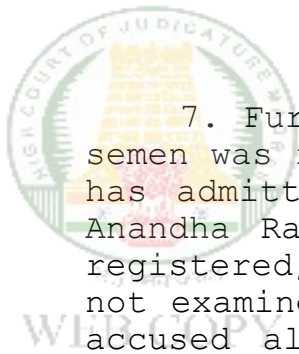
2. The case of the prosecution is that the accused is the father of P.Ws.2 & 3. The mother of P.Ws.2 & 3 was living away from the accused for more than two years due to matrimonial dispute. P.Ws.2 & 3 were studying 8th standard and 10th standard respectively at Tirunelveli N.G.O.'A' Colony St. Joseph Girls Higher Secondary School and they were aged about 13 years and 16 years at the relevant point of time. The allegation against the accused is that on 17.02.2017 at about 10.00 p.m., when P.Ws.2 & 3 were sleeping, the accused alleged to have removed the dress of P.W.2 and touched upon her breast. Pending appeal, he seeks suspension of sentence.

3. In order to prove the charge, the prosecution has examined as many as 20 witnesses and marked 16 documents. On the side of the accused, D.W.1 and D.W.2 were examined. On appreciation of evidence, the trial Court convicted the accused under Section 6 of POCSO Act and sentenced him under Life Imprisonment and imposed a fine of Rs.1,00,000/-. Aggrieved over the said conviction and sentence, the appellant has filed the present appeal. Pending appeal, he seeks suspension of sentence.

4. Mr.I.Pinaygash, learned counsel appearing for the petitioner would argue that the entire prosecution case is false. According to him, the accused and his wife are admittedly residing separately and due to property dispute, this false complaint has been give at the instigation of his wife. It is further contended that there are material contradictions in the evidence of P.Ws.1 & 2 with regard to allegations made against the accused. Further, the prosecution has not come to the Court with clean hands and the original complaint has been suppressed in this case and the medical evidence has not supporting the case of the prosecution.

5. Per contra, Mr.R.Anandaraj, learned Additional Public Prosecutor appearing on behalf of the State would argue that the prosecution has proved the case beyond reasonable doubt and there is no reason to reject the evidence of P.Ws.2 & 3, who are the victim in this case and prayed for dismissal of the petition.

6. In the instant case, admittedly the accused is a father of P.Ws.2 & 3. It is also not in dispute that the accused's wife Amirthakani is living separately in view of the matrimonial discard. A perusal of evidence of P.Ws.2 & 3 would reveal that there is a material contradictions with regard to overt-act attributed against the accused. P.W.2 in her evidence has stated that on the date of occurrence at 10.00 p.m., when she was sleeping along with her sister P.W.3, the accused removed her dress and laid his hand on her breast, immediately she raised alarm. This incident has been informed to her sister P.W.3 and her maternal aunt Salithish over phone. But P.W.3 in her evidence stated that on the date of incident at 10.00 p.m., the accused in an inebriated mood pulled the hands of P.W.2 and immediately, she raised alarm.



7. Furthermore, the evidence of P.Ws.13 & 17 would show that no semen was found in the material objects seized from the P.W.2. P.W.1 has admitted in his evidence that the complaint was given by one Anandha Ramakrishnan and on that basis, a criminal case has been registered, however, admittedly, the said Anandha Ramakrishnan was not examined by the prosecution. Though, P.W.1 has stated that the accused also misbehaved with P.W.3, but nothing is found in the evidence of P.W.3.

8.D.Ws.1 & 2 deposed that only due to the property dispute and at the instigation of accused's wife, this false complaint has been preferred against the accused.

9. 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:

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 Mahila Court (District and Sessions Judge), 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 pass book to ensure their identity.

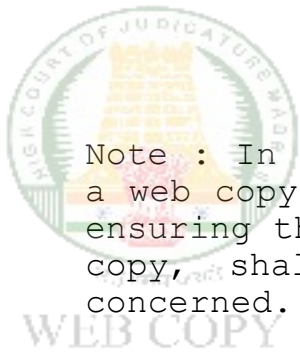
iii. The petitioner shall appear before the Mahila Court (District and Sessions Judge), Tirunelveli, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

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 he would absent.

sd/-
07/01/2021

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/ /2021
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 DISTRICT AND SESSIONS JUDGE (MAHILA COURT),
TIRUNELVELI DISTRICT.
- 2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PALAYAMKOTTAI, TIRUNELVELI DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON,
PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL MP (MD) No.2377 of 2020

IN

CRL A (MD) No.128 of 2020

Date : 07/01/2021

AM

MS/PN/SAR-2/19.01.2021/4P.5C