



Crl.A.No.544 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2022

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.544 of 2021

and

Crl.M.P.No.13596 of 2021

S.Prakash

... Appellant/Accused

Versus

State By,
The Inspector of Police,
Azlagapuram Police Station,
Salem.

Crime No.427 of 2015

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records pertaining to the judgment rendered by the trial Court namely, the learned Special Judge for POCSO Act, Salem in S.C.No.66 of 2019 dated 26.08.2021 and allow the appeal.

For Petitioner : Mr.K.Venkataramani
Senior Advocate
for Mr.A.G.Rajan

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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ORDER

This Criminal Appeal is preferred by the appellant/accused against the judgment passed by the learned Special Judge for POCSO Act, Salem in S.C.No.66 of 2019 dated 26.08.2021.

2. The appellant is accused and the respondent is complainant. Initially, the respondent police had registered a case in Cr.No.427 of 2015 against the appellant under girl missing. Subsequently, the respondent police conducted investigation and laid charge sheet under Sections 363, 366 of IPC, Section 9 of Prohibition of Child Marriage Act, 2006 and Section 6 r/w. 5(1) of Protection of Children from Sexual Offences Act, 2012. After taking cognizance of the offences, the learned Sessions Judge, Mahila Court taken the case on file in Spl.S.C.No.5 of 2018. Since the offence is against the woman and it is triable by the Court of the Session, the Mahila Court framed charges against the appellant. Subsequently after establishment of Special Court under POCSO Act, the case was transferred before the learned Special



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Judge for POCSO Act and renumbered as S.C.No.66 of 2019. The learned Special Judge after completion of trial, convicted the accused and sentenced him to undergo 5 years of Rigorous Imprisonment and imposed a fine of Rs.5,000/- in default to undergo 3 months of Simple Imprisonment for the offence under Section 363 of IPC; sentenced him to undergo 5 years of Rigorous Imprisonment and imposed a fine of Rs.5,000/- in default to undergo 3 months of Simple Imprisonment for the offence under Section 366 of IPC; sentenced him to undergo 2 years of Rigorous Imprisonment and imposed a fine of Rs.10,000/- in default to undergo 3 months of Simple Imprisonment for the offence under Section 9 of Prohibition of Child Marriage Act, 2006 and sentenced him to undergo 10 years of Rigorous Imprisonment and imposed a fine of Rs.10,000/- in default to undergo 6 months of Simple Imprisonment for the offence under Section 6 r/w. 5(1) of Protection of Children from Sexual Offences Act, 2012.

3. Aggrieved over the judgment of conviction and sentence dated 26.08.2021, the appellant/accused is before this Court with the present appeal.



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4. The learned counsel for the appellant would submit that during the pendency of this appeal, the appellant filed a miscellaneous petition under Section 391 of Cr.P.C., to accept the original birth certificate of the alleged victim girl, in support of his contention that on the date of occurrence, the victim has completed the age of 18 years and she is not a child under the definition mentioned in the Section 2(1)(d) of POCSO Act. Therefore, the offence under Section 6 r/w. 5(1) of Protection of Children from Sexual Offences Act, 2012 would not attract. Since the victim attained majority, Section 9 of Prohibition of Child Marriage Act, 2006 also would not attract.

5. When the matter came up for hearing on 14.11.2022, this Court had directed the Headquarters Deputy Tahsildar, Kallakurichi to appear before this Court on 17.11.2022 and to bring the Original Birth Register reflecting the birth details of the victim girl.

6. Today, Mr.E.Paranthaman, Headquarters Deputy Tahsildar, Kallakurichi District & Taluk appeared before this Court with the Original



Birth Register.

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7. On verification of the Original Birth Register, the date of birth mentioned in the Miscellaneous petition in Crl.M.P.No.13596 of 2021 filed under Section 391 of Cr.P.C is tallied with the date of birth mentioned in the Original Birth Register. As per the additional document/birth certificate, the victim has completed the age of 18 years on the date of occurrence. Hence, this miscellaneous petition filed under Section 391 of Cr.P.C., is allowed and the appeal is remitted back to the trial Court. Since the additional document/birth certificate of the victim shows that on the date of occurrence, the victim is not a child, the trial Court is directed to summon the Headquarters Deputy Tahsildar, Kallakurichi and mark the Birth Certificate produced with petition filed under Section 391 of Cr.P.C after comparing with the original Birth Register as defence side documents in the manner known to law by examining Headquarters Deputy Tahsildar, Kallakurichi as Court Witness and to re-frame the charges and conduct fresh trial and dispose the Sessions Case in S.C.No.66 of 2019 in accordance with law. Both parties are directed to extend their fullest co-operation for speedy disposal. In case, non-cooperation of the appellant, the trial Court is directed to remand the appellant and dispose the case as expeditiously as possible preferably within



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a period of 4 months from today.

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In the result, this Criminal Appeal is disposed of. Consequently,
connected Miscellaneous Petition is allowed.

17.11.2022

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Index: Yes/No

Internet: Yes/No

To

1. The learned Special Judge
for POCSO Act, Salem.
2. The Inspector of Police,
Azlagapuram Police Station,
Salem.
3. The Public Prosecutor,
Madras High Court,
Madras.



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P.VELMURUGAN, J.

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