



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

Monday, the Twentieth day of June Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice P.N.PRAKASH
and

The Hon`ble Mrs.Justice R.HEMALATHA

Crl.M.P.[MD]No.1800 of 2022
in
Crl.A.(MD) No.29 of 2022

PALRAJ

... PETITIONER / APPELLANT /
SOLE ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
RAJAPALAYAM NORTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.672/2015)

... RESPONDENT / 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 passed in Spl S.C No. 37/2016 dt. 08.10.2021 on the file of the Special court for exclusive Trial of cases under protection of children from the sexual offences act, 2012 Virudhunagar District at Srivilliputhur pending disposal of the above said Criminal Appeal.

Prayer in Crl.A.(MD) No.29 of 2022:

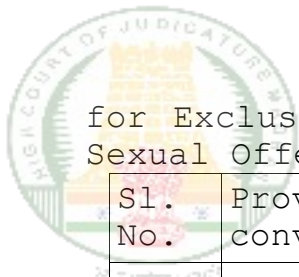
To admit this appeal on file, to call for the records from the Lower Court and duly set aside the judgment passed by the learned Special Court for exclusive trial of cases under protection of children from the sexual offences act, 2012, Virudhunagar District at Srivilliputhur in his Special Sessions Case No.37 of 2016 dated 08.10.2021.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.M.KRISHNAVENI, Advocate for the petitioner and of MR.S.RAVI, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by P.N.PRAKASH, J.]

The petitioner has been convicted and sentenced in Special Sessions Case No.37 of 2016, dated 08.10.2021 by the Special Court

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



for Exclusive Trial of cases under Protection of Children from the Sexual Offences Act, 2012 are as follows :

Sl. No.	Provision under which convicted	Sentence
1	Section 363 IPC	Seven years imprisonment and fine of Rs.1,000/-.
2	Section 341 IPC	Three months imprisonment and fine of Rs.1,000/-.
3	Section 342 IPC	One year imprisonment and fine of Rs.1,000/-.
4	Section 8 r/w.7 of POCSO Act	Five years imprisonment and fine of Rs.1,000/-.
5	Section 10 r/w.9(k), (l) of POCSO Act	Seven years imprisonment and fine of Rs.1,000/-.
6	Section 6 r/w.5(l) (m) of POCSO Act	Life imprisonment and fine of Rs.1,000/-.

If the fine amounts are not paid, to undergo six months imprisonment each concurrently. The aforesaid sentences were ordered to run concurrently.

2. Challenging the conviction and sentences, the petitioner has filed Crl.A.(MD) No.29 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. Learned counsel for the petitioner submitted that the age of the victim girl has been determined based on Ex.P.16, which is a certificate issued by the Headmistress, Sahayarani Middle School, Malayadipatti, Rajapalayam, which shows the date of birth of victim is 18.04.1999. But whereas, the victim was not a minor but was more than 18 years of age. However, it is seen that the petitioner was 50 years old and the victim conceived, delivered a child and DNA report also clearly implicates the petitioner.

4. The learned counsel for the petitioner submitted that it was a consensual sex between the petitioner and the victim girl and therefore, the petitioner ought not to have been convicted under the POCSO Act.

5. In our considered opinion of this Court, whether the age of the victim was less than 18 years or whether it was an consensual sex or not, if otherwise, questions are to be gone into only at the time of final disposal of the Criminal Appeal.

6. At this juncture, pertinent it is to point out that the Supreme Court, in **Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)**, has considered **Kashmira Singh v. State of Punjab**, and has held as follows:

"30. . . . In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt



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true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

7. In such view of the matter, we find no merit in this petition.

8. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-

20/06/2022

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23/06/2022

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

TO

- 1 THE JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, 2012,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE
RAJAPALAYAM NORTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

Crl.M.P.[MD]No.1800 of 2022
in

Crl.A.(MD) No.29 of 2022

Date :20/06/2022