



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

Monday, the Twenty Second day of August Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) . No.6134 of 2022
in
CRL.A.(MD) .No.351 of 2022

V.BALAMURUGAN

... PETITIONER / RESPONDENT /
ACCUSED

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
THILAGARTHEDAL POLICE STATION, MADURAI CITY
(CRIME NO.229 OF 2013)

... RESPONDENT / PETITIONER /
COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to pass an order to suspend the sentence passed in S.C.No. 260 of 2016 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai dated 06.04.2022 and enlarge the petitioner on bail pending disposal of the Crl.A.

Prayer in CRL.A.(MD).No.351 of 2022:

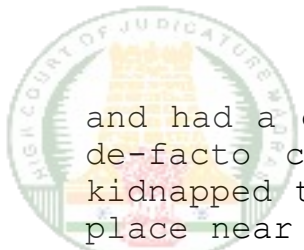
To call for the records pertaining to Sessions Case No.260 of 2016 on the file of the learned Sessions Judge, Mahalir Neethimandram, madurai and to set aside the order of conviction passed in S.C.No.260 of 2016 dated 06.04.2022 and acquit the appellant/accused from all the charges.

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.ARUMUGAM.C.M., Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

RESERVED ON	17.08.2022
PRONOUNCED ON	22.08.2022

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/accused by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in S.C.No.260 of 2016, dated 06.04.2022, till the disposal of the Criminal Appeal.

2.The case of the prosecution is that the de-facto complainant and her daughter were waiting at Madurai Railway Station on 12.03.2013 at about 09.00 p.m, that the accused came to that place



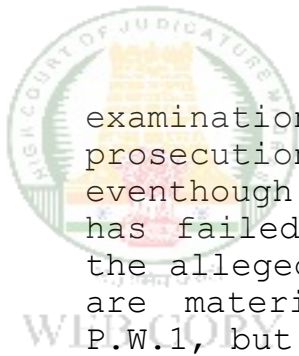
and had a conversation with them, that at about 10.00 p.m, the de-facto complainant was sleeping in the floor, the accused had kidnapped the de-facto complainant's daughter and brought her to the place near Chappani Temple near Arulmighu Meenakshi Amman temple and he committed rape on the de-facto complainant's daughter, who is mentally unsound, that at about 04.00 a.m., on 13.03.2013, the victim came to the place of her mother, that both of them travelled in the train from Madurai to Tenkasi and during travel, the de-facto complainant noticed that her daughter was in a tired position and there was bleeding, that the complainant along with her daughter got down at Thirumangalam and went to Government Hospital, that on the basis of the intimation given by the hospital, the respondent police went to the hospital and that on the basis of the complaint lodged by the de-facto complainant, FIR came to be registered in Crime No.229 of 2013 for the offence under Sections 366 and 376 IPC. The respondent after completing the investigation, has laid the final report against the petitioner/accused on 06.05.2013 and the case was taken on file in P.R.C.No.53 of 2013 on the file of the learned Judicial Magistrate No.II, Madurai. Subsequently, the case was committed to the Principal District and Sessions Judge, Madurai and the case was taken on file in S.C.No.260 of 2016 and subsequently, the case was made over to the learned Sessions Judge, Mahalir Neethimandram, Madurai.

3.During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 20 documents as Ex.P1 to Ex.P20 and 5 Material Objects as M.O.1 to M.O.5. The defence has adduced neither oral nor documentary evidence.

4.The learned Special Judge, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned Judgment, dated 06.04.2022 and convicted the petitioner/accused for the offence under Sections 366 and 376 IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- for each offence, in default to undergo six months Simple Imprisonment for each offence. Aggrieved by the said Judgment of conviction and sentence, the petitioner/accused has preferred the present appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6.The learned counsel for the petitioner would submit that the trial Court has relied on the alleged conversation between the de-facto complainant (P.W.1) and her daughter, but the Investigation Officer has neither examined the victim nor cited her as a witness. He would further submit that the prosecution has miserably failed to prove that the victim was mentally unsound and that therefore, the



examination of the victim. He would further submit the prosecution has also failed to prove the place of occurrence itself, even though they had prepared two mahazars and that the trial Court has failed to consider the discrepancy in evidence with regard to the alleged place of occurrence. He would further submit that there are material contradictions between Ex.P.1 and the evidence of P.W.1, but the trial Court has failed to consider the same.

7. The learned Additional Public Prosecutor would submit that the trial Court, on considering the evidence of P.W.1, P.W.6 and P.W.16, Medical Officer, has given a finding that the daughter of P.W.1 i.e., victim was mentally unsound and that P.W.16, Medical Officer has given evidence that the victim was suffering from "Psychosis not otherwise specified" and that therefore, the non-examination of the de-facto complainant by the Investigating Officer and before the Court cannot be found fault with. He would further submit that the trial Court has rightly observed that the evidence of P.W.1, P.W.6, P.W.10 and P.W.11 are wholly reliable and their evidence inspired the confidence of the Court and came to the decision that the charge levelled against the petitioner/accused stood proved. He would further submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

8. Considering the above facts and circumstances of the case and also considering the seriousness and gravity of the offence alleged against the petitioner and also the fact that the petitioner is in jail from 28.12.2021, this Court is not inclined to grant suspension of sentence to the petitioner at this point of time.

9. In the result, this Criminal Miscellaneous Petition is dismissed

sd/-

22/08/2022

/ TRUE COPY /

/08/2022

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

TO

- 1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM, MADURAI.
- 2 THE INSPECTOR OF POLICE
THILAGARTHEDAL POLICE STATION, MADURAI CITY
- 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD). No.6134 of 2022
in

CRL.A.(MD).No.351 of 2022

Date :22/08/2022