



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

Friday, the Twenty Sixth day of August Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6579 of 2022
in
Crl.A.(MD)No.372 of 2022

AGASTHIYAR

... PETITIONER/APPELLANT/
SOLE ACCUSED

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
RAJAPALAYAM ALL WOMEN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.24 OF 2018.

... 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 imposed on the Petitioner by the Learned Special Court for exclusive trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur by its judgment in Spl.SC.No.3 of 2019 dated 08.04.2022 and enlarge him on bail pending disposal of the Criminal Appeal.

PRAYER IN CRL.A.(MD) No.372 of 2022 :

Pleased to call for the records of the impugned judgment made in Spl.S.C.No.3 of 2019 on the file of the Learned Special Court for exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur dated 08.04.2022 and set aside the same.

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.JEGADEESH PANDIAN.M, Advocate for the petitioner and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.03 of 2019, dated 08.04.2022, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputtur, till the disposal of this Criminal Appeal.



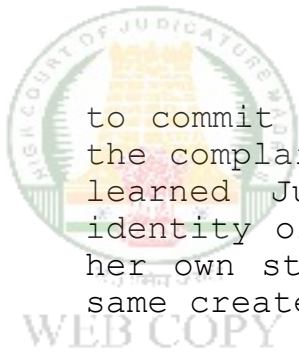
2. The case of the prosecution is that on 19.11.2018 at about 04.30 p.m., when the child victim was returning back to her house from her school, she took tea and told her mother as if she was going to attend her natural call at nearby brick kiln, that when the child victim was returning after attended her natural call, the petitioner/accused called her, for which, she refused to go with him, that the petitioner took her to the place of occurrence where he removed her dresses and his dresses and thereby attempted to commit penetrative sexual assault, that the child victim at that time raised an alarm suddenly and the petitioner stood up and watched over in and around the place of occurrence to notice as to whether anybody was nearing to that place, that the child victim suddenly escaped from him and took her cycle and flee from the place of occurrence, that she immediately went to her house and narrated the incident to her parents and relatives, who in turn rushed to the place of occurrence, that the child victim had identified the petitioner to them and that on that basis, complaint came to be lodged and FIR came to be registered in Crime No.24 of 2018 for the offences under Section 363 IPC and Sections 5(m), 6 and 18 of POCSO Act.

3. The respondent police, after completing the investigation, has filed the final report and the same was taken on file in Spl.S.C.No.03 of 2019 on 05.01.2019 on the file of the Fast Track Mahila Court and subsequently, the case was transferred to the Special Court for Exclusive Trial of Cases under POCSO Act.

4. During the trial, the prosecution has examined 13 witnesses as P.W.1 to P.W.13 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The defence has adduced neither oral nor documentary evidence.

5. The learned Special Judge, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the impugned judgment dated 08.04.2022 convicting the petitioner/sole accused for the offence under Section 363 IPC and sentenced him to undergo seven years imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment and for the offence under Sections 18 r/w 6 r/w 5(m) of POCSO Act, 2012, and sentenced him to undergo ten years imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6. The learned counsel for the petitioner would submit that though the occurrence said to have taken place nearby a brick kiln there is no hidden place available in the occurrence spot



to commit the occurrence and that there is no corroboration in the complaint dated 20.11.2018 of P.W.1 and her statement before the learned Judicial Magistrate, Rajapalayam, on 27.11.2018 as the identity of the accused was not known to P.W.1, whereas she disowns her own statement and identified him before the Magistrate and the same creates strong doubt about the veracity of the complaint.

7. The learned counsel for the petitioner would further submit that the victim girl did not speak about the identity of the accused at the first instance, whereas she has spoken about the identity subsequently and hence, the question of possibility of tutoring the child ought not to be ruled out, that there is no corroboration of evidence between P.W.1, P.W.12 and P.W.13, that the prosecution has also not explained the inordinate delay in lodging the complaint and that the trial Court has miserably failed to consider the material contradictions.

8. The learned Additional Public Prosecutor would submit that P.W.1 has made a statement before the learned Judicial Magistrate, Rajapalayam that she knew about the culprit as identified by her daughter, that her statement was recorded on 27.11.2018 and the complaint was given on 20.11.2018, that therefore non-identification of the accused does not arise, that though there are minor variations as to the exactness of the statement, the trial Court has held that they are not fatal to the case of the prosecution, that the reason for delay in reporting the matter has been clearly explained, that the prosecution has established that the child victim was aged 8 years, at the time of the alleged occurrence and as such, she comes under the category of child and that the petitioner took the child victim into the place of occurrence where he removed his dresses and dresses of the child victim and thereby attempted to commit the penetrative sexual assault.

9. Considering the above facts and circumstances and taking note of the seriousness and gravity of the offence alleged and also the facts that the victim was only 8 years old at the time of alleged occurrence and that the petitioner is in incarceration from the date of judgment i.e., 08.04.2022, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-
26/08/2022

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/08/2022

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 SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, 2012,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTTUR.
2. THE INSPECTOR OF POLICE,
RAJAPALAYAM ALL WOMEN 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 MP(MD) No.6579 of 2022
in
Crl.A.(MD)No.372 of 2022
Date :26/08/2022

csm
USK/VR/SAR-IV/30.08.2022/4P/5C