



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Thursday, the Eighteenth day of August Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.8296 of 2022

in

Crl.A.(MD)No.448 of 2022

SATHISH KUMAR

... PETITIONER/APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
MUSIRI POLICE STATION,
MUSIRI ALL WOMEN POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
CR.NO.1546/2020

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed upon him in Spl S.C.No.115/2020 on the file of the Learned Sessions Judge Mahila Court Tiruchirappalli, Tiruchirappalli District Dt 20.05.2022 pending disposal

PRAYER IN CRL A(MD)No. 448 OF 2022:

To call for the records in SPL.S.C.No.115 of 2020 on the file of the Learned Sessions Judge, Mahila Court, Tiruchirappalli, Tiruchirappalli District and set aside the Judgment dated 20.05.2022 and Acquit the appellant of the charge leveled against him.

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



RESERVED ON	16.08.2022
PRONOUNCED ON	18.08.2022

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.115 of 2020, dated 20.05.2022, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the defacto complainant's daughter, due to corona, was working in fancy store temporarily, that on 27.08.2020 at about 08.45 p.m., when the defacto complainant went to the said fancy store to pick up his daughter, he was informed by the owner of the shop that she left the shop at 06.45 p.m., itself as if she felt stomach pain, that the defacto complainant thereafter searched his daughter in his relatives house, but could not find out her whereabouts, that he lodged a complaint before the police and on that basis, FIR came to be registered in Crime No.1546 of 2020 under the caption of 'Girl Missing' on 28.08.2020 by Musiri Police, that on 29.08.2020 at about 12.00 noon, the victim girl appeared before the respondent police and on enquiry, she informed that she was in love with the petitioner for the past three months and the petitioner promised that he would marry her, that on 27.08.2020 at about 06.45 p.m., due to the compulsion of the petitioner, she went along with him by a car to Namakkal and on the way to Salem, the petitioner tied Thali on her neck before a Vinagayar Temple situated on the way, that both of them had stayed in the car itself throughout that night and at that time, the petitioner had sexual intercourse with her forcibly, despite her refusal, that on 28.08.2020 morning after taking bath in the nearby Cauvery river both of them travelled in the car throughout the day, that on 28.08.2020 night, they had again stayed in the car itself and at that time also, the petitioner had sexual intercourse with her two three times forcibly, despite her refusal and that thereafter, on coming to know that complaint was lodged before the respondent police, the petitioner dropped her at Periyar bridge at Musiri on 29.08.2020.

3. The respondent police, after recording the statement of the victim girl, altered the case from 'Girl Missing' to Section 366(A) IPC, Sections 5(1) r/w 6 of POCSO Act and Section 9 of Prohibition of Child Marriage Act.

4. The respondent police, after completing the investigation, has filed the final report and the same was taken on file in Spl.S.C.No.115 of 2020.

5. During the trial, the prosecution has examined 16 witnesses as P.W.1 to P.W.16, exhibited 19 documents as Ex.P.1 to Ex.P.19 and marked 1 material object as M.O.1. The defence has adduced neither oral nor documentary evidence.



6. The learned Sessions Judge, upon considering the evidence and on hearing the arguments of both the sides, has passed the impugned judgment dated 20.05.2022 convicting the petitioner/accused for the offence under Section 366 IPC and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months Simple Imprisonment, for the offence under Section 9 of Prohibition of Child Marriage Act, 2006 and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Simple Imprisonment and for the offence under Sections 5(1) r/w 6(1) of POCSO Act, 2012 and sentenced him to undergo twenty years Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo six months Simple Imprisonment and further ordered that above the sentences of imprisonment to 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.

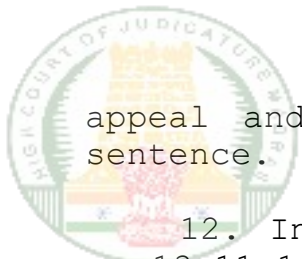
7. The learned counsel for the petitioner would contend that the prosecution has miserably failed to prove the age of the victim girl, that the prosecution had only produced Ex.P.9-school certificate issued by P.W.8/Headmistress, that the trial Court ought not to have placed much reliance upon Ex.P.9 as the admissibility of the same would not be of much evidentiary value to prove the age of the victim girl in the absence of the material on the basis of which, the age was recorded and that there is no contemporaneous documents to substantiate the age recorded in Ex.P.9.

8. The learned counsel for the petitioner has also relied on the judgment of the Hon'ble Supreme Court in **S.Varadarajan vs. State of Madras reported in AIR 1965 SC 942** and the judgment of this Court in **Ragavan @ Puvial Ragavan and others vs. Inspector of Police, Thiruvaiyaru Police Station reported in 2014 (2) MWN (Cr.) 592**.

9. In both the above decisions, the accused therein were convicted for the offence under Section 363 IPC.

10. In **S.Varadarajan's case**, the Hon'ble Supreme Court has held that if a girl, who is in the verge of attaining majority and capable of knowing the full import of what she is doing and went on her own accord, the same cannot made out an offence under Section 363 IPC.

11. In **Ragavan @ Puvial Ragavan's case**, no charge under Section 363 IPC was framed and the accused had been put to serious prejudice, as they had no notice of the offence of which he was convicted and also taking note of the fact that the victim girl left the house voluntarily without any force or compulsion by the accused, the learned Judge of this Court has allowed the criminal



appeal and thereby setting aside the judgment of conviction and sentence.

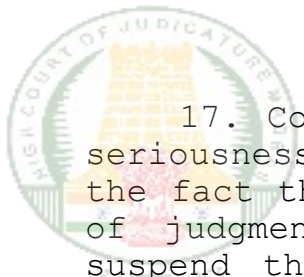
12. In **S.Varadarajan's case**, the victim girl therein was born on 13.11.1942 and she had already completed 17 years and 10 months at the time of the alleged occurrence, whereas, in **Ragavan @ Puvial Ragavan's case**, as per the Radiological examination, the age of the victim girl was above 17 years, but below 18 years.

13. The learned Additional Public Prosecutor would submit that in the case on hand, the victim girl was born on 13.01.2004 and she was only 16 years, 7 months and 14 days at the time of occurrence and as such, she comes under the category of child as per Section 2 (d) of the POCSO Act.

14. As rightly contended by the learned Additional Public Prosecutor, considering the fact that the victim girl in the present case was aged 16 years and that the petitioner was charged for the offences under the POCSO Act, the above decisions cannot be made applicable.

15. The next main contention of the learned counsel for the petitioner is that the prosecution had recorded the statement of the victim girl under Section 164 Cr.P.C., under Ex.P.2, that the victim girl in her 164 Cr.P.C. statement would state that she had compelled the petitioner to take her out of the home, that therefore the evidence of the victim girl as recorded in the Court is in total contradiction to her earlier statement which had been recorded under Section 164 Cr.P.C. and that the alleged sexual intercourse and the tying of Thali are totally found absent in the statement recorded under Section 164 Cr.P.C.

16. The learned Additional Public Prosecutor would submit that considering the above aspects, the trial Court has clearly observed by referring the judgment of the Hon'ble Supreme Court in **AIR 1972 SC 468**, that the statement under Section 164 Cr.P.C. is not a substantive piece of evidence and it can be used to corroborate or contradict in the statement of the witness, that the trial Court has also held that the victim girl in her chief-examination has specifically stated that she did not state anything about the sexual intercourse of the petitioner with her on the basis of the assurance given by the friends and relatives of the petitioner to marry her to the petitioner and that the evidence of the victim girl is reliable and trustworthy. He would further submit that the trial Court has clearly observed that simply because the victim girl did not state anything about the commission of offence by the petitioner in her 164 Cr.P.C. statement, her evidence which is otherwise found reliable and trustworthy cannot be discarded.



17. Considering the above facts and circumstances and the seriousness and gravity of the offence alleged and taking note of the fact that the petitioner is in incarceration only from the date of judgment (i.e.,) 20.05.2022, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

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

sd/-
18/08/2022

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

csm

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,
MAHILA COURT, TIRUCHIRAPPALLI,
TIRUCHIRAPPALLI DISTRICT.
- 2 THE INSPECTOR OF POLICE
MUSIRI POLICE STATION,
MUSIRI ALL WOMEN POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, TIRUCHIRAPPALLI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
Crl.M.P(MD)No.8296 of 2022
in
Crl.A.(MD)No.448 of 2022
Date :18/08/2022