



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

Monday, the Nineteenth day of September Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

CRL MP(MD) No.10633 of 2022

IN

CRL A(MD) No.544 of 2022

RAMU

... APPELLANT/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KUMBAKONAM DISTRICT.
(CRIME NO. 19 OF 2019)

... 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 by the Judgment Dated. 11.08.202 made in Spl.S.C.No. 27 of 2020 on the file of Special Court under POCSO Act, Thanjavur and enlarge the petitioner on bail pending disposal of the above Appeal.

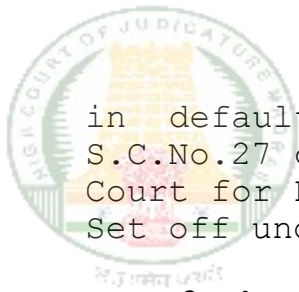
PRAYER IN CRL.A(MD)No.544/2022:

Pleased to call for the records relating to the judgment dated 11.08.2022 made in Spl.S.C.No.27 of 2020 on the file of Special Court under POCSO Act, Thanjavur and set aside the conviction and sentence imposed against the Appellant and allow above appeal by acquitting the Appellant.

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.AJMAL KHAN, Senior Advocate for M/S. AJMAL ASSOCIATES, for the petitioner and of Mr.SS.MADHAVAN, Government Advocate(crl.side) on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Thanjavur, dated 11.08.2022, in Spl.S.C.No.27 of 2020 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The learned counsel for the petitioner submitted that the petitioner, has been convicted by the learned trial judge, for the alleged offence under Section 9(m), (1) (k) instead of (n) which are all punishable under Section 10 of POCSO Act and sentenced to undergo rigorous imprisonment for 5 years with a fine of Rs.30,000/-



in default to undergo rigorous imprisonment for one in S.C.No.27 of 2020 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Thanjavur. Set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief:

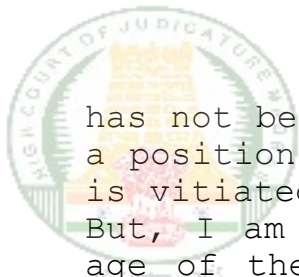
The victim girl was aged about 9 years and was studying in a Primary School. The petitioner is aged about 85 years. The victim girl is suffering from Moderately Intellectual Disability Illness and she is to attend the school by going through the house of the accused. At that time, the accused person used to invite the victim girl by giving biscuits and other snacks and touch her private parts and caused sexual assault that was continued for some time. On 23.12.2019, at about 9.30 hours, as usual again this petitioner invited the victim girl, as to give biscuits, taking her to the house, hugged her and kissed in her cheek and also sexually assaulted her. That was done by taking advantage of the mental illness of the victim girl. When the witnesses Valliammal shouted out about the behaviour of the petitioner, the door was opened by the petitioner and he left the victim girl. On the basis of the above said complaint, case was tried in Spl. S.C.No.27 of 2020. On the side of the prosecution, 19 witnesses have been examined and 12 documents were marked.

4.On the basis of the evidence let in by the prosecution, the trial Court found the accused guilty under Section 10 of POCSO Act and sentenced him to undergo 5 years of rigorous imprisonment. On the date, he was taken into custody. Against which he filed this appeal and pending appeal seeking suspension of sentence this Criminal Miscellaneous Petition has been filed.

5.The learned counsel for the petitioner would submit that even as per the evidence of the victim girl, she is not very particular and specific about the allegations. Since she is suffering from Moderately Intellectual Disability Illness, there is every likelihood of misleading the signs during recording the evidence. Moreover, it is submitted that the petitioner is aged about 85 years and considering the age factor suspension of sentence may be ordered.

6.Heard both sides. Perused the records.

7.It is a very unfortunate case. The victim girl is only aged about 9 years and as stated above, she is suffering from Moderately Intellectual Disability Illness. So Interpreter was appointed during the course of investigation as well as the trial and evidence was recorded with the help of the above said interpreter. Reading of the evidence shows that she has given a clear picture about the manner in which, the petitioner misbehaved with her. It appears that there was no objection on the side of the defence, during the recording of the evidence to the effect that the signs of the victim



has not been properly interpreted. Since the victim girl : in a position to co-operate for the trial process, the entire Judgment is vitiated. This is the contention on the part of the petitioner. But, I am unable to agree with the said argument. Considering the age of the victim girl and her mental incapacity, the above said misconduct and misbehaviour appears to have been committed by the petitioner and if this petitioner is released on bail by suspending the sentence, there is every likelihood to make trouble to the victim girl.

8.The point that has been raised by the learned Senior Counsel for the petitioner at the time of arguments are not sufficiently enough to suspend the sentence. The learned Senior Counsel for the petitioner has further relied upon the evidence of P.W.10, who was working as Senior Civil Surgeon in the Department of Psychology, Thanjavur Medical College Hospital. According to him, the victim girl was admitted in the hospital and was put on observation from 25.02.2020 to 04.03.2020. Because of the Moderately Intellectual Disability Illness, she may not be in a position to co-operate for the trial process. Even though the victim girl is capable of answering some questions, her mental maturity is only 4 years of child. But no recommendation was made by him to examine the victim through the Interpreter and during the cross examination, he is also stated that the victim girl informed him about the misbehavior of this petitioner at some point of time. He also stated that possibility of tutoring cannot be ruled out. By relying upon the evidence, the learned Senior Counsel for the petitioner submitted that this is the ground in the appeal that he got thoroughly looked out. But as I mentioned earlier, such sort of objection was not made at the time of recording the evidence of victim girl. The belated submission on the part of the petitioner at the appeal stage is a matter of consideration at the time of hearing the appeal. It is a premature stage to record any observation, opinion or finding of the evidences of P.W.10 now.

9.As I stated earlier, if this petitioner is released on bail by suspending the sentence, there is every likelihood to make trouble to the victim girl. So this petition deserves to be dismissed and accordingly, dismissed.

10.However, the Registry is directed to call for the entire records from the trial Court and prepare the typed set of papers and list the matter for final hearing on or before 11.10.2022.

sd/-

19/09/2022

/ TRUE COPY /

/09/2022

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



TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER POCSO ACT, 2012, THANJAVUR.

2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
KUMBAKONAM DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO:

1 THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

2 THE SECTION OFFICER,
VR SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S. AJMAL ASSOCIATES Advocate SR.No.10224

ORDER IN

CRL MP(MD) No.10633 of 2022
IN

CRL A(MD) No.544 of 2022

Date :19/09/2022

TM

SA/SBN/SAR.1/21.09.2022/4P/8C