



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

Wednesday, the Seventh day of December Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.12399 of 2022

IN

CRL A(MD)No. 641 OF 2022

SIVAKUMAR ...PETITIONER/APPELLANT  
(CONFINED IN CENTRAL PRISON, MADURAI)

Vs

THE STATE REP BY,  
THE INSPECTOR OF POLICE  
ALL WOMEN POLICE STATION,  
SRIVILLIPUTTUR,  
VIRUDHUNAGAR DISTRICT.  
CR.NO.14/2020

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence passed under the judgment and conviction and sentence dated 18.08.2022 in Spl.S.c.7/2021 passed by the Learned Sessions Judge Special Court fr Exclusive Trial of POCSO Act cases virudhunagar District At Srivilliputtur in so far as convicting the appellant for offences under section 366 of Indian Penal code and sentencing him to undergo 5 years rigorous imprisonment and Rs.5,000/- as fine in default to undergo one year simple imprisonment, section 5(1) r/w 6 of Protection of Children from Sexual offeces Act, 2012 and sentencing him to undergo 20 years rigorous imprisonment and Rs.5,000/- fine in default to undergo one year simple imprisonment and enlarge the petitioner on bail pending disposal of the above criminal appeal.

PRAYER IN CRL A(MD)No.641 OF 2022:

Pleased to call for the records and to set aside the judgment and conviction and sentence dated 18.08.2022 in Spl.S.C.NO. 7 of 2021 passed by the Learned Sessions Judge, Special Court fr Exclusive Trial of POCSO Act cases virudhunagar District At Srivilliputtur.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the

advocate of M/S. SUSI KUMAR C, Advocate for the petitioner and of



MR.RMS.SETHURAMAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

|               |            |
|---------------|------------|
| RESERVED ON   | 01.12.2022 |
| PRONOUNCED ON | 07.12.2022 |

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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge, Special Court for Exclusive Trial of POCSO Act Cases, Virudhunagar District at Srivilliputtur in Spl.S.C.No.7 of 2021, dated 18.08.2022 and enlarge the petitioner on bail, pending disposal of the Appeal.

2.The case of the prosecution in brief:-

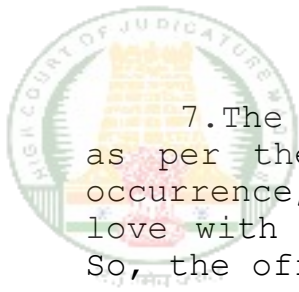
The victim girl after completing her 12<sup>th</sup> standard, working as accountant in a Match Box factory, at that time, she was in love with the accused. On 16.11.2020, at about 12.30 p.m., the accused called the victim girl and asked her to come to his house. She also went to the house of the accused and at that time, she was subjected sexual intercourse by him. Again on 22.11.2020, at about 10.30 a.m., when she was going to the agency, the accused came there, threatened her to come along with him stating that he is willing to marry her, she was kidnapped to Pollachi and there, she was put up in a lodge, on the same day night by force and criminal intimidation, she was subjected to sexual intercourse.

3.On the basis of the above said occurrence, the case was registered and after completing the investigation, final report was filed and the accused was charged for the offence under Sections 363 and 506(i) IPC and Sections 11(4) r/w 12 and 5(1) r/w 6 of Protection of Children from Sexual Offences Act, 2012.

4.Before the trial, the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and marked 17 documents as Ex.P.1 to Ex.P.17.

5.At the conclusion of the trial, the Trial Court found the petitioner guilty and convicted him for the offence under Section 366 IPC and sentenced him to undergo five years of Rigorous Imprisonment and imposed a fine amount of Rs.5,000/-, in default to undergo Simple Imprisonment for a period of one year and for the offence under Section 5(1) r/w 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced him to undergo 20 years of Rigorous Imprisonment and imposed a fine amount of Rs.5,000/-, in default to undergo Simple Imprisonment for a period of one year. Challenging the conviction and sentence, the main appeal has been preferred. Pending the main appeal, this petition came to be filed to suspend the sentence.

6.Heard both sides.



7.The learned counsel for the petitioner would submit as per the case of the prosecution, on the date of the alleged occurrence, the victim girl was aged about 17+ and she was also in love with the petitioner. So, according to him, is a love affair. So, the offences that are alleged against him are not attracted.

8.Per contra, the learned Additional Public Prosecutor would submit that the evidence of P.W.2, the victim girl, the prosecution has established the offences.

9.P.W.2 is the victim girl and she was stated that she was working in the Match Box factory, where, the petitioner was also working and he was already married and got two children. But inspite of that, they were contact with each other and subjected to consensual intercourse promising to marry her after making divorce. On 22.11.2020, she was taken to Pollachi and stayed in a lodge and during the time, she was subjected to consensual intercourse.

10.No doubt, this is an affair between the victim and the petitioner herein. But the fact remains that he has already married and got two children. So, the contention of the learned counsel for the petitioner is that there was love affair between them is not at all acceptable. It was found that her hymen was not intact and she was already subjected to sexual intercourse prior to the examination. As per the evidence of P.W.8, the date of birth is 25.12.2003. So, on the date of the alleged occurrence, namely, on 22.11.2020, she was below 17.

11.Considering the facts that since the petitioner was already married and got two children as mentioned earlier, it is a case of love affair, is out of place and cannot be accepted. So, the petitioner is also aged about 42 years. So, the petitioner is not entitled for suspension of sentence.

12.Hence, this Criminal Miscellaneous Petition is dismissed.

sd/-

07/12/2022

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/12/2022

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 POCSO  
ACT CASES,VIRUDHUNAGAR DISTRICT AT  
SRIVILLIPUTHUR.

2 THE INSPECTOR OF POLICE  
ADDITIONAL WOMEN POLICE STATION, SRIVILLIPUTTUR,

<https://www.mhc.tn.gov.in/>



VIRUDHUNAGAR DISTRICT.

3 THE SUPERINTENDENT  
CENTRAL PRISON,  
MADURAI.

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

ORDER  
IN  
CRL MP (MD) No.12399 of 2022  
IN  
CRL A (MD) No. 641 OF 2022  
Date :07/12/2022

SJI  
PKP/BUC/SAR-3/20.12.2022/4P/5C