



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

Friday, the Eighteenth day of November Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN

WEB COPY

CRL MP(MD) No.12962 of 2022
in
CRL A(MD)No. 692 OF 2022

AYYAVU

... PETITIONER/APPELLANT

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
VIRUVEEDU POLICE STATION,
DINDIGUL DISTRICT.
CR.NO.703/2020

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to pass an order of Suspend the sentence, imposed on the petitioner vide Judgment dated 10.06.2022 made in Spl S.C No. 59 of 2020 on the file of the learned Fast Track Mahila court, Dindigul pending disposal of the above criminal appeal.

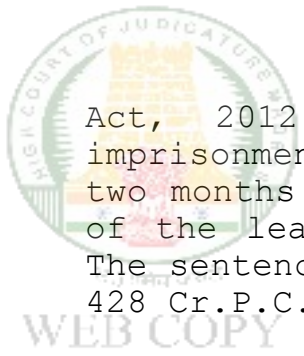
PRAYER IN CRL A(MD)No.692 OF 2022:

To Call for the records to set aside the Judgment and Conviction passed by the learned Fast Track Mahila Court, Dindigul in SPL.S.C.No.59 of 2020 dated 10.06.2022 and acquit the appellant herein.

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.A.KARTHICK KUMAR, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Criminal 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, Fast Track Mahila Court, Dindigul, dated 10.06.2022, in Spl.S.C.No.59 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, who is the accused in this case, has been found guilty and convicted by the learned Sessions judge, for the offence under Section 451 IPC and sentenced to undergo 2 years of rigorous imprisonment and imposed a fine of Rs.500/- in default to under one month simple imprisonment and for the offences punishable under Section 376 (1) r/w 10 of Protection of Children from Sexual Offences



Act, 2012 and sentenced to undergo five years of imprisonment and imposed a fine of Rs.1,000/- in default to undergo two months simple imprisonment in Spl.S.C.No.59 of 2020 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dindigul. The sentence was ordered to run concurrently. Set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief:

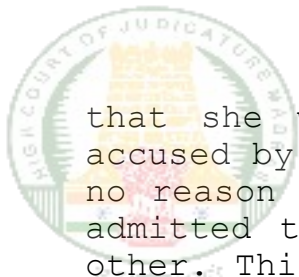
On 08.08.2020, when the victim girl was viewing Television, the accused person tress passed into the house, removed her dresses, kissed her private parts, criminally intimidated her not to disclose the same. On the basis of the above said occurrence complaint was lodged by PW1 and the case was registered and after completing the formalities of investigation, final report was filed and to prove the prosecution case, on the side of the prosecution 17 witnesses have been examined, 13 documents were marked.

4.At the conclusion of the trial, the trial Court found that the prosecution has proved the case beyond all reasonable doubt and convicted the petitioner and sentenced him as stated above. Challenging the above said conviction and sentence, the petitioner has filed appeal and pending appeal seeking suspension of sentence the present petition has been filed.

5.The learned counsel for the petitioner would submit that even as per the case of the prosecution, the victim girl was aged about 14 years at the time of occurrence and if at all only Section 8 of the POCSO Act will be attracted, which is punishable only up to five years. There was a motive between PW3, PW6 and accused. They are coparcener in nature and because of some property issue, they were not in contact with each other for many years. There is a delay of one day in preferring the complaint. Even as per the medical records no injury was found on the private parts of the victim girl. So according to him, because of the above said motive over the property issue, the above said case has been foisted against him.

6.Per contra, the learned Additional Public Prosecutor would submit that the motive that has been suggested by the defence has not been properly established before the trial Court. So the presumption which is available inform the prosecution has not been discharged. The delay has been explained by the prosecution that on the date of occurrence there was heavy rain. So the complaint was preferred on the next day, which cannot be considered to be unnatural and statement was also recorded during the course of investigation under Section 164 (5) Cr.P.C., wherein, the victim girl has also narrated the events in a satisfying manner. So no interference has been called for.

7.Reading of the evidence of the victim girl shows that she was ^{6th} standard on the date of occurrence. She has also stated



that she was subjected to the above said sexual assault. He is accused by taking her to his house and her dress was removed. I find no reason to dis-believe the evidence of the victim girl. She has admitted that the families were not in contacting terms with each other. This was pointed out by the counsel for the petitioner that When that being the position, the probability of the offence said to have been committed is highly doubtful. Moreover, it is also submitted that all the witnesses, who have been examined are only relatives. It is also admitted by the petitioner that he is also a relative of the victim. Whether there was any motive for, is a matter for consideration in the appeal.

8.Considering the age of the victim girl, I am of the view that if the petitioner is released on bail by suspending the sentence, again he may cause trouble to the victim girl. So at this stage he is not entitled for suspension of sentence. This petition deserves to be dismissed.

9.Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
18/11/2022

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/11/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDGE,
FAST TRACK MAHILA COURT, DINDIGUL.
- 2 THE INSPECTOR OF POLICE
VIRUVEEDU POLICE STATION, DINDIGUL DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON,MADURAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.12962 of 2022
in
CRL A (MD) No. 692 OF 2022
Date :18/11/2022

TM

<https://www.mhcc.org.in/> /25.11.2022/3P/5C