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CRL MP(MD) N



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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.14536 of 2022

IN

CRL A(MD) No.806 of 2022

KARUNANITHI

... PETITIONER/APPELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
PAPPANADU POLICE STATION,
THANJAVUR DISTRICT.
CRIME NO.47 OF 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 Suspending the Sentence imposed upon the Petitioner in Spl.SC.No.26 of 2020 on the file of the Learned Sessions Judge, Special Court for exclusive trial of Cases under POCSO Act, Thanjavur, Thanjavur District dt.7.7.2022 pending disposal of the main Criminal Appeal.

Prayer in CRL A(MD).806/2022 :

To call for the records in Spl.S.C.No.26 of 2020 on the file of the Learned Sessions Judge/Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, Thanjavur District and set aside the judgment dated 07.07.2022 and acquit the Appellant of the charge leveled against the petitioner.

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.ANANDA KUMAR N, Advocate for the petitioner and of MR.S.MANIKANDAN, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

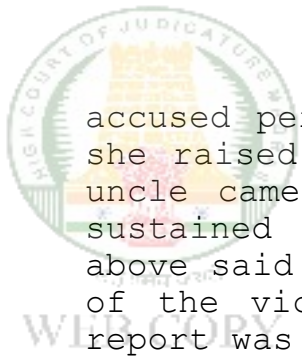
RESERVED ON	01.12.2022
PRONOUNCED ON	07.12.2022

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, Thanjavur, Thanjavur District in Spl.S.C.No.26 of 2020, dated 07.07.2022 and enlarge the petitioner on bail, pending disposal of the Appeal.

2.The case of the prosecution in brief:-

On 08.03.2020 at about 06.00 p.m., the victim girl went to Rajagopal's thoppu to attend her natural call, at that time, the

<https://www.judis.org.in/>



accused person came there, gagged her mouth and committed rape. So she raised alarm sound and on hearing the same, her mother and the uncle came to her rescue. In the above said process of rape, she sustained injuries on her left forehead. So, on the basis of the above said occurrence, the complaint was lodged by P.W.2, the mother of the victim girl and after completing the investigation, final report was filed and charges were framed against the accused for the offence under Sections 11(iv) r/w 12, 3(a) r/w 4, 4(2), 5(i), 3(c) r/w 18 of POCSO Act.

3.To prior the charges, the prosecution has examined 12 witnesses as P.W.1 to P.W.12 and marked 12 documents as Ex.P.1 to Ex.P.12.

4.At the conclusion of the trial, the Trial Court found the petitioner guilty and convicted him for the offence under Section 9 (i) r/w 10 of POCSO Act and sentenced him to undergo five years of Rigorous Imprisonment and imposed a fine amount of Rs.20,000/-, in default to undergo Rigorous 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.

5.Heard both sides.

6.The learned counsel for the petitioner would submit that no material evidence is available to support of the case of the prosecution is that she was subjected to rape.

7.Per contra, the learned Government Advocate (Crl.Side) would submit that the evidence of the victim girl is sufficient enough to prove the prosecution case that there was a rape. The learned Government Advocate (Crl.Side) would rely upon the evidence of P.W.11, the Doctor who examined the victim girl.

8.P.W.1 is the victim girl. She stated that she completed 9th standard and later staying in her uncle's house. On 08.03.2020 at about 06.00 p.m., when she went for answering natural call, the above said rape was committed by the accused. It was contended that she was in talking habit with the accused, which was not liked by her mother and the uncle and on the particular day of occurrence also they were talking with each other. On seeing the above said private conversation between them, the mother caused assault. But to prove the above said affair, no circumstances has been brought on record and as pointed out by the learned Government Advocate (Crl. side), the evidence of medical expert is against the case of the accused, wherein, he found that on examination, the hymen was not intact. There was no external injuries on the private parts. But lacerated injury was found on the left eyebrow region.



9.By taking out this medical evidence, it has been concluded by the learned counsel for the petitioner to the effect that absolutely there was no penetrative sexual assault that was committed by the petitioner. So only on the ground that it was altered to Section 9 (i) r/w 10 of POCSO Act. Since there was injury on the left eyebrow, the contention on the part of the petitioner that the above said injury was sustained by her because of the assault made by the mother is absolutely out of place cannot be accepted at this stage.

10.Whether there was any affair between them is a matter for consideration in this appeal.

11.Considering the fact that that since there was injury, it is not a fit case to suspend the sentence. This Criminal Miscellaneous Petition deserves to be dismissed and accordingly, it 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 CASES UNDER POCSO ACT,
THANJAVUR, THANJAVUR DISTRICT.
- 2 THE INSPECTOR OF POLICE, PAPPANADU POLICE STATION,
THANJAVUR DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL MP(MD) No.14536 of 2022

IN

CRL A(MD) No.806 of 2022

Date :07/12/2022

sjj

RS/VR/SAR.2(20.12.2022) 3P-5C