



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

Wednesday, the Nineteenth day of October Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.12351 of 2022
in
CRL.A.(MD)No.638 of 2022

P.GANESAN

... PETITIONER/APPELLANT/ACCUSED NO.1

Vs

THE STATE REP. BY,
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
KULITHALAI,
KARUR DISTRICT.
(CR NO.07/2020).

... RESPONDENT/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 substantive sentence imposed on the petitioner in SC No.22/2021 on the file of Additional Sessions Court (Fast Track Mahila Court), Karur pending disposal of the above appeal.

PRAYER in CRL.A.(MD)No.638 of 2022 :

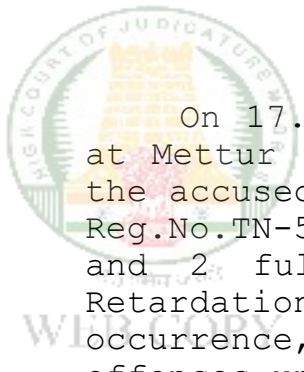
Pleased to call for records and set aside the Judgment dated 17.05.2022 passed in Sessions Case No.22/2021 on the file of Additional Sessions Judge (Fast Track Mahila Court), Karur, Karur District and set aside the appellant at liberty.

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.PRAHALAD RAVI.B, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Criminal) on behalf of the Respondent and while admitted the Criminal Appeal, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Additional Sessions Court(Fast Track Mahila Court), Karur, in Sp.S.C.No.22 of 2021, dated 17.05.2022 and enlarge the petitioner on bail, pending disposal of the Appeal.

2.Case of the prosecution in brief:-

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



On 17.06.2020, at about 1.00 p.m, the victim went to 1 at Mettur to collect Firewood for cooking and while. At that time, the accused persons kidnapped the victim in a Hero HF Deluxe bearing Reg.No.TN-55-AS-8511, which belongs to one Rengan, the accused Nos.1 and 2 fully knowing that the victim girl is a Mild Mental Retardation person, committed rape. On the basis of the above said occurrence, a case in Crime No.07 of 2020 was registered for the offences under Sections 366, 376(2)(1) and 376(2)(D).

3.Before the trial Court, on the side of the prosecution, 17 witnesses have been examined and 25 documents marked. 5 material object was exhibited. On the side of the accused, one witness was examined and two document was marked. No materials object was exhibited.

4.At the conclusion of the trial, the Trial Court found the petitioner guilty and convicted the accused for the offence under Section 366 IPC and sentenced him to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year of Simple Imprisonment, under Section 376(2)(1) and sentenced him to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year of Simple Imprisonment and under Section 375(2)(D) and sentenced him to undergo 20 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year of Simple Imprisonment 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 appellant submitted that the appeal has been filed on the ground that FIR was registered after four days from the date of occurrence and the capability of the victim to give the evidence is now under challenge in the above said appeal.

7. The learned counsel for the petitioner submitted that this is not fair to rely upon the evidence of the victim girl, who is the incompetent person to give evidence, because the victim is mentally Retarded person.

8.Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that sufficient materials have been placed before the trial Court to record the finding of guilt and also would submit that proper procedure has been adopted by the trial Court, while recording the evidence of the victim girl. Even as per the evidence of the Doctor, the victim girl had capable of understanding the events and give evidence. Her I.Q. Level is sufficient to understand the events.



9. There is a finding by the trial Court in Para No.6 in the judgement that the victim girl is having a mental age of around 10 years and 6 months with an I.Q. 56% and her overall I.Q. was found to be 61%, indicating Mild Mental retardation.

10. Whether the finding of the trial Court can be accepted on medical basis is the point for consideration in the appeal. As far as the suspension of sentence is concerned, this is not a fit case to suspend the sentence. Here, mentally retarded person/victim was subjected to repeated rape by two accused persons one after other. The manner in which, the above said offence said to have been committed, this Court absolutely finds no reason to suspend the sentence.

11. Accordingly, this Criminal Miscellaneous Petition is dismissed and the petitioner must face the appeal proceedings in custody. Since the appeal was admitted, the Registry is directed to call for the records from the concerned Court and to prepare a typed set of papers and list the appeal for final hearing on 07.11.2022.

sd/-
19/10/2022

/ TRUE COPY /

/10/2022

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

TO

1. THE ADDITIONAL SESSIONS JUDGE, (FAST TRACK MAHILA COURT),
KARUR, KARUR DISTRICT.
2. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
3. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
KULITHALAI, KARUR DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO :

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

ORDER IN
CRL MP(MD) No.12351 of 2022
in
CRL.A. (MD) No.638 of 2022
Date :19/10/2022

tta

<https://www.mca.gov.in/cas-I/26.10.2022/3P/6C>