



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

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

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PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL.M.P. (MD) No.12526 of 2022
in
CRL.A. (MD) No.400 of 2022

SEKAR

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
SILAIMAN CIRCLE,
KARUPPAYURANI POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.192/2010)

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to grant an order of suspension of sentence imposed against the petitioner/appellant/accused no.2 in the Conviction Judgement passed in Sessions Case No.347/2013 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai dated 25/05/2022 and enlarge the Petitioner/Appellant/Accused No.2 on bail, pending disposal of the Criminal Appeal.

PRAYER IN CRL.A. (MD) No.400 of 2022:

To call for the records relating to Sessions case No.347 of 2013 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai dated 25.05.2022 and set aside the same in so far as the Appellant/Accused No.2 and to acquit the Appellant/Accused No.2 by allowing the present Criminal Appeal.

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.VEERANASAMY.S, Advocate for the petitioner and of M/S.S.MANIKANDAN, 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 against the petitioner in SC No.347 of 2013, dated 25/05/2022 by the Sessions Judge, Mahalir Neethimandram, Madurai and enlarge the petitioner/A2 on bail pending disposal of the criminal



2.The case of the prosecution is that the victim girl, who is the daughter of PW1 was mentally unsound girl. The accused persons were the residents of the same street. On 23/03/2010 at about 5.30 pm, when the victim was returning to her house near Suguna Store, Kani store bus stop, Anna Nagar, A1 took the victim girl in his bicycle and went to near Vandiyur Kanmai, where she was raped by A1 and A2. On the basis of the above said occurrence, the case was registered for the offences under sections 366 and 376 IPC. After completing the investigation, final report was filed against this petitioner for the offences under sections 120(B), 376, 366 r/w 34 IPC and the case was taken on file in SC No.347 of 2013 by the trial court.

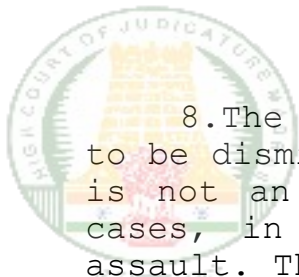
3.During the investigation period, the victim girl died. So the the father of the victim has been examined as PW1. At the conclusion of the trial, the trial court found the the petitioner/A2 guilty and convicted him for the offences under sections 120-B, 366 r/w 34, 376 IPC and sentenced to undergo 10 years of RI for each offence and also imposed a fine of Rs.1,000/-, in default to undergo one year SI for each offences and further ordered to run the sentences concurrently. Against which, the criminal appeal has been preferred before this court. Pending appeal seeking suspense of sentence, this petition has been preferred by A2.

4.Heard both sides.

5.The learned counsel appearing for the petitioner/A2 would submit that this petitioner is not known to the victim girl and he is not involved in the above said occurrence; his name has not even mentioned in FIR; Even on the date of the alleged registration of the case, the victim girl was in the police station; There is a delay of three days in lodging the complaint and that was not properly explained; Even though, three persons have been implicated, except two persons others were not shown as accused; PW1 has not stated about the presence of this petitioner in the place of occurrence; this petitioner is a stranger of the victim girl; no identification parade was also conducted. According to him, the judgment of conviction and sentenced passed by the trial court requires to be interfered in the main appeal.

6.Per contra, the learned Additional Public Prosecutor would submit that the victim girl was subjected to sexual intercourse repeatedly by the petitioner and other accused person is based upon the circumstantial and other evidences, the trial court has recorded the conviction. According to him, offence of this nature requires no consideration.

7.Records perused.



8.The earlier application that was filed by the petitioner to be dismissed in Crl.MP(MD)No.7264 of 2022, dated 22/07/2022. This is not an ordinary case of rape. It is one of the extraordinary cases, in which a mentally unsound girl was subjected to sexual assault. The trial court on circumstantial evidence and on the basis of the medical evidence of the victim girl has recorded a finding, there are evidences to show that A1 took the victim girl in his bicycle.

9.Similarly, A2 was also found in the place of occurrence, as per the evidence of PW3. Whether this petitioner is also involved in the above said crime, all are the matters for consideration in the main appeal, since circumstantial evidence has been taken into account by the trial court. Whether the evidence of PW9 is sufficient enough to convict the petitioner is also a matter for consideration in the main appeal. Since it is a serious offence of rape upon the mentally unsound victim girl, this is not a fittest case to exercise the power in favour of the petitioner by suspending the sentence. I find no merit in this petition and accordingly, this criminal miscellaneous petition is liable to be dismissed.

10.In the result, this criminal miscellaneous petition is dismissed. Since the main appeal is admitted, the Registry is directed to call for the entire records from the concerned trial court and prepare the typed set of papers.

sd/-

26/10/2022

/ TRUE COPY /

/11/2022

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

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TO

1.THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

2.THE INSPECTOR OF POLICE
SILAIMAN CIRCLE, KARUPPAYURANI POLICE STATION,
MADURAI DISTRICT.

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

ORDER IN

CRL.M.P.(MD)No.12526 of 2022
in

CRL.A.(MD)No.400 of 2022

Date :26/10/2022