



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

Tuesday, the Thirteenth day of December Two Thousand and Twenty Two

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.14050 of 2022

IN

CRL A(MD) No.349 of 2022

GANESAN

... PETITIONER/APPELLANT

Vs

THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SATTUR,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.1/2017)

... 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 of Imprisonment imposed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputhur made in Special Sessions Case No.18/2017 by the Judgment..

Prayer in CRL A(MD) No.349 of 2022:

Pleased to call for records and to set aside the Judgment and Conviction dated 21.04.2022 by the Learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputhur made in Special Sessions Case No.18 of 2017 and acquit the Appellant.

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.SARAVANAN KUMAR P, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor 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, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputhur, dated 21.04.2022, in Spl.S.C.No.18 of 2017 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, has been convicted by the learned trial judge, for the alleged offence under 450 IPC and sentenced to undergo 7 years and imposed a fine of Rs.1,000/- in default to undergo 6 months simple imprisonment and for the alleged offence under Section 4 of POCSO Act, 2012 he was convicted and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of 6 months, in S.C.No.60 of 2017 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, 2012, Virudhunagar District at Srivilliputhur. Both the sentence were ordered to be run concurrently. Since the accused was released on bail as per the anticipatory bail order in CrI.O.P.(MD)No.1021 of 2017 of this Court, dated 02.02.2017 and he was not inside the prison during the pre-trial stage, no period shall be set off under Section 428 Cr.P.C. But, the petitioner was acquitted from the charges under Section 6 r/w 5(i) of the POCSO Act.

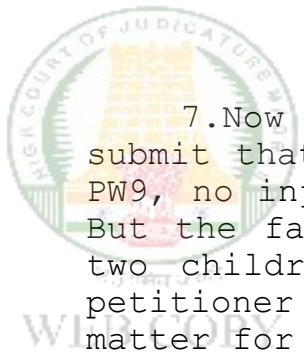
3.The case of the prosecution in brief:-

On 23.01.2017, the mother of the victim girl lodged a complaint stating that at about 01.00 am, in the midnight, she found the accused entering into the house and came to the upstairs bath room, hugged the victim by closing her mouth and touched her private parts. He also attempted to commit penetrative sexual assault. On hearing the noise, the defacto complainant knocked the door. At that time, the accused person suddenly, came out of the room. The entire event was narrated by the victim girl. On the basis of the information given by the defacto complainant and the victim girl, the case was registered in Crime No.1 of 2017 for the offences punishable under Sections 450 of IPC and Section 4 of POCSO Act and Section 6 r/w 5(i) of POCSO Act. The case was tried by the Special Court in Spl.S.C.No.18 of 2017.

4.To prove the case on the side of the prosecution 18 witnesses have been examined and 14 documents were marked.

5.On the basis of the evidence let in by the prosecution, the trial Court found the accused guilty under Section 450 of IPC and Section 4 of POCSO Act, convicted and sentenced him to undergo 7 years imprisonment for each offence and thereafter, he was taken into custody. Thereafter, the petitioner herein was taken into custody and filed the present appeal. Pending appeal seeking suspension of sentence this Criminal Miscellaneous Petition has been filed.

6.The earlier application that was dismissed after considering the factual circumstance of the case and this petition has been filed on the very same ground.



7. Now the learned counsel appearing for the petitioner submit that it is a case of elopement. Even as per the evidence of PW9, no injuries were found in the private part of the victim girl. But the fact remains that the petitioner is a married man and got two children. So the question of elopement, as contended by the petitioner cannot be taken into account at this stage and it is a matter for consideration in the appeal.

8. Considering the fact that there was no injury in the private part, he was convicted for the offences stated above. Filing of repeated petitions, without change of circumstances cannot be appreciated. So the petitioner can argue the main appeal on merits.

9. In the result, this criminal miscellaneous petition is **dismissed**.

10. Since, the criminal appeal is admitted, list the matter on 10/01/2023 for final disposal. In the meantime, the Registry is directed to call for the entire records from the concerned court and prepare the typed set of papers.

sd/-

13/12/2022

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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, 2012,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SATTUR,
VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT CENTRAL PRISON, MADURAI.
- 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.14050 of 2022

IN

CRL A(MD) No.349 of 2022

Date :13/12/2022