



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



Friday, the Ninth day of December Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL.M.P.(MD)No.14560 of 2022
in
CRL.A(MD) No.808 of 2022

ILAIYARAJA

... PETITIONER / APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
ARUPPUKOTTAI TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
(CRIME NO.447/2016)

... 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 and conviction imposed upon the petitioner by the Learned Fast Track Mahila Court, Virudhunagar District @ Srivilliputhur in SC No.61/2017 Dated 28.07.2022 pending disposal of the Criminal Appeal.

Prayer in CRL.A(MD) No.808 of 2022:

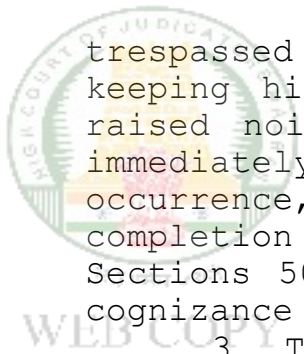
To call for the records pertaining to the impugned Judgment and Conviction passed by the Learned Fast Track Mahila Court, Virudhunagar District @ Srivilliputhur in S.C.No.61 of 2017 dated 28.07.2022 and set aside the same.

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.MURUGAN R, 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 and conviction imposed upon the petitioner by the learned Fast Track Mahila Court, Virudhunagar District @ Srivilliputhur in S.C.No.61 of 2017 dated 28.07.2022 pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The victim and the accused are neighbours. The husband of the victim is in abroad and she was living with her two children in her house. On 10.06.2016 without closing the doors, the victim was sleeping in her house. On 11.06.2016 at about 1.15 a.m., the accused



trespassed into the house of the victim, with the intention of keeping his hand in her private parts, at that time, the victim raised noise and the neighbours gathered in the victim's house, immediately the accused ran away from that place. On the above said occurrence, a case was registered in Crime No.447 of 2016 and after completion of investigation, Final Report has been laid under Sections 506(i), 354(A), 376, 511 and 450 of IPC and it was taken cognizance in S.C.No.61 of 2017 by the trial Court.

3. To prove the case of the prosecution, 7 witnesses were examined as P.W.1 to P.W.7 and 5 documents marked as Ex.P.1 to Ex.P.5 before the trial Court.

4. At the conclusion of the trial, the trial Court has found that the accused is guilty under Sections 448, 354(A), 376 r/w.511 and 506(i) of IPC. Accordingly the accused was convicted and sentenced to undergo one year of Rigorous Imprisonment and imposed a fine of Rs.1,000/- with default clause for the offence under Section 448 of IPC; and one year of Rigorous Imprisonment and imposed a fine of Rs.1,000/- with default clause for the offence under Section 354(A) of IPC; and five years of Rigorous Imprisonment and imposed a fine of Rs.2,000/- with default clause for the offence under Section 376 r/w.511 of IPC of IPC; and one year of Rigorous Imprisonment and imposed a fine of Rs.1,000/- with default clause for the offence under Section 506(i) of IPC and directed the petitioner to run the sentences concurrently.

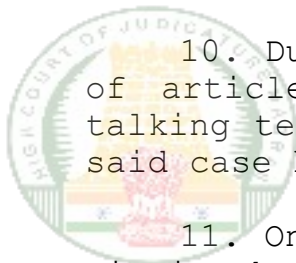
5. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal before this Court. Pending appeal, this Miscellaneous Petition has been filed by the Petitioner.

6. Heard both sides.

7. The learned Counsel appearing for the Petitioner would submit that due to previous enmity in pathway dispute between them, a false case has been registered. But, no such occurrence as stated above by the petitioner is made out in the Final Report.

8. Per contra, the learned Additional Public Prosecutor would submit that taking advantage of the fact that the victim women is living along with her two children lonely, the above said attempt has been made by the accused person. So, no ground is made out to the suspension of sentence.

9. The victim was examined as P.W.1 and she was stated that on 11.06.2016 at about 1.15 a.m., she found one person lying beside her and tried to rape by placing his hands in her private parts. At that time, she was criminally intimidated and when she raised noise, the neighbours gathered at her house, the accused ran away from that place.



10. During cross examination such was made out that the ss of articles belongs to the accused is found, but that not talking terms. So, because of the above said enmity only, the above said case has been registered but that was denied by the victim.

11. On examination of P.W.2 stated that on hearing the noise of victim, he came to the house of P.W.1, at that time, the accused ran away from that house and the P.W.1 told him about the misbehaviour of the accused.

12. On the basis of the above said two witnesses, conviction has been recorded.

13. The learned Counsel for the petitioner by relying upon the judgment of Honourable Supreme Court of India in **Tarkeshwar Sahu Vs. State of Bihar (Now Jharkhand) (2006) 3 Supreme Court Cases (Cri) 556**, submits that the facts and circumstances of the offences under Section 376 r/w. 511 of Cr.P.C. is not made out. So, no doubt that there is no evidence to show that the petitioner has tried to commit penetrative sexual assault. So, in the above circumstances, no doubt that section 376 r/w. 511 of IPC is may not be attracted. But the fact remains that section 354 of IPC is squarely attracted.

14. The petitioner is the neighbour of the victim. If the accused is released on bail and he granted suspension of sentence, he will make trouble to the victim. So, this is not a fittest case to order the suspension of sentence, since only limited question is involved in the main appeal.

15. With the above observations, this Criminal Miscellaneous Petition is dismissed.

16. The Registry is directed to call for the entire records from the concerned trial court forthwith and prepare the typeset of papers.

17. List the appeal on 04.01.2023 for final disposal.

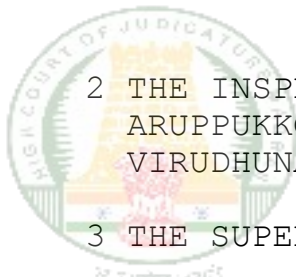
sd/-
09/12/2022

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/12/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE JUDGE,
FAST TRACK MAHILA COURT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.



2 THE INSPECTOR OF POLICE
ARUPPUKOTTAI TOWN POLICE STATION,
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 SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL.M.P. (MD) No.14560 of 2022
in
CRL.A (MD) No.808 of 2022
Date :09/12/2022

INDU
MK/VR/SAR 3/21.12.2022/4P/6C