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Crl.A.No.1129 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.A.No.1129 of 2022

Mohamed Babu

.. Petitioner

Vs.

State rep by
The Inspector of Police,
W-21, All Women Police Station,
Guindy, Chennai
(Crime No.2 of 2015)

.. Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C praying to call for the records and set aside the judgment of conviction and sentence passed by the learned Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai 600 104 in S.C.No.143 of 2015 dated 21.02.2018 and acquit the appellant from all the above charges.

For Petitioner : Mr.S.Paneerselvan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor.



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JUDGEMENT

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This Criminal Appeal has been filed praying to set aside the order passed in S.C.No.143 of 2015 by the Special Court for cases under POCSO Act 2012, Mahila Court, Chennai dated 21.02.2018 in Crime No.2 of 2015 on the file of the The Inspector of Police, W-21, All Women Police Station, Guindy, Chennai and acquit the appellant.

2. The learned counsel for the petitioner submitted that the petitioner is the accused in S.C.No.143 of 2015 on the file of the Special Court for cases under Section 10 of POCSO Act 2012, Mahila Court, Chennai. He was prosecuted by the respondent Police for the offence punishable under Section 10 of POCSO Act, 2012. The trial Court, after trial, found guilty and convicted the accused for the offence under Section 10 of POCSO Act, 2012 (2 counts) and sentenced to undergo 5 years simple imprisonment for each count and imposed with a fine of Rs.5,000/- for each count in default to undergo further period of 6 months simple imprisonment for each



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count. The learned counsel further submitted that the accused is now aged about 73 years. The trial Court ordered sentence to run consecutively. Now, the learned counsel for the petitioner submitted that he is not willing to argue the case on merits. Considering the age of the accused is 73 years, this Court may order to run the sentence concurrently and the petitioner is also ready to pay the fine amount imposed by the trial Court.

3. When the matter is taken up for hearing, the learned Additional Public Prosecutor appearing for the respondent submitted that the age of the accused is 72 years and since the learned counsel for the petitioner is not willing to argue the matter on merits with regard to the sentence imposed on the petitioner, he has left it to the Court to decide the matter.

4. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) for the respondent.



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5. On perusal of the records, the fact reveals the case of the prosecution is that the petitioner/Accused has sexually assaulted the victim children aged about 9 years and 5 years respectively at the time of the incident. Hence, he was prosecuted and after trial, he was found guilty and was convicted as stated above. At the time of the trial, the age of the accused is 68 years and now he is 73 years. He is in judicial custody from 21.02.2018. Considering the fact that the allegation is not of aggravated sexual assault upon the victims and further considering the age of the accused and that he realised the offence committed by him and also the fact that he is ready to pay the fine amount before his release from the prison, it would meet ends of justice, if the sentence imposed by the trial Court is ordered to run concurrently, Therefore, this Court deems it appropriate to modify only the sentence portion of the judgment of the trial Court.

6. In the result, the criminal appeal is disposed of. The finding of the trial Court is confirmed and the sentence portion is modified to the extent that **“The sentence imposed for the offence should**



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run concurrently” instead of “The sentence imposed for the offence should run consecutively”. The petitioner is directed to pay the fine amount before his release from the prison. The appeal is disposed of with the above modification.

09.06.2023

srn

To

1. The learned Special Court for Cases under POCSO Act 2012/Mahila Court, Chennai 600 104
2. The Inspector of Police,
W-21, All Women Police Station, Guindy, Chennai
3. The Public Prosecutor, High Court, Madras



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V.SIVAGNANAM.J

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