



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

Monday, the Seventeenth day of April Two Thousand and Twenty Three

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.2961 of 2023

IN

CRL A(MD) No.837 of 2022

NALLUR PANDIAN

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
RAJAPALAYAM NORTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CR.NO.502/2017

... 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 imposed by the Special Court (Protection of Children from Sexual Offences Act Cases)Virudhunagar District at Srivilliputhur in S.C.No.13/2018 on 01.11.2022 and release the petitioner on bail, pending disposal of the Criminal Appeal.

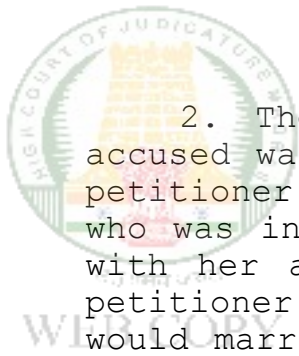
PRAYER IN CRL A(MD) No.837 of 2022:

To call for records and set aside the conviction and sentence imposed by the Special Court(Protection of Children from Sexual Offences Act Cases), Virudhunagar District at Srivilliputhur in Special S.C.No.13 of 2018 on 01.11.2022 and allow this 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.JOTHI BASU.M, Advocate for the petitioner and of M/S.SS.MADHAVAN, Government Advocate(Crl.side) on behalf of the Respondent,the court made the following order:-

RESERVED ON	06.04.2023
PRONOUNCED ON	17.04.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Special Court for Protection of Children from Sexual Offences Act Cases, Virudhunagar District @ Srivilliputhur, in Spl.S.C.No.13 of 2018, dated 01.11.2022, till the disposal of this Criminal Appeal.



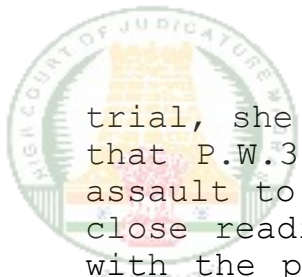
2. The case of the prosecution is that the petitioner, who was already married to one Priya and got a child, that the petitioner and his wife were living separately, that the petitioner, who was in close relationship with minor victim girl, used to talk with her and impressed her with his honey coated words, that the petitioner had also given false promise to the victim girl that he would marry her, that on 08.06.2017 at about 08.30 a.m., while the parents of the victim girl were away from home, the petitioner, by using the said opportunity, had taken the victim girl to the kitchen and committed penetrative sexual assault and made the victim girl pregnant, that on 01.08.2017 at about 12.30 p.m., the victim girl informed her parents that she was going to school started from her house, that when the victim girl was walking near Mayuranadha Swamy temple, Madurai Road, the petitioner had kidnapped the victim girl and forcibly got married in Tenkasi Sivan Kovil and on the basis of the complaint lodged, FIR came to be registered in Crime No.502 of 2017 as 'Girl Missing' and that subsequently, the case was altered and the respondent police, after completing the investigation, has filed the final report for the offences under Sections 366, 376(2) (f) and 417 IPC and Sections 7, 8, 5(1) and 6 of POCSO Act, 2012.

3. During trial, the prosecution has examined 16 witnesses as P.W.1 to P.W.16, exhibited 19 documents as Ex.P.1 to Ex.P.19 and marked 5 material objects as M.O.1 to M.O.5. The accused has adduced neither oral nor documentary evidence.

4. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 01.11.2022 finding the petitioner guilty for the offences under Section 366 IPC and Sections 5(j)(ii) r/w 6 of POCSO Act and sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 366 IPC and to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 year Simple Imprisonment for the offence under Sections 5(j)(ii) r/w 6 of POCSO Act and by acquitting the petitioner for the offences under Section 417 IPC and Section 9 of Prohibition of Child Marriage Act and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal.

5. No doubt, the petitioner's earlier application for suspension of sentence was ordered to be dismissed vide order dated 22.12.2022.

6. The learned counsel appearing for the petitioner would submit that the witnesses of P.W.1 and P.W.2 father and mother of the victim girl are hearsay witnesses, that the entire prosecution case relied on the testimony of P.W.3-victim girl, that the victim girl in her statement recorded under Section 164 Cr.P.C., did not say anything about the sexual assault made on 08.06.2017, but during



trial, she had given evidence in support of the prosecution and that P.W.3 had deposed that she does not whisper about the sexual assault to anyone till 03.08.2017. He would further submit that the close reading of Ex.P.2 would show that the victim girl went along with the petitioner on her own accord, that though the prosecution has stated that the victim girl was born on 08.09.2000, parents of the victim girl does not say anything about her age, that birth certificate of the victim girl was marked only through the Inspector of Police, that the prosecution did not take any steps to examine author of Ex.P.16-birth certificate and that abortion said to have taken place on 06.08.2017 was not supported by the medical evidence.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the grounds raised by the petitioner are vague and unsustainable and that the prosecution has proved the charges beyond reasonable doubt and the trial Court has rightly convicted the petitioner.

8. As rightly contended by the learned Government Advocate (Criminal Side), it is the specific case of the prosecution that the petitioner was already married, but his wife was living separately and taking advantage of the immaturity of the victim girl, he had committed the penetrative sexual assault and that subsequently, he kidnapped the victim girl and subjected her to sexual assault.

9. The learned Government Advocate (Criminal Side) appearing for the respondent would further submit that due to the physical relationship, the victim girl has become pregnant, that the same was informed to the petitioner, who was working in Karur at the time and that in pursuance of the same, he came to his village and the victim girl was taken to Tenkasi.

10. As rightly contended by the learned Government Advocate (Criminal Side), the learned Judge of this Court, while considering the earlier application, by observing that reading of the evidence of the victim girl would go to show that she was given false promise of marriage, that the petitioner is a married man and got two children and that he had misused the immaturity of the victim girl, who was aged 16 years at the time of occurrence, dismissed the petition.

11. As rightly contended by the learned Government Advocate (Criminal Side), the points/aspects now canvassed are matter for consideration in the main appeal.

12. Considering the nature and seriousness of the offences allegedly proved against the petitioner and also the period of incarceration and the way in which the victim girl was subjected to sexual assault by the petitioner, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of



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13. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-
17/04/2023

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

CSM

TO

1. THE JUDGE,
SPECIAL COURT
(PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT CASES)
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR
2. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI
3. THE INSPECTOR OF POLICE
RAJAPALAYAM NORTH POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.2961 of 2023
IN
CRL A(MD) No.837 of 2022
Date :17/04/2023

RK/BUC/SAR-4 (26/04/2023) 4P/5C