



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

Monday, the Nineteenth day of June Two Thousand and Twenty Three
PRESENT

WEB COPY

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP (MD) No.6677 of 2023
IN
CRL A (MD) No.343 of 2023

SHAJAKAN

... APPELLANT/ACCUSED

Vs

1 THE DEPUTY SUPERINTENDENT OF POLICE,
DINDIGUL RURAL, SUB-DIVISION,
NATHAM POLICE STATION,
DINDIGUL DISTRICT.
(IN CRIME NO.626/2015)

... RESPONDENT/COMPLAINANT

2 ALAGAMMAL

... RESPONDENT/DEFACTO COMPLAINANT/VICTIM

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 Learned Fast Track Mahila Court, Dindigul in Spl.SC.No.20/2018 dt.13/7/2022 and enlarge the appellant on bail pending disposal of the above said Crl.A.

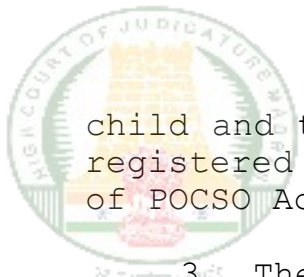
PRAYER IN CRL A (MD) No. 343 of 2023:

Pleased to call for the records and set aside the sentence and conviction imposed by the Learned Fast Track Mahila Court, Dindigul in SPL S.C.No. 20 of 2018 dated 13.07.2022.

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.JINNAH S M A, Advocate for the petitioner and of MR.R.SIVAKUMAR, Government Advocate (Criminal Side) on behalf of the 1st Respondent and M/s.BALA MEENAKSHI, Advocate for the 2nd respondent, the Court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Fast Track Mahila Court, Dindigul, in Spl.S.C.No.20 of 2018, dated 13.07.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that when the victim child was playing in front of one Madurai Veeran's house, the petitioner/sole accused by giving chocolate had brought the victim child to the said Madurai Veeran's house and removed the dresses of the victim child and touched his hand in the vagina of the victim



child and that on the basis of the complaint lodged, FIR came to be registered in Crime No.626 of 2015 for the offences under Section 8 of POCSO Act, 2012 and Section 3(xi) of SC/ST (POA) Act, 1989.

3. The first respondent, after completing the investigation, has filed the final report for the offences under Section 8 of POCSO Act, 2012 and Section 3(xi) of SC/ST (POA) Act, 1989 and the case was taken on file in Spl.S.C.No.20 of 2018 and the same was pending on the file of the Fast Track Mahila Court, Dindigul.

4. During trial, the prosecution has examined 20 witnesses as P.W.1 to P.W.20 and exhibited 15 documents as Ex.P.1 to Ex.P.15. The defence has adduced neither oral nor documentary evidence.

5. 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 13.07.2022 convicting the petitioner for the offences under Section 9(m) r/w 10 of POCSO Act, 2012 and Section 3(1)(xi) of SC/ST (POA) Act, 1989 and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Simple Imprisonment for the offence under Section 9(m) r/w 10 of POCSO Act, 2012 and to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month Simple Imprisonment for the offence under Section 3(1)(xi) of SC/ST (POA) Act, 1989 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 along with the above application for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that the petitioner is a stranger to the victim child, since the occurrence had taken place at the grandmother's house where she visits that house only occasionally, that no identification parade was conducted, that the evidence of mere identification of the petitioner at the trial for the first time is inherently of a weak character, that the dress worn by the victim child was not seized, that material omissions were made by the P.W.1 to P.W.4 regarding the purpose of visit of the victim child to her grandmother's house, that there is a serious infirmity in the preparation of rough sketch as the same does not indicate the house of the petitioner, that the prosecution has failed to examine the independent witness and that the learned trial Judge, without considering the evidence in proper perspective, has convicted the petitioner.

7. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the victim child was aged 5 years only at the time of alleged occurrence, that the victim child deposed before the trial Court that the petitioner brought her into Madurai Veeran's house and pressed her vagina and also identified the petitioner, that the trial Court has properly appreciated the evidences of the witnesses produced and that



therefore, the finding of the conviction and the imposition of the punishment cannot be found fault with.

8. As rightly contended by the learned Government Advocate (Criminal Side), the learned trial Judge, considering the materials available on record, has come to a decision that the age of the victim child was below 12 years on the date of occurrence. As rightly pointed out by the learned Government Advocate (Criminal Side), the points / aspects now canvassed by the petitioner's side are matter for consideration in the main appeal.

9. Considering the nature and gravity of the offence allegedly proved against the petitioner and also taking note of the age of the victim child and also the fact that the impugned judgment was passed on 13.07.2022 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-
19/06/2023

/ TRUE COPY /

/07/2023

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

CSM

TO

- 1 THE JUDGE
FAST TRACK MAHILA COURT, DINDIGUL.
- 2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI
- 3 THE DEPUTY SUPERINTENDENT OF POLICE,
DINDIGUL RURAL, SUB-DIVISION,
NATHAM POLICE STATION,
DINDIGUL DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.J.BALAMEENAKSHI, Advocate (SR-9140[I] dated 20/06/2023)

ORDER
IN
CRL MP (MD) No.6677 of 2023
IN
CRL A (MD) No.343 of 2023
Date :19/06/2023