



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

Monday, the Twentieth day of March Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4185 of 2023

IN

CRL A(MD)No.644 of 2022

PRASANTH

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
VIRUVEEDU POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO. 122 OF 2019

... RESPONDENT/COMPLAINANT

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 District and Sessions Judge, (Mahila Fast Track Court) Dindigul made in Spl.S.C.No.73 of 2019 dated 10.09.2022 pending disposal of the above criminal appeal.

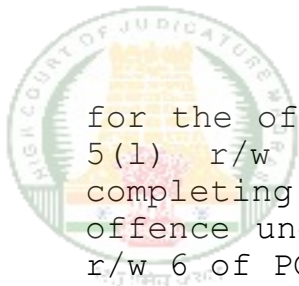
PRAYER IN CRL A(MD)No.644/2022:

Pleased to call for records and set aside the judgment of conviction and sentence imposed by the learned District and Sessions Judge (Mahila Fast Track Court) Dindigul made in Spl.SC.No.73 of 2019 dated 10.09.2022 and allow the above 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.JAMEEL ARASU B, Advocate for the petitioner and of Mr.S.S.MADHAVAN, Government Advocate(crl.side) on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned District and Sessions Judge (Mahila Fast Track Court), Dindigul made in Spl.S.C.No.73 of 2019, dated 10.09.2022, pending disposal of the Criminal Appeal.

2. The case of the prosecution is that on 25.08.2019, when the victim girl came out of her house, the accused kidnapped her and taken her to Ooty, booked a room in a hotel and subjected to her to continuous sexual assault; that due to the above said sexual assault, she has become pregnant and subsequently, it was aborted. The respondent Police has registered a case in Crime No.122 of 2019



for the offences punishable under Section 363 of I.P.C. and Section 5(1) r/w 6 of POCSO Act, 2012. The respondent Police, after completing the investigation, has filed the final report for the offence under Section 363 IPC and Section 5(1) r/w 6 and 5(j)(ii) r/w 6 of POCSO Act, 2012.

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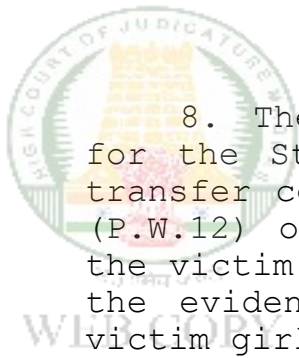
3. During trial, the prosecution has examined 18 witnesses as P.W.1 to P.W.18 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The defence has examined one witness Muthu as D.W.1 and adduced no documentary evidence.

4. The learned Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 10.09.2022, finding the accused guilty for the offences under Section 363 of IPC and under Sections 5 (1) r/w 6 and 5(j)(ii) r/w 6 of POCSO Act and sentenced him to undergo 4 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of six months for the offence under Section 363 IPC ; to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.20,000/- in default, to undergo six months simple imprisonment for the offence under Section 5(1) r/w 6 of POCSO Act and to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.20,000/- in default, to undergo further six months simple imprisonment for the offence under Section 5(j)(ii) r/w Section 6 of POCSO Act. Aggrieved by the judgment of conviction and sentence , the accused has preferred the present appeal.

5. No doubt, the petitioner's earlier application for similar relief in Crl.M.P.(MD)No.12475 of 2022 in Crl.A(MD)No.644 of 2022, after enquiry, was ordered to be dismissed vide order 06.01.2023.

6.The learned counsel for the petitioner/appellant would contend that the respondent Police has failed to establish the age of the victim girl, particularly that she is a minor so as to attract the offence under POCSO Act; that the evidence of the prosecution would reveal that the victim girl had accompanied the accused voluntarily and there was no kidnapping of the victim girl; that the victim in her statement recorded under Section 161(3) Cr.P.C deposed that she was given juice by the accused and after consuming, she has become unconscious and in that situation, she was taken to various places by the accused for a period of two months and that the prosecution has not come with clear cut case.

7. The learned counsel for the petitioner would further contend that though the father of the victim girl deposed that the birth certificate of the victim girl available with him, the prosecution has not taken any steps for production of the birth certificate; that the prosecution has not offered any reason or explanation for non-production of the birth certificate, which is very much available and that in the absence of such vital evidence, the entire prosecution case is highly illegal.



8. The learned Government Advocate (Criminal Side) for the State would submit that the prosecution has produced the transfer certificate of the victim girl and examined the headmaster (P.W.12) of Viruvidu Government Higher Secondary School, in which, the victim girl was studying and that the trial Court, on perusal of the evidence available, has rightly come to a decision that the victim girl is a child.

9. As rightly contended by the learned Government Advocate (Criminal Side), the other aspects now canvassed by the learned counsel for the petitioner are matter for consideration in the main appeal.

10. Considering the above facts and circumstances of the case and also the nature and seriousness of the offence allegedly proved against the petitioner and also taking note of the punishment imposed and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

11. In the result, the Criminal Miscellaneous Petition is dismissed.

sd/-

20/03/2023

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/03/2023

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

DAS

TO

- 1 THE DISTRICT AND SESSIONS JUDGE (MAHILA FAST TRACK COURT),
DINDIGUL.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE
VIRUVEEDU POLICE STATION, DINDIGUL DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL MP(MD) No.4185 of 2023
IN CRL A(MD) No.644 of 2022
Date :20/03/2023

SA/BUC/SAR.2/28.03.2023/3P/5C