



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Tuesday, the Twenty Fifth day of April Two Thousand and Twenty
Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.4183 of 2023

in

Crl.A.(MD)No.806 of 2022

KARUNANITHI

... PETITIONER/PETITIONER/APPELLANT

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
PAPPANADU POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO.47/2020)

... RESPONDENT/RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed upon the petitioner in Spl.SC.No.26/2020 on the file of the Learned Sessions Judge/Special Court for Exclusive trial of Cases under POCSO Act, Thanjavur, Thanjavur District.

PRAYER IN Crl.A.(MD)No.806 of 2022:-

To call for the records in Spl.SC.No.26/2020 on the file of the Learned Sessions Judge/Special Court for Exclusive trial of Cases under POCSO Act, Thanjavur, Thanjavur District and set aside the judgement dated 07.07.2022 and acquit the appellant of the charge leveled against him.

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.ANANDA KUMAR N, Advocate for the petitioner and of M/S.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondents the court made the following order:-



RESERVED ON	20.04.2023
PRONOUNCED ON	25.04.2023

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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/sole accused by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur, in Spl.S.C.No.26 of 2020, dated 07.07.2022, till the disposal of this Criminal Appeal.

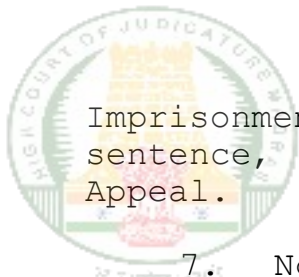
2. The case of the prosecution is that the defacto complainant, after the demise of her husband, along with her two children were residing in her brother's house in Thondarampattu West, that the victim girl/daughter of the defacto complainant was aged about 15 years and studied upto 9th standard, that on 08.03.2020 at about 06.30 p.m., when the victim girl went to Rajagopal's thoppu to attend natural call, the petitioner/sole accused, who was hiding there, had gagged her mouth, pushed her down and raped her, that on hearing the alarm sound of the victim girl, the defacto complainant and her brother came towards her and on seeing the same, the petitioner ran away from the occurrence spot by pushing down the victim girl and caused bleeding injury on her left eye brow and that on the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.47 of 2020 on the file of the respondent police.

3. The respondent police, after completing the investigation, has filed the final report against the petitioner for the offences under Sections 3(a) r/w 4 of POCSO Act and Section 4(2) of POCSO Amendment Act 2019 and the case was taken on file in Spl.S.C.No.26 of 2020 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thanjavur.

4. The learned trial Judge, upon considering the materials available on record and on hearing the submissions made on both the sides, has framed the charged against the petitioner for the offences under Sections 11(iv) r/w 12, 3(a) r/w 4, 4(2), 5(i), 3(c) r/w 18 of POCSO Act.

5. During trial, the prosecution has examined 12 witnesses as P.W.1 to P.W.12 and exhibited 12 documents as Ex.P.1 to Ex.P.12. The defence has adduced neither oral nor documentary evidence.

6. 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 07.07.2022 convicting the petitioner for the offence under Sections 9(i) r/w 10 of POCSO Act and sentenced him to undergo 5 year Rigorous Imprisonment and to pay a fine of Rs.20,000/-, in default, to undergo 1 year Rigorous



Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal.

7. No doubt, the petitioner's earlier application for suspension of sentence in Crl.M.P.(MD)No.14536 of 2022 came to be dismissed vide order dated 07.12.2022.

8. The learned counsel appearing for the petitioner would submit that the prosecution had charged the petitioner with the allegation that he had committed penetrative sexual assault upon the victim girl and that the victim girl had also deposed that she was raped by the petitioner, but the trial Court on a proper appreciation of evidence had come to the decision that the prosecution has failed to prove the penetrative sexual assault and acquitted the petitioner for the said charge and instead convicted the petitioner for the charge of sexual assault by the accused.

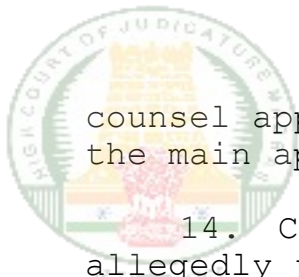
9. The learned counsel appearing for the petitioner would further contend that the prosecution has failed to prove the age of the victim girl in accordance with law, that the reliance placed upon Ex.P.6 and Ex.P.7 by the trial Court is erroneous, that though the petitioner had come up with a probable explanation during his examination under Section 313 Cr.P.C., the same was not considered by the trial Court and that the trial Court failed to consider that the prosecution has miserably failed to prove the charge of sexual assault also.

10. The learned Additional Public Prosecutor appearing for the respondent would submit that the prosecution has produced and exhibited the attested copy of the transfer certificate and school bonafide certificate as Ex.P.6 and Ex.P.7 by examining the Head Mistress of Government High School, Thirumangalakkottai, that the prosecution has proved that the victim girl was born on 08.08.2004 and that the learned trial Judge, upon considering the materials produced, has rightly come to the decision that the victim girl is a child as defined under Section 2(d) of POCSO Act.

11. As rightly pointed out by the learned Additional Public Prosecutor, the learned trial Judge, by relying on Ex.P.6 and Ex.P.7 and the evidence of P.W.8, has come to a decision that P.W.1-victim girl is a child.

12. No doubt, as rightly contended by the learned counsel appearing for the petitioner, the learned trial Judge, upon considering the evidence adduced, has come to a decision that the charge of penetrative sexual assault has not been proved, but on the other hand, the prosecution has proved the charge of sexual assault.

13. More over, as rightly contended by the learned Additional Public Prosecutor, the aspects/points now canvassed by the learned



counsel appearing for the petitioner are matter for consider in the main appeal.

14. Considering the seriousness and gravity of the offence allegedly proved against the petitioner and also taking note of the age of the victim girl and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

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

sd/-
25/04/2023

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/05/2023

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

CSM

TO

- 1 THE SESSIONS JUDGE/SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT, THANJAVUR, THANJAVUR DISTRICT.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
- 3 THE INSPECTOR OF POLICE, PAPPANADU POLICE STATION, THANJAVUR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.4183 of 2023
IN
CRL A (MD) No.806 of 2023
Date :25/04/2023

NA/VR/SAR-2/16.05.2023/4P/5C