



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

Wednesday, the Nineteenth day of April Two Thousand and
Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4520 of 2023
IN
CRL A(MD) No.1 of 2023

CHRISTOPHER

... PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ARANTHANGI,
PUDUKOTTAI DISTRICT.
(CR NO.4/2020)

... 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 upon me by the Mahila Court, Pudukottai in made in Spl SC No.13 of 2020 dt.19.09.2022 pending disposal of the Criminal Appeal.

PRAYER IN CRL.A(MD).1/2023:

Pleased to call for the records and set aside the conviction and sentence passed by the Mahila Court, Pudukottai in made in Spl.S.C.No.13 of 2020 dated 19.09.2022.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.LENIN KUMAR.T., Advocate for the petitioner and of Mr.S.S.MADHAVAN, Government Advocate on behalf of the Respondent, the court made the following order:-

RESERVED ON	10.04.2023
PRONOUNCED ON	19.04.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions
<https://www.mhc.tn.gov.in/judis>



Judge, Mahila Court, Pudukkottai, in Spl.S.C.No.13 of 2020 dated 19.09.2022, till the disposal of this Criminal Appeal.

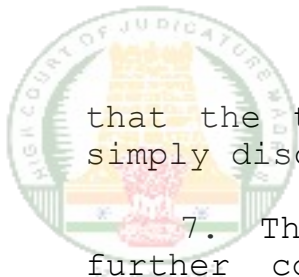
2. The case of the prosecution is that the petitioner/sole accused was residing near the defacto complainant house at Avanam Perungudi, Avudaiyarkovil Taluk, that the defacto complainant is residing with her 3 daughters and aged mother, that her husband had got separated from the family, that on 26.09.2011, when the victim child had been sleeping in her house along with her grandmother, the petitioner had trespassed into the house of the victim child and had lied on top of the victim child, who was sleeping and had removed the dress of the victim child, that he had kept his hand in the vagina of the victim child and had been rubbing, that the victim child had feared and started shouting, that the petitioner had escaped from that place and that on the basis of the complaint lodged, FIR came to be registered in Crime No.4 of 2020 for the offences under Section 448 IPC and Section 8 of POCSO Act.

3. The respondent police, after completing the investigation, has filed the final report and the case was taken on file in Spl.S.C.No.13 of 2020 and the same was pending on the file of the Mahila Court, Pudukkottai.

4. During trial, the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and exhibited 9 documents as Ex.P.1 to Ex.P.9. 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 19.09.2022 finding the petitioner guilty for the offences under Section 448 IPC and Section 10 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 1 month Simple Imprisonment for the offence under Section 448 IPC and to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.60,000/-, in default, to undergo 6 months Simple Imprisonment for the offence under Section 10 of POCSO 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 along with the above miscellaneous petition for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that the prosecution has miserably failed to prove the case beyond reasonable doubt, that according to the prosecution, the occurrence had taken place during night hours and at that time, there was no light in the occurrence place, that documents Ex.P.7 and Ex.P.8 did not contain the particulars about the light, that since the occurrence took place during night hours and there was no light, it was not possible for P.W.2 and P.W.3 to see the person, who trespassed into their house and assaulted P.W.2 sexually and



that the trial Court, without considering the said vital , simply discarded the contradictions and convicted the petitioner.

7. The learned counsel appearing for the petitioner would further contend that the trial Court erred in convicting the petitioner by relying upon the testimony of P.W.1 and P.W.2, that P.W.1 deposed that light will be burning always in her house, but the trial Court ought not to have concluded that the light was burning at the time of incident, that the evidence of P.W.2 has entirely contradicted the evidence of P.W.1 and that P.W.2 did not support the evidence of P.W.1 because P.W.2 deposed that at the time of occurrence, light was burning outside the house.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.1 in his evidence has stated that light would be burning always in the house entrance and P.W.2 had also stated that light was burning in the house entrance and that P.W.2-victim child had deposed evidence about the occurrence, which was corroborated by the evidence of P.W.1-mother of the victim child and P.W.3-eye witness and grandmother of the victim child and also corroborated by P.W.7-medical officer with respect to time, date, place and person, though there is slight variation in the manner in which the occurrence had taken place.

9. It is pertinent to note that the victim child was aged about 8 years at the time of occurrence.

10. As already pointed out, it is the specific case of the prosecution that the petitioner had entered into the house of the victim child in the night hours, when the victim child and her grandmother were sleeping and had committed the offence.

11. 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 the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner. Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
19/04/2023

/ TRUE COPY /

/04/2023

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

CSM
TO

1 THE SESSIONS JUDGE,
MAHILA COURT, PUDUKOTTAI.

<https://www.mhc.tn.gov.in/judis>



2 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ARANTHANGI,
PUDUKOTTAI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.LENIN KUMAR T Advocate SR.No.6188

ORDER

IN

CRL MP(MD) No.4520 of 2023
IN

CRL A(MD) No.1 of 2023

Date :19/04/2023

SA/VR/SAR.3/26.04.2023/4P/6C