



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

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

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.5682 of 2023
in
Crl.A.(MD)No.281 of 2023

K.SIVAKANNAN @ SIVA

... APPELLANT/ACCUSED

Vs

THE STATE REP. BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PUDUKOTTAI.
CRIME NO.18/21.

... 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 and imposing the fine of Rs.23,000/- which was not paid by the petitioner vide Judgement in Spl.SC.No.38/2021 dt.24/8/2022 by this Mahila Court, Pudukottai in AWPS Pudukottai Crime No.18/2021 do hereby.

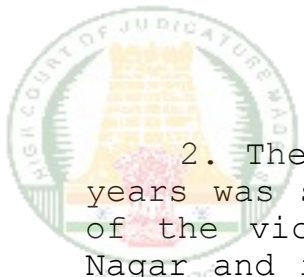
PRAYER IN Crl.A.(MD)No.281 of 2023:-

To call for the records relating to Judgement dated 24.08.2022 made in Spl.S.C.No.38/2021 on the file of the Mahila Court, Pudukkottai and set aside the same.

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.MOHAN V R G, 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	17.04.2023
PRONOUNCED ON	24.04.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/sole accused by the learned Sessions Judge, Mahila Court, Pudukkottai, in Spl.S.C.No.38 of 2021, dated 24.08.2022, till the disposal of this Criminal

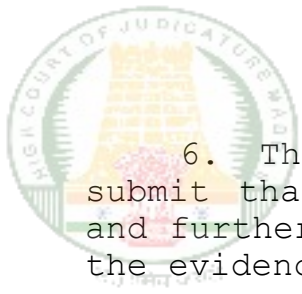


2. The case of the prosecution is that the victim girl aged 13 years was studying 9th standard, that the defacto complainant/mother of the victim girl had been working in the ration shop at Ashok Nagar and in that ration shop, the petitioner/sole accused had also worked as a coolie, that since the defacto complainant's husband had been suffering from kidney failure and has been under dialysis, the petitioner had been moving with the family as if he was helping them, that the petitioner had been following the victim girl, while she was going to school and returning back, that the petitioner had informed the victim girl that he was in love with her, that the victim girl had immediately informed the same to her mother and the defacto complainant had also warned the petitioner, that on 04.10.2021 at 04.30 p.m., when the victim girl had got down in Ashok Nagar bus stop and at that time, the petitioner, who had come to the bus stop, had tried to talk with the victim girl, that the victim girl, without talking to him, had shouted at him as to why he was following her, that the petitioner had immediately abused the victim girl in filthy language, that the victim girl had asked the petitioner to leave that place, that all the people, who were standing nearby, had caught hold of the petitioner and scolded him and that on the basis of the complaint given by the mother of the victim girl, FIR came to be registered in Crime No.18 of 2021 for the offences under Sections 11(i) r/w 12 of POCSO Act. Subsequently, the case was altered into Sections 11(i) r/w 12 of POCSO Act and Section 294(b) IPC.

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.38 of 2021 and the same was pending on the file of the Sessions Judge, Mahila Court, Pudukkottai.

4. During trial, the prosecution has examined 7 witnesses as P.W.1 to P.W.7 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 24.08.2022 convicting the petitioner for the offences under Section 294(b) IPC and Section 12 of POCSO Act and sentenced him to undergo 3 months Simple Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo one week Simple Imprisonment for the offence under Section 294(b) IPC and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.20,000/-, in default, to undergo 6 months Simple Imprisonment for the offence under Section 12 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 preferred the present appeal along with the above application for suspension of sentence.



6. The learned counsel appearing for the petitioner would submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

7. The learned Additional Public Prosecutor appearing for the respondent would further submit that the petitioner has not paid the fine amount so far.

8. The learned Additional Public Prosecutor appearing for the respondent would further submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

9. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

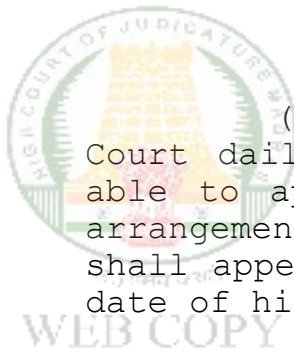
10. The learned counsel appearing for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

11. Considering the above facts and circumstances and also the nature of the charges allegedly proved against the petitioner and also the facts that the petitioner is in jail from 24.08.2022 and taking note of the punishment imposed, this Court is inclined to suspend the sentence imposed on the petitioner.

12. Accordingly, the petitioner is directed to pay the fine amount of **Rs.23,000/- (Rupees Twenty Three Thousand only)** before the trial Court and on such payment, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** with two sureties each for a like sum to the satisfaction of the Mahila Court, Pudukkottai;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and



(iii) The petitioner shall appear before the Court daily at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-
24/04/2023

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03/05/2023

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

CSM

TO

- 1 THE SESSIONS JUDGE, MAHILA COURT, PUDUKKOTTAI.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
- 3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PUDUKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.5682 of 2023
IN
CRL A (MD) No.281 of 2023
Date :24/04/2023

NA/VR/SAR- /03.05.2023/4P/5C