



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

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

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4877 of 2023
in
CRL A(MD)No. 706 of 2022

NAGAPANDI

... APPELLANT/ACCUSED NO.2

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
NAGAMALAIPUDHUKOTTAI POLICE STATION,
MADURAI,
IN CRIME NO.12/2012.

... 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 on the petitioner/appellant passed in SC No.180/2014, on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai dated.03/08/2022 and enlarge him on bail pending disposal of the instant Criminal Appeal.

Prayer in CRL A(MD)No. 706 of 2022:

Pleased to call for the records in S.C.No. 180 of 2014 on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai and set aside the sentence and conviction awarded to A2 by the order dated 03.08.2022.

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.N.ANANTHAPADMANABHAN, Senior Counsel for M/S.APN LAW ASSOCIATES for the petitioner and of MR.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed on the petitioner in S.C.No.180 of 2014, on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai, dated 03.08.2022 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

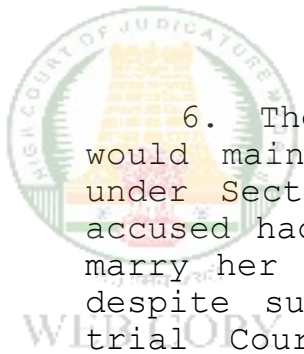


2. The case of the prosecution is that six months prior to the lodging of complaint, father of the victim girl Ganesan was admitted in Government Rajaji Hospital, Madurai for pain in his left leg and he underwent surgery for removal of the leg and hence, he was taking treatment as inpatient nearly six months; that the mother of the victim girl had accompanied her husband in the hospital; that during the absence of parents of the victim girl, the accused used to talk with the victim girl and used to give her snacks; that the victim girl is partially unsound mind and was innocent girl aged about 23 years; that all the accused residents of Otthucolony, Nagagamalai Pudukkottai, used to misbehave with her by touching her body; that the first accused had taken her to the backside of his house and committed penetrative sexual assault; that the accused 2 to 6, after coming to know about this, they had also committed rape against the victim girl and that the accused had also threatened the victim girl not to inform anyone. On the basis of the complaint given by the victim's father, FIR came to be registered in Crime No.12 of 2012. During investigation, the victim girl delivered a female child on 10.02.2012 and DNA test was conducted and the fourth accused Vigneswaran was shown to be the biological father of the child as per DNA report and that the respondent Police, after completing the investigation, has filed the final report under Sections 417, 376, 354, 506(ii) I.P.C and Section 4 of TNPHW Act and the same was taken on file in S.C.No.180 of 2014 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai.

3. During trial, the prosecution has examined 14 witnesses as P.W.1 to P.W.14 and exhibited 50 documents as Ex.P.1 to Ex.P.50 and 15 material objects as M.O.1 to M.O.15. The accused has examined one witness as D.W.1 and exhibited four documents as Ex.D.1 to Ex.D.4.

4. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 03.08.2022, finding the accused 2 to 6 guilty for the offences under Sections 376 and 506(ii) I.P.C., and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for a period of one year and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo six months simple imprisonment for the offence under Section 506(ii) I.P.C. Pending trial, the first accused had died and hence, the charge against him was ordered to be abated. Aggrieved by the judgment of conviction and sentence, the second accused has come forward with the present appeal.

5. No doubt, the petitioner's earlier application for similar relief in Crl.M.P.(MD)No.14885 of 2022 in Crl.A(MD)No.706 of 2022, after enquiry, was ordered to be dismissed vide order 14.12.2022.



6. The learned senior counsel for the petitioner/... it would mainly contend that the fourth accused in the proceedings under Section 313 Cr.P.C has specifically stated that the fourth accused had love affairs with the victim girl and was intending to marry her and that he alone had committed sexual assault and that despite such an important admission made by the co-accused, the trial Court has failed to consider the same and mechanically recorded the impugned conviction and sentence.

7. As rightly contended by the learned Additional Public Prosecutor, the fourth accused should have revealed this aspect at the time of investigation of the case and moreover, he has not chosen to enter into the witness box; that he has also not chosen to examine his parents and that the fourth accused has failed to produce any evidence to prove the said contention.

8. As rightly contended by the learned Additional Public Prosecutor, the fourth accused, after coming to know about the result of DNA test, had given his explanation in the proceedings under Section 313 Cr.P.C as if he was in love with the victim girl and was planning to marry her. Such a statement, by no stretch of imagination, can be taken as an evidence to show that the other accused were innocents.

9. 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 facts that the victim girl is partially unsound mind and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

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

sd/-

03/04/2023

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/04 /2023

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

DAS
TO

1 THE SESSIONS JUDGE,
MAHILAR NEETHIMANDRAM, MADURAI.

2 THE INSPECTOR OF POLICE
NAGAMALAIPUDHUKOTTAI POLICE STATION, MADURAI.



3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

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

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+1 CC to M/s.APN LAW ASSOCIATES, Advocate (SR-5627[I] dated
11/04/2023)

ORDER
IN
CRL MP (MD) No.4877 of 2023
in
CRL A (MD) No. 706 of 2022
Date :03/04/2023

PKP/CG/SAR-4/12.04.2023/ **4P/6C**