



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

Monday, the Twelfth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4999 of 2023
in
CRL A(MD) No.248 of 2023

N.SELVAMANI

... Petitioner / Appellant

Vs

STATE REP BY
THE INSPECTOR OF POLICE
FORT ALL WOMAN POLICE STATION,
TRICHY DISTRICT.
(CRIME NO.6 OF 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 by the learned Sessions Judge, Mahila Court, Tiruchirappalli in Special SC No.43/2020 dt.20.01.2023 and enlarge the Petitioner on bail, pending disposal of the Criminal Appeal.

Prayer in CRL A(MD) No.248 of 2023:

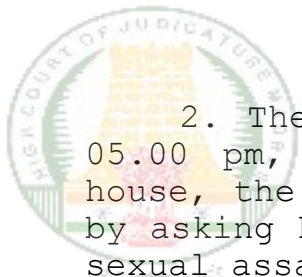
To call for the records set aside the conviction and sentence passed by the Learned Sessions Judge, Mahila Court, Tiruchirappalli in Special S.C.No.43 of 2020 dated 20.01.2023 and acquit the Appellant.

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.SOMASUNDARAM E, Advocate for the petitioner and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 05.06.2023

Delivered on : 12.06.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in S.C.No.43 of 2020, dated 20.01.2023, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli, till the disposal of this Criminal Appeal.



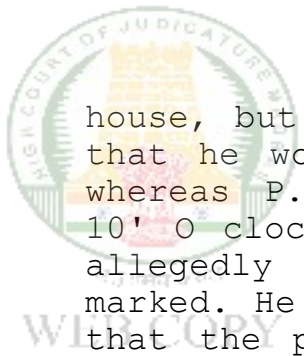
2. The case of the prosecution is that on 16.03.2020 at 05.00 pm, when the victim girl was playing near her relative's house, the accused had kidnapped the victim girl to a coconut grove by asking her to collect coconut leaves with an intention to commit sexual assault against her; that the accused licked the private part of the victim and also committed the sexual assault. On the basis of the complaint lodged, FIR came to be registered in Crime No.6 of 2020 and the respondent Police, after completing the investigation, has filed a final report for the alleged offence under Sections 366 (A), 376 AB of IPC and Section 3(d) r/w 4(1)(a), 7 r/w 8, 11(i) r/w 12 of POCSO Act and the same was taken on file in Spl.S.C.No.43 of 2020 on the file of the Sessions Judge, Mahila Court, Tiruchirappalli.

3. During the trial, the prosecution has examined 15 witnesses as P.W.1 to P.W.15 and exhibited 12 documents as Ex.P.1 to Ex.P.12. The accused has adduced neither oral nor documentary evidence.

4. The learned Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 20.01.2023 convicting the petitioner/accused for the offence under Section 366 IPC and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default, to undergo three months simple Imprisonment and convicting the petitioner for the offence under Sections 5(m) r/w 6(1) POCSO Act, 2012 and sentenced him to undergo 20 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment. Aggrieved by the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

5. The learned counsel for the petitioner would submit that P.W.1 in her evidence would say that she wrote the complaint and gave it to the Police, but during her cross examination, she would say that she along with her husband went to the Police Station and that the Police has written the complaint and she signed in the complaint; that P.W.1 in her cross examination would say that a public toilet situated near by the occurrence place was functioning till 10.30 pm., but the prosecution has not chosen to examine any witness in the occurrence place; that the trial Court failed to consider as who has come to the Police Station whether P.W.1 to P.W.3, but nothing is revealed as who went to the Police Station and lodged the complaint.

6. The learned counsel for the petitioner would further submit that P.W.2/victim girl in her cross examination would say that she went to the coconut grove along with other children and after that they had gone to their houses; that the trial Court failed to consider the material aspect that on 17.03.2020 early morning 6' O



house, but he would admit that they were examined in the 1st; that he would admit that an error has been committed by him and whereas P.W.3 would say that the investigating officer at about 10' O clock examined him and that the victim dress were recovered allegedly by the investigating officer, but the same were not marked. He would further submit that P.W.2 victim girl would submit that the police picked up the accused on the date of occurrence itself and was taken in the custody and whereas the investigating officer would say that the accused was arrested on 17.03.2020 at about 07.30 am near Gandhi Market Arch and that the trial Court has not at all considered the material contradictions among the witnesses of prosecution.

7. The learned Government Advocate (Criminal Side) appearing for the State would submit that the complaint was lodged by P.W.1 after consulting her husband on 16.03.2020 at about 22.30 hours on the date of occurrence itself and that P.W.1 has nowhere stated that the Police has written the complaint and she had signed in the complaint; that the occurrence took place at coconut grove at the north of the accused house and at the time of occurrence nobody was there nearby the toilet; that P.W.3 would say the victim and the accused alone came along the path and that the accused was arrested on 17.03.2020 at 07.00 hours at Gandhi Market Arch and the same was also intimated to his brother Manikandan.

8. The learned Government Advocate (Criminal Side) appearing for the State would further submit that the above aspects canvassed by the learned counsel for the petitioner are matter for consideration in the appeal and are not sufficient enough to suspend the sentence.

9. Considering the facts and circumstances of the case and also the seriousness and gravity of the offence allegedly proved and also the fact that the impugned judgment was passed on 23.08.2022 and the period of incarceration and also taking note of 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/-
12/06/2023

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/06/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DAS

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



To

1.The Sessions Judge,
Mahila Court, Tiruchirappalli.

2.The Inspector of Police,
Fort All Women Police Station,
Trichy District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER

IN

CRL MP(MD) No.4999 of 2023
in

CRL A(MD) No.248 of 2023

Date :12/06/2023

ED/CG/SAR- (21/06/2023) 4P 4C