



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

Monday, the Nineteenth day of June Two Thousand and Twenty Three  
PRESENT

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The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5331 of 2023  
in  
CRL A(MD)No.96 of 2023

MURUGAVEL

... PETITIONER/APPELLANT

Vs

THE STATE REPRESENTED BY  
THE INSPECTOR OF POLICE  
PALANI ALL WOMEN POLICE STATION, PALANI,  
DINDIGUL DISTRICT.  
(CRIME NO.12/2021)

... 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 in the order of conviction against the petitioner/ appellant in Spl SC No.36/2021 dt.09.12.2022 on the file of the Learned Sessions Judge, Fast Track Mahila Court, Dindigul till the disposal of pending appeal.

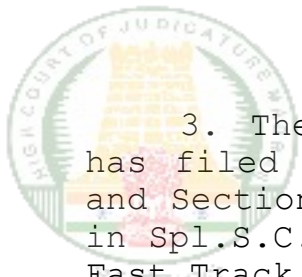
Prayer in CRL A(MD).96/2023 :

To call for the records pertaining to the Judgment dated 09.12.2022 in Spl.S.C.No.36 of 2021 on the file of the Learned Sessions Judge, Fast Track Mahila Court, Dindigul and to set aside the same, by allowing this Criminal Appeal and may be pleased to acquit the Appellant/Accused.

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.KARUPPASAMY M, Advocate for the petitioner and of MR.R.SIVAKUMAR, Government Advocate(Crl.side) on behalf of the Respondent, the Court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Fast Track Mahila Court, Dindigul, in Spl.S.C.No.36 of 2021, dated 09.12.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 14.06.2021 at about 11.00 p.m., the petitioner/sole accused by promising to marry the victim girl had hugged her, kissed her and also subjected her to sexual assault and thereafter, the victim girl was kidnapped to Gandapathi Nagar and that on the basis of the complaint lodged, FIR came to be registered in Crime No.12 of 2021.



3. The respondent police, after completing the investigation, has filed the final report for the offences under Section 363 IPC and Sections 3(a) r/w 4 of POCSO Act and the case was taken on file in Spl.S.C.No.36 of 2021 and the same was pending on the file of the Fast Track Mahila Court, Dindigul.

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4. During trial, the prosecution has examined 9 witnesses as P.W.1 to P.W.9 and exhibited 10 documents as Ex.P.1 to Ex.P.10. 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 09.12.2022 convicting the petitioner for the offences under Section 363 IPC and Section 4 of POCSO Act and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 363 IPC and to undergo 10 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 4 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.

6. No doubt, the petitioner's earlier application for similar relief for suspension of sentence was ordered to be dismissed vide order dated 24.02.2023.

7. The learned counsel appearing for the petitioner would submit that mere reading of Ex.P1-complaint would show that P.W.1 lodged the complaint only to find out the whereabouts of her daughter, that the statements recorded under Section 161(3) Cr.P.C. and the deposition of witnesses are clearly an afterthought and invented for the purpose of roping the petitioner with crime, that there is no whisper to the effect that the victim girl was sexually assaulted by the petitioner, that the victim girl, who was aged 16 years, is well known to the petitioner, that the petitioner has not committed any offence as alleged by the prosecution, that the reason of this Court given for dismissal of the earlier application that the petitioner is living separately with his wife and children is not correct, that his wife died on 29.01.2015 and he is only taking care of his two children, that the victim girl has now attained majority and interested in marrying him, that both of them were on love and prepared to marry and that the petitioner's children are school going children and there is nobody to look after and take care of them.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the grounds raised by the petitioner are vague and unsustainable, that the date of birth of the victim girl is 29.09.2004 and she was aged 16 years and she had not completed 18 years of age as such, she comes under the category of a child as mentioned in Section 2(d) of POCSO Act, that the consent of minor would be no defence for the charge of kidnapping,



that the trial Court has clearly observed that on conjoint reading of evidence of the victim girl and the statement recorded under Section 164 Cr.P.C., the petitioner induced and deceived the victim girl under the pretext of marriage and lifted the victim girl to Palani and committed sexual assault, that the evidence of P.W.1 is reliable, trustworthy and there is absolutely no reason to discard her evidence and that the evidence of the victim girl got corroborated by the evidence of P.W.2, P.W.3 and P.W.7.

9. As rightly contended by the learned Government Advocate (Criminal Side), the learned trial Judge, upon considering the evidence available on record, has come to a decision that the victim girl was aged 16 years and she has not completed 18 years of age.

10. According to the prosecution, the petitioner was a married man and is having children and is living separately, but the petitioner in the affidavit filed in support of his petition has disputed that version and according to him, the prosecution has wrongly stated that he was living separately and his wife and children are living separately. But according to the petitioner, his wife died on 29.01.2015 and he is looking after his two children. But the fact remains that the petitioner is a married man and is having two children even at the time of alleged occurrence.

11. Considering the seriousness and gravity of the charges allegedly proved against the petitioner and also the fact that the impugned judgment was passed on 09.12.2022 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-

19/06/2023

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/07/2023

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

CSM  
TO

- 1 THE SESSIONS JUDGE,  
FAST TRACK MAHILA COURT, DINDIGUL.
- 2 THE INSPECTOR OF POLICE  
PALANI ALL WOMEN POLICE STATION, PALANI,  
DINDIGUL DISTRICT
- 3 THE SUPERINTENDENT  
CENTRAL PRISON, MADURAI.



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

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ORDER

IN

CRL MP (MD) No.5331 of 2023

in

CRL A (MD) No.96 of 2023

Date :19/06/2023

SS/BUC/04/07/2023/4P/5C