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Crl.M.P(MD)



23

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

Tuesday, the Twenty Seventh day of June Two Thousand and
Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.5542 of 2023

in

Crl.A.(MD)No.698 of 2022

M.PANDEESWARAN

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
SRIVILLIPUTHUR ALL WOMEN POLICE STATION,
SRIVILLIPUTHUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CR.NO.285/2016

... 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.S.C.No.52/2016 dt 14.06.2022 on the file of the Learned Sessions judge (Special Court of POCSO Act Cases) Virudhunagar District at Srivilliputhur till the disposal of pending appeal.

PRAYER IN CRL.A.(MD)No.698 of 2022:

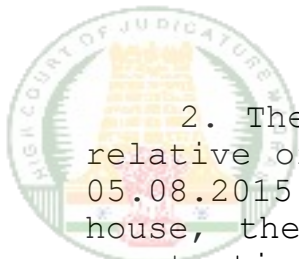
To call for the records pertaining to the judgment dated 14.06.2022 in Spl.S.C.No. 52 of 2016 on the file of the Sessions Judge(Special Court of POCSO Act Cases) Virudhunagar District at Srivilliputhur and to set aside the same, by allowing this Criminal Appeal and may be pleased to acquit the Appellant/Accused from the charges framed against him.

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.MUTHUMALAI K, Advocate for the petitioner and of M/S.SS.MADHAVAN, Government Advocate(Crl.side) on behalf of the Respondent, the court made the following order:-

Reserved on : 22.06.2023

Delivered on : 27.06.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.52 of 2016, dated 14.06.2022, on the file of the learned Sessions Judge (Special Court for POCSO Act Cases) Virudhunagar District at Srivilliputhur, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that the petitioner is the relative of the victim girl and he used to visit her house; that on 05.08.2015 at about 01.30 pm when the victim girl was alone in her house, the petitioner trespassed into the house and has committed penetrative sexual assault on the victim girl; that the petitioner by giving false promise to the victim girl that he will marry her, kidnapped the victim girl to Coimbatore, and he had committed aggravated penetrative sexual assault and that the victim was aged 16 years at the time of alleged occurrence. On the basis of the complaint lodged, FIR came to be registered in Crime No.285 of 2016 and the respondent Police, after completing the investigation, has filed a final report for the alleged offence under Sections 417, 506 (i), 368 IPC and Section 5(n) r/w Section 6 and 5(1) r/w Section 6 of POCSO Act and the same was taken on file in Spl.S.C.No.52 of 2016 on the file of the Sessions Judge (Special Court for POCSO Act Cases), Virudhunagar District at Srivilliputhur.

3. During the trial, the prosecution has examined 10 witnesses as P.W.1 to P.W.10 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The accused has adduced neither oral nor documentary evidence.

4. The learned trial Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 14.06.2023, acquitting the accused for the offence under Sections 417, 506(i), 368 IPC and Section 5(n) r/w 6 of POCSO Act and convicting the petitioner/accused for the offence under Section 5(1) r/w 6 of POCSO Act and sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default, to undergo one year 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 originally complaint was lodged to find out whereabouts of the victim girl and hence, F.I.R came to be registered under Section 366 (A) IPC against the petitioner, his wife and mother and subsequently, the petitioner's wife and mother were deleted; that P.W.1 in her evidence would say that he does not know to read, but she would say specifically that she had written the complaint and gave it to the Police and the above evidence creates a doubt about the complaint lodged; that though P.W.1 lodged the complaint on 10.04.2016, F.I.R has been registered only on 23.04.2016 with inordinate delay of 13 days ; that neither P.W.1 nor prosecution has not offered any acceptable reason or explanation for the said delay; that in Ex.P.3/accident register, it has been stated that the victim girl, out of her willingness, went along with the identifiable person on 05.08.2015 at about 08.00 pm and there was no murmur or whisper in Ex.P.3 that she was sexually assaulted.



6. The learned counsel for the petitioner would further submit that the prosecution has miserably failed to prove the age of the victim girl; that the victim girl herself would say that her date of birth was 28.04.1998, but P.W.10/School Headmistress has produced the school records and deposed that the birth date of the victim girl is 03.04.2000 and that the trial Court without considering the material aspects has mechanically recorded the conviction.

7. The learned Government Advocate (Criminal Side) appearing for the State would submit that the prosecution has examined the School Headmistress/P.W.10 and she would say that the date of birth recorded in the school records is 03.04.2000 and she has produced the copies of the school admission register, 10th mark sheet and the transfer certificate and that through the above evidence, the prosecution has clearly proved that the victim girl was born on 03.04.2000. He would further submit that the accused person is already married person and that by giving false promise of marriage had taken her to Coimbatore and committed penetrative sexual assault and that the learned trial Judge considering the evidence available on records, has rightly convicted the petitioner/accused.

8. It is pertinent to note that the victim girl was aged 15 years at the time of alleged occurrence and that the petitioner/accused is a married person. As already pointed out, originally the case was registered against the petitioner, his wife and mother and after investigation, the petitioner's wife and mother were deleted.

9. No doubt, the petitioner's earlier application in Crl.M.P (MD)No.13120 of 2022 was dismissed vide order, dated 02.01.2023.

8. Considering the facts and circumstances of the case and also the seriousness and gravity of the offence allegedly proved against the petitioner and also taking note of the age of the victim girl and the petitioner's marital status and the way in which, the offence was committed and also taking note of the fact that the impugned judgment was passed on 14.06.2022 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/-
27/06/2023

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/07/2023

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



TO

1. THE SESSIONS JUDGE (SPECIAL COURT OF POCSO ACT CASES)
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2. THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.

3 THE INSPECTOR OF POLICE
SRIVILLIPUTHUR ALL WOMEN POLICE STATION,
SRIVILLIPUTHUR TOWN POLICE STATION,
VIRUDHUNAGAR DISTRICT.

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

ORDER

IN

CRL MP (MD) No.5542 of 2023

Date : 27/06/2023

RK (06/07/2023) 4P/5C