



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

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

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6475 of 2023
in
CRL A(MD)No. 67 of 2023

LOGANATHAN

... PETITIONER/APPELLANT

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SIVAKASI, VIRUDHUNAGAR DISTRICT.
IN CR NO.02/2019.

... RESPONDENT/RESPONDENT

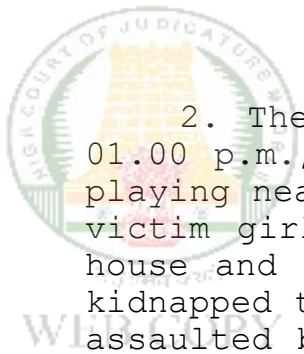
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed by the Learned Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur in Special Sessions Case No.34/2019 dated 14.11.2022 and enlarge the Petitioner / Sole Accused on bail, till the disposal of the Criminal Appeal.

PRAYER IN CRL A(MD)No.67 of 2023:

Pleased to admit this appeal on file and call for the records from the Lower court and set aside the Judgment passed by the learned Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur i Special Sessions Case No.34 of 2019 dated 14.11.2022 by allowing this appeal.

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.MAYA PERUMAL.S, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Criminal 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, Special Court of POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.34 of 2019, dated 14.11.2022, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that on 18.05.2019 at 01.00 p.m., the victim girl along with her friend one Karpagam was playing near the line house, that after playing, her friend left the victim girl and the victim girl alone was standing near the third house and at that time, the petitioner/sole accused came there and kidnapped the victim girl to the third house, where she was sexually assaulted by the petitioner and that on the basis of the complaint lodged, FIR came to be registered in Crime No.02 of 2019.

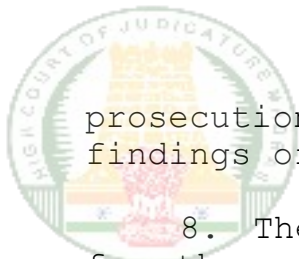
3. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 366 and 506(2) IPC and Sections 5(k) r/w 6 of POCSO Act, 2012 and the case was taken on file in Spl.S.C.No.34 of 2019 and the same was pending on the file of the Special Court of POCSO Act Cases, Virudhunagar District at Srivilliputhur.

4. During trial, the prosecution has examined 12 witnesses as P.W.1 to P.W.12 and exhibited 18 documents as Ex.P.1 to Ex.P.18. 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 14.11.2022 convicting the petitioner for the offences under Section 506(1) IPC and Sections 5(k) r/w 6 of POCSO Act, 2012 and sentenced him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 1 month Simple Imprisonment for the offence under Section 506(1) IPC and to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 1 year Simple Imprisonment for the offence under Sections 5(k) r/w 6 of POCSO Act, 2012 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 02.02.2023.

7. The learned counsel appearing for the petitioner would submit that though the prosecution has alleged that the incident was occurred on 18.05.2019, the complaint was given only on 24.05.2019, that the prosecution has not offered any reason or explanation for the inordinate delay of 7 days for preferring the complaint, that the prosecution has suppressed the earlier complaint, that the place and the time of occurrence were also doubtful, that the victim girl was tutored, that the medical evidence does not support the case of the prosecution, that the prosecution has also failed to prove the age of the victim girl, that they have also not examined the material witness Karpagam-friend of the victim girl with whom she was playing before the occurrence, that the evidence of the



prosecution did not support their case and that therefore the findings of the trial Court are wrong and perverse.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the victim girl was aged 14 years at the time of alleged occurrence, that the victim girl was taken by the petitioner to his house and committed the penetrative sexual assault, that the delay in preferring the complaint in POCSO cases cannot be considered as a fatal mechanically and that the trial Court, considering the evidence in proper perspective, has rightly convicted the petitioner.

9. As rightly pointed out by the learned Government Advocate (Criminal Side), the learned trial Judge, considering the evidence available on record, has come to a decision that the victim girl was aged 14 years 11 months and 27 days at the time of alleged occurrence.

10. According to the prosecution, the victim girl is a physically challenged girl and when she was playing with her friend and after noticing that the said friend had left that place, the petitioner had dragged the victim girl to his house and locked the room and when the same was questioned, he threatened the victim girl and removed her clothes and committed the penetrative sexual assault.

11. Considering the facts and circumstances of the case and also the seriousness and gravity of the charges allegedly proved against the petitioner and also considering the age of the victim girl and also the fact that the impugned judgment was passed on 14.11.2022 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

/ TRUE COPY /

/07/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

TO

1 THE SPECIAL JUDGE FOR
POCSO ACT CASES, VIRUDHUNAGAR DISTRICT AT
SRIILLIPUTHUR.



- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SIVAKASI,
VIRUDHUNAGAR DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.MAYAPERUMAL, Advocate (SR-9075[I] dated 20/06/2023)

ORDER
IN
CRL MP(MD) No.6475 of 2023
in
CRL A(MD)No. 67 of 2023
Date :19/06/2023

PKP/BUC/SAR- /06.07.2023/ **4P/6C**