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

Tuesday, the First day of August Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.11002 of 2023
in
CRL A(MD)No.57 of 2023

BULLET @ PALPANDI

... Petitioner / Appellant

Vs

THE STATE REP BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VIRUDHUNAGAR,
VIRUDHUNAGAR DISTRICT
(CRIME NO.29 OF 2015)

... Respondent / Respondent

Criminal Miscellaneous 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 passed by the learned Sessions Court, (Special Court for the Exclusive Trial of POCSO Act cases), Virudhunagar District at Srivilliputhur in Spl.SC.No.63 of 2016 dated 28.10.2022 pending disposal of the criminal appeal.

Prayer in CRL A(MD). 57/ 2023 :

To calling for the records pertaining to the conviction and sentence passed by the learned Sessions Court, (Special Court for the Exclusive Trial of POCSO Act Cases) Virudhunagar District at Srivilliputhur in Spl.S.C.No.63 of 2016 dated 28.10.2022 and set aside the same as illegal and acquit the appellant.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.SATHISH.G.R, 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 Court, (Special Court), Virudhunagar District at Srivilliputhur in Spl.S.C.No.63 of 2016 dated 28.10.2022 pending disposal of the Criminal Appeal.

2. The learned counsel appearing for the petitioner submitted that the trial Court failed to note the prosecution had specifically mentioned about the date of the occurrence, P.W.1 in her cross examination had deposed that she is not aware of the date of the occurrence. The entire case of the prosecution is false and instituted by P.W.2 with mala-fide intention. Therefore, he prayed to allow this petition.

3. The learned Government Advocate (Criminal Side) appearing for the respondent submitted that the learned trial Judge, upon considering all the evidence on records, has rightly convicted the petitioner. Hence, strongly opposed to allow this petition.

4. Heard both sides.

5. This petition has been filed to suspend the sentence imposed on the petitioner as a second time. In earlier occasion, this Court passed a detailed order and dismissed the same in Crl.M.P.(MD).No.5763 of 2023 dated 19.04.2023, which is as follows:

"2.The case of the prosecution is that the victim girl was suffering from frequent fits, that she was staying in the house without attending the school 6 months prior to the



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occurrence, that on 12.09.2015, the petitioner/first accused had taken the victim girl to his house and committed penetrative sexual assault, that the petitioner had also poured oil in her private parts and committed sexual torture and that he had also threatened the victim girl with dire consequences.

3. It is further case of the prosecution that the second accused had also committed penetrative sexual assault and also criminally intimidated the victim girl and that on the basis of the complaint lodged, FIR came to be registered against 5 persons in Crime No.29 of 2015 for the offences under Sections 7 r/w 8 and 5(l) r/w 6 of POCSO Act and Section 506(2) IPC.

4. During trial, the prosecution has examined 13 witnesses as P.W.1 to P.W.13, exhibited 21 documents as Ex.P.1 to Ex.P.21 and marked 2 material objects as M.O.1 and M.O.2. The defence has examined 1 witness as D.W.1 and adduced no documentary evidence. Two documents have been exhibited as Court documents as Ex.C.1 and Ex.C.2.

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 28.10.2022 convicting the petitioner for the offence under Sections 3(a) r/w 4 of POCSO Act and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 1 year Simple



Imprisonment. Aggrieved by the said judgment of conviction and sentence, the first 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 15.02.2023.

7. It is not in dispute that since three accused were juveniles, separate charge sheet has been filed against them before the Juvenile Justice Board and only against the petitioner and the second accused trial was conducted and the impugned judgment was passed against them.

8. The learned counsel appearing for the petitioner would submit that there is no eye witness to prove the charges against the petitioner, that only based on the allegations given by the mother of the victim girl-P.W.1, the trial Court convicted the petitioner, that the prosecution has failed to establish the commission of offence against every accused by specifically pointing out the date and time of the occurrence, that P.W.1 herself had stated that she was not aware of the date of occurrence and that the entire prosecution case is false and instituted by P.W.2 with malafide intention.

9. It is pertinent to note that the victim girl was aged about 9 years only at the time of occurrence.

10. As rightly pointed out by the learned Government Advocate (Criminal



Side), it was found in the medical examination that hymen of the victim girl was not intact.

11. Considering the above facts and circumstances and the nature and gravity of the charges allegedly proved against the petitioner and also 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."

6. Hence, this Court does not find any new grounds to suspend the sentence imposed on the petitioner, this Criminal Miscellaneous Petition is dismissed.

sd/-

01/08/2023

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/09/2023

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

SBN

TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR THE EXCLUSIVE TRIAL OF
POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, VIRUDHUNAGAR,
VIRUDHUNAGAR DISTRICT



3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

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

ORDER
IN
CRL MP(MD) No.11002 of 2023
in
CRL A(MD) No.57 of 2023
Date :01/08/2023

SS/JGB/01/09/2023/6P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023