



CRL.M.P.(MD)No.11690 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Friday, the First day of September Two Thousand and Twenty Three

PRESENT

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

CRL.M.P.(MD)No.11690 of 2023

in

CRL.A.(MD)No.410 of 2023

1 K.SURESH KUMAR

2 K.KALIMUTHU @ MARIMUTHU

3 K.BABYAMMAL

4 S.JEYA

5 G.SOMAN

...APPELLANTS/ ACCUSED NO.1 TO 3

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
GANDAMANUR POLICE STATION,
THENI DISTRICT.
CR.NO.307/2016

... RESPONDENT/COMPLAINANT



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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 judgment dt 19.04.2023 made in Spl.S.C.No.78/2016 on the file of learned Mahila Fast Track Court Theni and enlarge the petitioner on bail pending disposal of the above appeal and thus render justice.

PRAYER IN CRL A(MD)No.410 of 2023:

To call for the records relating to the judgment dated 19.04.2023 made in Spl.S.C.No.78 of 2016 on the file of Mahila Fast Track Court, Theni and set aside the conviction and sentence imposed against the appellants/accused and allow above appeal by acquitting the 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 MR.MOHAMMED IMRAN.H, Advocate for M/S.AJMAL ASSOCIATES, for the petitioners and of MR. M.MUTHUMANIKKAM, 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 petitioners/accused 1 to 5 by the Mahila Fast Track Court, Theni, in Spl.S.C.No.78 of 2016, dated 19.04.2023, and enlarge the petitioners on bail the till the disposal of this Criminal Appeal.



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2. The case of the prosecution is that the petitioners and the victim girl are belongs to the same community and also the close relatives. At the time of occurrence, the first petitioner is aged about 33 years and the victim girl is aged about 17 years. The petitioners 2 & 3 are the parents and the petitioners 4 & 5 are the sister and sister's husband of the first petitioner. The petitioners 2 & 3 said to have went to the house of the victim girl and asked her parents to perform marriage between their son and the victim girl. The parents of the victim girl rejected the same by pointing out the fact that the victim girl is minor. In such circumstances, on 08.09.2016, when the victim girl was arriving at Kandamanur, to go to college, the second petitioner came to that place and brought to her into his house by using sweet coated words and insisted her to marry the first petitioner and also threatened her by stating that if she is not married the first petitioner, they would be committed suicide. On the very same day, in a Car, the first petitioner took her into the place of Pothankadu, Thiruvananthapuram, Kerala and stayed in the house of the petitioners 4 and 5. On 09.09.2016, at about 08.30 a.m, the petitioners 4 and 5 performed marriage between the first petitioner and the victim girl at Velavoor Bhagavathi Amman Temple. Thereafter, the first petitioner had committed penetrative sexual assault on her from 09.09.2016 to 13.09.2016. Since the victim girl has not returned to home on 08.09.2023,

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the victim girl's mother has lodged a complaint before the respondent police on 10.09.2016 and on that basis, FIR came to be registered as 'Girl Missing' in Crime No.307 of 2016. After that, they came to know about the involvement of the petitioners and secured the victim girl and also altered the offence.

3. After completing the investigation, The respondent police filed final report before the Fast Track Mahila Court, Theni, and the case was taken on file in Spl.S.C.No.78 of 2016 for the offences under Sections 366 and 366(A) IPC and Sections 5(1) r/w 6 and 17 of POCSO Act.

4. During trial, the prosecution has examined 25 witnesses as P.W.1 to P.W.25, exhibited 20 documents as Ex.P.1 to Ex.P.20 and marked 2 material objects as M.O.1 and M.O.2. The defence have 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 19.04.2023 convicting the petitioners/accused 1 to 5 and sentenced them as follows:-



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Accused	Provision under which convicted	Sentence
A1-K.Suresh Kumar	under Section 366 IPC	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for 2 years
	under Section 6 of POCSO Act	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 2 years
A2-K.Kalimuthu @ Marimuthu A3-K.Babyammal	under Section 366(A) IPC	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for 2 years
	under Section 6 r/w 17 of POCSO Act	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 2 years
A4-S.Jeya A5-G.Soman	under Section 6 r/w 17 of POCSO Act	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 2 years

6. Aggrieved by the said judgment of conviction and sentence, the accused 1 to

5 have come forward with the present criminal appeal along with the above

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application for suspension of sentence.

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7. The learned Senior Counsel appearing for the petitioners seeks permission of this Court to withdraw this petition insofar as the first petitioner is concerned and hence, the suspension of petition is dismissed as withdrawn as against the first petitioner is concerned.

8. The learned Senior counsel submitted that the victim girl was more than 17 years at the time of occurrence. As per the prosecution, the petitioners 2 and 3 insisted the victim girl to marry the first petitioner. But, she refused the same. Therefore, the second petitioner forcefully took her in a Car and kidnapped the victim girl and sent her and the first petitioner to the house of the petitioners 4 & 5 situated at far away place namely, the Pothankadu, Thiruvananthapuram, Kerala. In the Tiruvananthapuram, the first petitioner said to have committed the aggravated penetrative sexual assault upon the victim girl with the aid of the petitioners 4 & 5. The said sequence of events are not believable one since she was a college going girl. The version of the victim girl that she did not raise any alarm till the vehicle reached the place at Pothankadu, Thiruvananthapuram, Kerala is not also unbelievable one.

Originally, there was love affair between the first petitioner and the victim girl. On



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her own volition, she eloped with the first petitioner and stayed at the house of the petitioners 4 & 5. Even though, now, she made the false allegations against the petitioners.

9.He further submitted that both are belongs to same community and also relatives. Due to some intervention of the third party, she made a false complaint. The second petitioner is aged about 74 years and the third petitioner is aged about 75 years. The fourth petitioner is suffering from Blood Cancer and she has been robbed only on the ground that she is the wife of the fifth petitioner. Earlier suspension of sentence petition filed by the petitioners in Crl.MP(MD)No.7376 of 2023 was dismissed by this Court, dated 07.07.2023, only on the ground that the incarceration period is only 3 months. All the petitioners 2 to 5 are inside the jail from 19.04.2023 onwards. Hence, he seeks to grant of suspension of sentence to the petitioners 2 to 5/A2 to A5.

10. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that there are enough materials available on record against the petitioner and this Court dismissed the earlier petition only on 07.07.2023 and there is no



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change of circumstances and hence, he strongly opposed to grant suspension of sentence.

11. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

12. Admittedly, the victim was more than 17 year at the time of the occurrence. She stayed with the first petitioner from 08.09.2016 to 13.09.2016. In that period, there was no hue and cry from the victim girl. She travelled from the State of Tamil Nadu to State of Kerala and stayed at Kerala. After returning to her house, she made the allegation that the first petitioner committed penetrative sexual assault upon her. For that, the petitioners 2 to 5 said to have aided the first petitioner. In the said circumstances, whether any intentional aid on the part of the petitioners 2 to 5 existed or not to be considered at the time of final hearing of the Appeal. The petitioners 2 to 5 are the parents, sister and sister's husband of the first petitioner. Therefore, considering the incarceration period from 19.04.2023 and the limited overt act attributed against the petitioners 2 to 5 that they have aided the first petitioner to commit the offence and no bad antecedent is reported against the petitioners 2 to 5 and considering the age of the petitioners 2 & 3 and the fourth petitioner is suffering



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from the trace of blood cancer and the fifth petitioner is only the husband of the fourth petitioner, this Court is of the considered view that the petitioners 2 to 5 herein are entitled to the relief of grant of suspension of sentence.

13. Accordingly, this Criminal Miscellaneous Petition is partly allowed and the relief of suspension of sentence is granted to the petitioners 2 to 5 on the following conditions:-

(i) The petitioners 2 to 5 shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Theni;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and



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(iii) The petitioners 2 to 5 shall appear before the concerned Court once in a month i.e., on first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal.

sd/-
01/09/2023

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01/09/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

dss

TO

1. THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, THENI.
- 2 THE INSPECTOR OF POLICE
GANDAMANUR POLICE STATION,
THENI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.



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

+3 CC to M/s.M/S.AJMAL ASSOCIATES, Advocate (SR-13076[I] dated
01/09/2023)

ORDER
IN
CRL.M.P.(MD)No.11690 of 2023
in
CRL.A.(MD)No.410 of 2023
Date :01/09/2023

RK /(01/09/2023) 11P / 8C

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