



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

Monday, the Second day of January Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL.M.P.(MD)No.13120 of 2022
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.
CRIME 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 of 2016 dated 14.06.2022 on the file of the Learned Sessions Judge (Special Court of POCSO Act cases) Virudhunagar District at Srivilliputhur.

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.B.NAMBI SELVAN, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed against the petitioner in Special SC No.52 of 2016, dated 14/06/2022 by the Sessions Judge (Special Court for POCSO Act cases), Virudhunagar District and enlarge the petitioner on bail pending disposal of the criminal appeal.



2. The case of the prosecution in brief:-

The victim girl is aged about 16 years at the time of occurrence. At that time, she was working in a Spinning Mill. The accused is her close relative. He used to visit the house of the victim girl frequently. At that time, he used to misbehave sexually with her. On 05/08/2015 at about 1.30 pm, he committed the penetrative sexual assault upon the victim girl. On 10/09/2015 also, he tried to misbehave. When that was objected by the victim girl, she was criminally assaulted and on the false promise of marriage, he kidnapped her to Coimbatore and joined her in a Textile Mill and she was confined for about 6 months. During the above said period, he committed the penetrative sexual assault. Based upon the occurrence, the case was registered for the offences under sections 417, 506(i) and 368 IPC and section 5(n) r/w section 6 and section 5 (1) r/w section 6 of POCSO Act 2012.

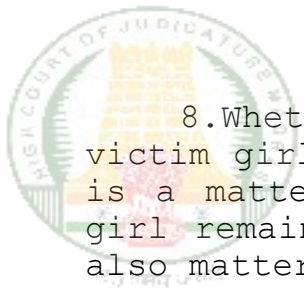
3. At the time of trial process, on the side of the prosecution to prove the guilt of the accused, 10 witnesses have been examined and 13 documents marked. On the side of the accused, none was examined and no document was also exhibited.

4. At the conclusion of the trial, the trial court found the accused guilty, convicted and sentenced to undergo 10 years R/I and imposed a fine of Rs.10,000/- with default clause for the offence under section 5(1) r/w section 6 of POCSO Act. In respect of the other charges, he was acquitted by the trial court. Challenging the above said sentence, criminal appeal has been preferred before this court. Pending appeal, this criminal miscellaneous petition has been filed by the petitioner.

5. The learned counsel appearing for the petitioner would submit that the age of the victim girl was not properly examined by the trial court; when there is a contradiction with regard to the oral evidence and the documentary evidence, the scientific examination of fixing the age was not undertaken by the prosecution. PW4 has also given contra evidence with regard to the occurrence. So according to him, it is sufficient enough to suspend the sentence.

6. The learned Additional Public Prosecutor would submit that the age of the victim girl was about 16 + at the time of the alleged occurrence and the immaturity of the victim girl has been taken advantage by this petitioner, who is a married person. So he is not entitled for suspending the sentence.

7. No doubt that there is a contradiction with regard to the age of the victim girl at the time of alleged occurrence. The fact remains that the accused already a married person. He is also closely related to the victim girl. In such circumstances, the very nature of kidnapping of the immaturity girl and confined for about 6 months in Coimbatore clearly reveals the guilty mind of the



8. Whether any contradiction with regard to the age of the victim girl is sufficient enough for rejecting the prosecution case is a matter for consideration in the main appeal. Why the victim girl remained in Coimbatore without even contacting her parents is also matter for consideration in the main appeal.

9. But however, considering the fact that the petitioner is already a married man and taking advantage of the immaturity of the victim girl, he committed the crime. If the petitioner is released on bail by suspending the sentence, there is every likelihood of causing trouble to the victim girl. So the petitioner is not entitled for suspension of sentence.

10. In the result, this miscellaneous petition is **dismissed**.

sd/-

02/01/2023

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

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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.

+1 CC to M/s. MUTHUMALAI.K, Advocate (SR-123[I] dated 04/01/2023)

ORDER IN

CRL.M.P. (MD) No.13120 of 2022
in

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

Date : 02/01/2023