



CRL MP(MD) No.13023 of 2023

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

Monday, the Eleventh day of September Two Thousand and Twenty Three

PRESENT

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

CRL MP(MD) No.13023 of 2023

IN

CRL A(MD) No.67 of 2023

LOGANATHAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SIVAKASI,
VIRUDHUNAGAR DISTRICT.
CRIME NO. 02/2019

... 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 imposed by the Learned Special Court for POCSO Act cases, Virudhunagar District at Srivilliputhur in Special Sessions Case No. 34 of 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).67/2023:

Pleased to admit this appeal on the 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 in Special Sessions Case No.34 of 2019 dated 14.11.2022 by allowing this appeal.

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.MAYA PERUMAL.S, Advocate for the petitioner and of Mr.R.SIVAKUMAR,



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Government Advocate(crl.side) on behalf of the Respondent, the court made the following order:-

The petitioner is the sole accused in Spl.S.C.No.34 of 2019 on the file of the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, filed this Suspension of Sentence Petition.

2. The learned counsel appearing for the petitioner submitted that there is a delay of 6 days in making the complaint and the delay has not been properly explained. The medical evidence did not support the case of the prosecution and no semen was found in the dress materials. To wreck vengeance only, the said complaint has been given. The said contention already considered by this Court earlier while dismissing Crl.M.P(MD).No.990 of 2023 in Crl.A(MD).No.67 of 2023, dated 02.02.2023, which reads as follows:

“This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in Special Sessions Case No.34 of 2019, dated 14/11/2022 by the Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that on 18/05/2019 at about 01.00 pm, the victim girl along with her friend one Karpagam was playing near the line house. After playing her friends left her, she



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alone was standing near the third house. At that time, the accused came there, kidnapped to the third house, where she was sexually assaulted by the accused.

3.On the basis of the above said occurrence, the case was registered. After completing the formalities of investigation, final report was filed for the offences punishable under section 366, 506 (i) IPC and section 5(k) r/w 6 of POCSO Act and it was taken on file in SSC No.34 of 2019 by the trial court. 4.During trial process, on the side of the prosecution, 12 witnesses were examined and 18 documents marked, apart from that, 4 materials objects marked. On the side of the accused, neither oral evidence nor documentary has been adduced.

5.At the conclusion of the trial, the trial court found the petitioner guilty and sentenced him to undergo 6 months rigorous imprisonment and imposed a fine of Rs.5,000/- with default clause for the offence under section 506(i) IPC; and to undergo 10 years R/I and imposed a fine of Rs.10,000/- with default clause for the offence under section 5(k) r/w 6 of POCSO Act, 2012. Challenging the above said conviction and sentence, criminal appeal has been preferred



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before this court. Pending appeal, this miscellaneous petition has been filed seeking suspension of sentence.

6. Heard both sides.

7. The learned counsel appearing for the petitioner would submit that there is a delay of six days in making the complaint before the police station and the earlier complaint was suppressed; The delay has not been properly explained and the victim has been tutored by PW1 namely and the medical evidence did not support the case of the prosecution; and no semen was found in the dress materials and the arrest particulars have also doubtful, since it has been stated that when PW1 went to the police station for lodging the complaint, the accused was present in the police station; and a motive has also been suggested by the defence that on 18/05/2019, cycle belongs to the accused was broken by the victim's brother; To wreck vengeance only, the above said complaint has been given.

8. Per contra, the learned Additional Public Prosecutor would submit that the victim girl was aged about 7 or 8 years at the time of the alleged occurrence and she was taken by this petitioner to his house and committed the above said sexual assault. CRL MP(MD)



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9. Even if we ignore the evidence of PW1 and the victim for the time being, the independent witness is available supporting the case of the prosecution in the form PW3; She has narrated the entire occurrence, which does suffer from any discrepancy. The manner, in which the above said offence has been committed disentitles the petitioner from claiming the benefit of suspension of sentence.

10. Even though, the learned counsel appearing for the petitioner would rely upon several judgments and filed in the form of additional typed set of papers, I am not going into those aspects. All these things can be taken into consideration at the time of final hearing in the main appeal.

11. As mentioned earlier, the manner, in which the above said offence said to have been committed is sufficient for denying the benefit of suspension of sentence to the petitioner.

12. In the result, this criminal miscellaneous petition is dismissed."

3. After dismissal of the said petition, the petitioner filed second suspension of sentence petition in CrI.M.P(MD).No.6475 of 2023 in CrI.A(MD).No.67 of 2023 on the



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ground that there is delay in lodging the FIR, the prosecution has suppressed the earlier complaint and the place & time as alleged by the prosecution is doubtful. The said contention also considered by this Court while dismissing the petition, which reads as follows:

“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 about 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



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(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



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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.



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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.



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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."

3. Hence, this Court does not find any new grounds to allow this petition and accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
11/09/2023

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

DSS
TO
1 THE JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.



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

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

ORDER
IN
CRL MP(MD) No.13023 of 2023
IN
CRL A(MD) No.67 of 2023
Date :11/09/2023

SA/GB/SAR. /29.09.2023/11P/5C

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