



CRL.M.P.(MD)No.13903 of 2022

CRL.M.P. (MD)No.13903 of 2022
in
CRL.A. (MD)No.396 of 2021

G.ILANGO VAN, J.

This Criminal Miscellaneous Petition is filed to suspend the conviction and sentence imposed against the petitioner in Special SC No.49 of 2018, dated 05/05/2021 by the Sessions Judge, Fast Track Mahila Court, Dindigul and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution in brief:-

On 02/09/2018 at about 05.30 pm, when the victim girl went to the groceries shop, while she was returning to her house by crossing the railway gate, the accused called her, forcibly pulled her into his hut and committed penetrative sexual assault. She was also threatened by him that if she discloses the occurrence to her parents, he would kill her family members. Again, on 03/09/2018 at about 05.30 pm, when the victim girl was returning to her house from her school, the accused pulled her to his hut and committed penetrative sexual assault. Based upon the occurrence, the case was registered for the offence under section 5(1)(m) r/w section 6 of POCSO Act, 2012. After completing the formalities of investigation, the respondent



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police filed charge sheet against the petitioner/accused for the offences under sections 5(1)(m) r/w 6 of POCSO Act.

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3.At the time of trial process, on the side of the prosecution to prove the guilt of the accused, 18 witnesses have been examined and 11 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.5,000/- with default clause for the offence under section 5(1)(m) r/w section 6 of POCSO Act, 2012 and for the offence under section 506(i)IPC, sentenced him to undergo one year R/I. The above said sentences are directed to run concurrently.

5.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.

6.Heard both sides.



7.The learned counsel appearing for the petitioner would submit that there was no injury on the private part of the victim; the date of birth of the victim was not properly established and the dress materials were not recovered and sent to the Forensic Science Laboratory for chemical examination.

8.The next submission is that he was assaulted by the de-facto complainant's party, over which, he filed a complaint and taken to the hospital, on 04/09/2018 and the evidence of PW10 and PW12 also corroborated his defence version. So according to him, on the previous occasion, he was assaulted by the de-facto complainant's party and he was admitted in the hospital and on the date of the alleged occurrence, he was not at all available in the place of occurrence.

9.When this issue was raised, the learned Additional Public Prosecutor required to verify the correctness of the statement. But later, the petitioner himself has informed that the alleged occurrence took place, on 02/09/2018 and he was assaulted, on 04/09/2018; After a lapse of seven days only, the complaint has been given and FIR has been registered; So according to him, the delay in lodging the complaint itself will show that it is a false complaint.



10. In the light of the above said submission, let us to to the evidence of the prosecution, more particularly, the evidence of the victim. According to her, on the date of the alleged occurrence, he was aged about 11 years and studying in 8th Standard. On 02/09/2018, when she was returning from the shop, the accused, who was the Railway Gate Keeper, called her and on her refusal, forcibly taken to the thatched shed, where she was subjected to sexual abuse and that was also repeated, on 03/09/2018. On 05/08/2018 only, she informed her aunt about the occurrence and then, lodged a complaint, on 09/09/2018.

11. The cross examination of the victim shows that there was no money transaction also between the father of the victim girl and the accused. By pointing out this, it was suggested that it was only money dispute, over which, a false complaint has been given by misusing her and the money transaction was also admitted by PW2.

12. Further reading of the evidence shows that the village people rescued the victim girl and handed over to her parents. So, the contention that has been raised by the petitioner cannot be taken into account at this stage. It is a matter for consideration in the main appeal.



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13.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.

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

09.01.2023

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