



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

Wednesday, the First day of February Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.15301 of 2022

IN

CRL A(MD) No.845 of 2022

ANJALAI

... PETITIONER/APELLANT

Vs

State Rep.by
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ALANGUDI,
PUDUKKOTTAI DISTRICT.
(CRIME NO.2/2021)

... 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 on the petitioner by order dated 26.10.2022 passed in SC No.85/2021 on the file of the Learned Sessions Mahila Court, Pudukkottai and enlarged the petitioner on bail pending disposal of the above Criminal Appeal.

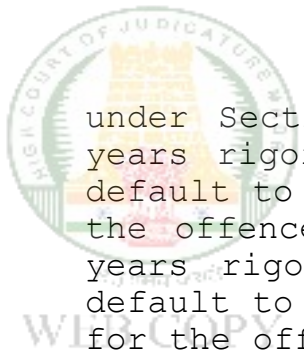
Prayer in CRL A(MD).845/2022 :

To call for the records pertaining to the Judgment made in S.C.No.85/2021 dated 26.10.2022 passed by the learned Sessions Mahila Court, Pudukkottai and set aside the same by allowing this appeal.

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.DINESH K, Advocate for the petitioner and of MR.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 sentence imposed by the learned Sessions Judge, Mahila Court, Pudukottai, dated 26.10.2022, in Special S.C.No.85 of 2021 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The learned counsel for the petitioner submitted that the petitioner, who is the third accused in this case, has been found guilty and convicted by the learned Sessions judge, for the offence



under Section 376(D) r/w 109 IPC and sentenced her to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,50,000/- in default to undergo rigorous imprisonment for a period of 1 year, for the offence under Section 366 IPC and sentenced her to undergo 10 years rigorous imprisonment and to pay a fine of Rs.50,000/- in default to undergo rigorous imprisonment for a period of 1 year and for the offence under Section 342 IPC and sentenced her to undergo 1 year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months. The sentences were ordered to run consecutively. Set off under Section 428 Cr.P.C. was ordered.

3.The case of the prosecution in brief:

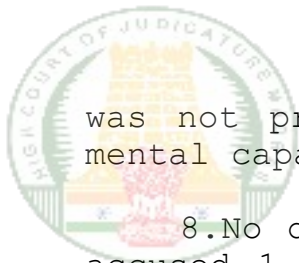
The victim, who is the daughter of the defacto complainant, was aged about 24 years at the time of the occurrence and she was suffering from mental illness some 6 months prior to the date of occurrence. On 03.01.2021, at noon, when the family members were out for duty, the third accused namely the petitioner herein took the above victim girl to her house stating that her relative one Rajangam had called her and pushed her inside her house and locked the door outside. At that time, the accused Nos.1 and 2, who were already inside the house, sexually assaulted the above said victim girl. Though she raised alarm, they committed the offence. Over the above said occurrence, the case was registered in Crime No.2 of 2021 and final report was also filed before the trial court after completing the investigation process. Before the trial Court, on the side of the prosecution 7 witnesses have been examined, 12 documents were marked. On the side of the accused none was examined and no document was marked.

4.At the conclusion of the trial, the trial Court came to the finding that the charge that was framed against the accused person was proved beyond all reasonable doubts. On that basis, the accused was found guilty and convicted and sentenced above. Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, this petition has been filed seeking suspension of sentence.

5.This appeal has been preferred by this petitioner on the ground that there was a delay of 7 days in preferring the complaint and mental capacity of the victim girl was not properly assessed by the trial Court. There was a civil dispute between the accused Nos.1 & 2 and the defacto complainant.

6.The learned Additional Public Prosecutor submitted that the victim was suffering from mental illness and this petitioner only alleged to have taken the victim girl to her house and abetted accused Nos.1 & 2 to commit the above said sexual assault.

7.In reply to the above said arguments, the learned counsel for the petitioner submitted that Section 118 of the Indian Evidence Act



was not properly complied by the trial Court, since the mental capacity was not assessed properly.

8.No doubt that a serious allegation has been made against the accused 1 and 2, who had committed sexual assault upon a mentally challenged girl. But the fact remains is that this petitioner alleged to have taken the victim to her house and locked the door for facilitating the accused 1 and 2 to commit the above said rape. How she was interested in the above said accused 1 & 2 is not properly explained by the prosecution. Whether there is any strong motive for this petitioner to help or abet accused 1 & 2 to commit the above said sexual assault, is a matter for consideration in the appeal.

9.No doubt that the trial Court has committed an error in following the proper procedure to examine the mentally challenged woman by following the proper procedure contemplated under Section 118 of the Indian Evidence Act. For that purpose he would rely upon the judgment of this Court passed in the case of **Ravichandran Vs. State Rep. by Inspector of Police, AWPS, Tiruppur, Tiruppur District** reported in **2002 (3) MWN (Cr.) 231**. But at this stage, I am not going to express any opinion with regard to the above said issue, as the mental capacity of the victim girl to give evidence, is the matter for consideration in the appeal.

10.Considering the limited role alleged to have been committed and also considering the fact that she is a woman aged about 60 years, this Court is inclined to grant suspension of sentence to the petitioner.

11.Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Court, Pudukottai and on further condition that the petitioner shall appear before the said Court once in a week at 10.30 a.m. pending appeal.

sd/-

01/02/2023

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02/02/2023

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

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TO

1 THE SESSIONS JUDGE, MAHILA COURT, PUDUKKOTTAI.

2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, ALANGUDI,
PUDUKKOTTAI DISTRICT.

3 THE SUPERINTENDENT, SPECIAL PRISON FOR WOMEN, TRICHY.

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

+1. C.C. to M/S.DINESH K Advocate SR.No.1710[I]

ORDER

IN

CRL MP(MD) No.15301 of 2022

IN

CRL A(MD) No.845 of 2022

Date :01/02/2023

RS/SSS/SAR.(02.02.2023) 4P-6C