



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

Monday, the Twenty Fourth day of April Two Thousand and Twenty
Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.16278 of 2022

IN

CRL A(MD) No.692 of 2022

AYYAVU

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
VIRUVEEDU POLICE STATION,
DINDIGUL DISTRICT.
CRIME NO.703 OF 2020.

... 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 vide Judgment dt.10.6.2022 made in Spl.SC.No.59 of 2020 on the file of Learned Fast Track Mahila Court, Dindigul pending disposal of the above Criminal Appeal.

PRAYER IN CRL.A(MD).692/2022:

Pleased to call for the records and set aside the Judgment and conviction passed by the learned Fast Track Mahila Court, Dindigul in Spl.S.C.No.59 of 2020 dated 10.06.2022 and acquit the appellant herein.

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.KARTHICK KUMAR A, Advocate for the petitioner and of M/S.R.SIVAKUMAR, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

RESERVED ON	17.04.2023
PRONOUNCED ON	24.04.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/sole accused by the learned Sessions Judge, Fast Track Mahila Court, Dindigul, in Spl.S.C.No.59 of 2020, dated 10.06.2022, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that on 08.08.2020, when the victim girl was viewing television, the petitioner/sole accused had trespassed into the house, removed her dresses, kissed her private parts and criminally intimidated her not to disclose the same. On the basis of the complaint lodged, FIR came to be registered in Crime No.703 of 2020 for the offences under Sections 448 and 506(1) IPC and Sections 9(m) r/w 10 of POCSO Act, 2012 against the petitioner.

3. The respondent police, after completing the investigation, has filed the final report against the petitioner for the offences under Sections 506(1) and 451 IPC and Sections 9(m) r/w 10 of POCSO Act, 2012 and the case was taken on file in Spl.S.C.No.59 of 2020 and the same was pending on the file of the Sessions Judge, Fast Track Mahila Court, Dindigul.

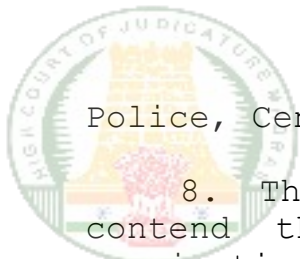
4. During trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17 and exhibited 13 documents as Ex.P.1 to Ex.P.13. The defence has adduced neither oral nor documentary evidence.

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 10.06.2022 convicting the petitioner for the offences under Section 451 IPC and Sections 9(m) r/w 10 of POCSO Act and sentenced him to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo 1 month Simple Imprisonment for the offence under Section 451 IPC and sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 2 months Simple Imprisonment for the offence under Sections 9(m) r/w 10 of POCSO Act and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has preferred the present appeal.

6. No doubt, the petitioner's earlier application in Crl.M.P. (MD)No.12962 of 2022 was ordered to be dismissed vide order dated 18.11.2022.

7. During pendency of the above petition, considering the submission made by the learned counsel appearing for the petitioner that the petitioner has been taking treatment for heart ailments and he is in need of better treatment, this Court has granted interim bail to the petitioner, vide order dated 23.12.2022, and subsequently, the same was extended periodically and when the matter was taken up for hearing on 10.04.2023, considering the submission made by the learned Government Advocate (Criminal Side) that the petitioner is not in hospital and he is normal, this Court directed the petitioner to surrender before the Superintendent, Central Prison, Madurai on 13.04.2023 at 12.00 noon. In pursuance of the

<https://www.mca.gov.in>



Police, Central Prison, Madurai on 13.04.2023.

8. The learned counsel appearing for the petitioner would contend that P.W.1-mother of the victim girl in her cross-examination has changed the timing of the occurrence and the time when she received the information about the occurrence from her son, that there was previous dispute between the petitioner's family and the defacto complainant's family, that the trial Court failed to consider that the petitioner's son had fight with the defacto complainant's husband in their locality and the defacto complainant was the reason for the same, that P.W.4 had stated that there was dispute between the victim girl's father and the petitioner's family, but in contrary, P.W.5 had stated that there was no dispute between their families, that P.W.5 has stated in her evidence that they have no good relationship with the victim girl's family, but P.W.6 her husband would say that there is no dispute and that the above would show that the testimony of the above witnesses are not reliable.

9. The learned counsel appearing for the petitioner would further submit that the prosecution has miserably failed to prove the age of the victim girl.

10. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the prosecution has produced the school certificate of the victim girl and through proper evidence has proved the age of the victim girl. Moreover, as rightly contended by the learned Government Advocate (Criminal Side), the above points/aspects are definitely matter for consideration in the main appeal.

11. Considering the nature and gravity of the offence allegedly proved against the petitioner and also the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

12. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-
24/04/2023

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/05/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM



TO

1 THE JUDGE, FAST TRACK MAHILA COURT, DINDIGUL.

2 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE, VIRUVEEDU POLICE STATION,
DINDIGUL DISTRICT.

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

ORDER

IN

CRL MP(MD) No.16278 of 2022

IN

CRL A(MD) No.692 of 2022

Date :24/04/2023

PKP/CG/SAR-1/17.05.2023/ **4P/5C**