



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

Wednesday, the Eighth day of March Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.72 of 2023

in

CRL A(MD) No.215 of 2022

GANAPATHI

... PETITIONER/ APPELLANT

Vs

The State Rep.by
THE INSPECTOR OF POLICE
VENGAMEDU POLICE STATION,
KARUR DISTRICT.
CRIME NO. 110 OF 2019

... 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 passed by the Learned Additional Sessions Court, Fast Track Mahila Court, Karur in Spl S.C No. 05 of 2019 dated 12.11.2021 and grant bail to the petitioner till the disposal of the Criminal Appeal

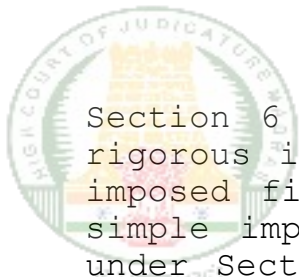
Prayer in CRL A(MD) No.215 of 2022:

Pleased to call for the records and set-aside the order dated 12.11.2021 passed in Spl.SC.No.5/2019 on the file of the Additional Sessions Judge, Fast Track Mahila Court, Karur.

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.R.L.DHILIPAN PANDIAN for Mr. SIVAKUMAR.V, Advocate for the petitioner and of Mr.B.NAMBISELVAN, Additional Public Prosecutor, on behalf of the Respondents the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Additional Sessions Judge, Fast Track Mahila Court, Karur, dated 12.11.2021, in Spl.S.C.No.05 of 2019 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 accused in this case, has been found guilty and convicted by the learned Sessions judge, for the offence under



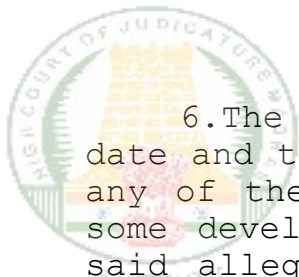
Section 6 of POCSO Act, 2012 (2 counts) and sentenced to rigorous imprisonment for a period of 10 years for each count and imposed fine of Rs.50,000/- for each count in default to undergo simple imprisonment for one year for each count, for the offence under Section 8 of the POCSO Act, 2012 and sentenced to undergo 5 years of rigorous imprisonment and imposed fine of Rs.50,000/- in default to undergo 6 months simple imprisonment, for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and sentenced to undergo 2 years rigorous imprisonment and imposed fine of Rs.10,000/- in default to undergo 3 months simple imprisonment, for the offence under Section 294(b) of IPC and sentenced to undergo three months imprisonment and for the offence punishable under Section 506(i) of IPC and sentenced to undergo 2 years imprisonment. The sentences were ordered to run concurrently. Set off under Section 428 Cr.P.C. is also ordered.

3.The case of the prosecution in brief:

The defacto complainant, who is the mother of the victims lodged a complaint stating that the accused is living in the very same locality and used to conduct pooja on every Friday and used to call the ladies and children for attending the pooja. For about 3 years defacto complainant's three daughters also attended the pooja. On 03.05.2019, the three daughters as usual attended the pooja, returned to the house, and remained silent, which created suspicion in her mind. On enquiry, the victims reveal on 10.05.2019 that on different dates they were harassed by the accused by misbehaving with them sexually. That was continued for about two years. He also threatened the victim girls not to disclose the same to others. On hearing the above said information, she went to the accused's house and enquired. She was threatened, criminally intimidated, over which the complaint was registered for the offence under Sections 6(2 counts) and Section 8 of the POCSO Act, 2012, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998, Section 294(b) and 506(i) IPC 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 20 witnesses have been examined, 18 documents were marked. On the side of the accused two witnesses were examined and one 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.

5.Challenging the above said conviction and sentence, appeal has been preferred by the petitioner. Pending appeal, earlier the petitioner has filed a petition seeking suspension of sentence in Crl.M.P.(MD).No.5919 of 2022. That petition was dismissed by this Court on 06.07.2022, by this Court. Now, after the above said dismissal, this petition has been filed.



6.The learned counsel for the petitioner would submit the date and time of the above said sexual harassment was not stated by any of the victims. During the course of investigation and trial, some development were made by PW1 to PW4 stating that during the said alleged misbehavior photographs were taken, but, whereas, in the complaint no such allegation has been made. The prosecution case that for about two years, the above said misbehavior continued is not at all real and probable also. He has also further submitted that the motive for foisting the false case is, that since the chain of the accused was found missing, enquiry was made with the victims. Due to the above said enmity only the above said false complaint has been given; The loan transaction is also established by the defence through Ex.D1. Some of the prosecution witnesses have turned hostile and medical examination does not support the prosecution version.

7.Per contra, the learned Additional Public Prosecutor would submit that for about two years this petitioner misbehaved with the young girls. Sufficient materials have been placed before the Court. The earlier application that was filed by the petitioner also dismissed in Crl.M.P.(MD)No.5919 of 2022. There is no change in circumstances. These grounds has been raised by the petitioner in the earlier petition also. Only after considering the prosecution case and the offence, the above said petition was dismissed on 06.07.2022. Now, absolutely, there is no change of circumstances. The very same ground has also been made in this petition also.

8.No doubt, there are some issues with regard to the missing of chain of the accused and enquiry was also made by the police with the victims and financial assistance was also rendered by the accused to the victim girls. But, whether those circumstances are sufficient enough to reject the prosecution case and the evidence of victim girls, is a matter for consideration in the appeal. I find this is not the fittest case to exercise the discretionary power. Offence of such nature cannot be taken lightly. I find no reason to differ from the view that has been taken in the earlier petition. Now the typed set of papers are also made ready. The petitioner can argue the main appeal itself. This petition deserves to be dismissed.

9.Accordingly, this criminal miscellaneous petition is **dismissed**.

sd/-

08/03/2023

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/ 03 /2023

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



TO

1. THE ADDITIONAL SESSIONS JUDGE,
FAST TRACK MAHILA COURT, KARUR.

2. THE INSPECTOR OF POLICE,
VENGAMEDU POLICE STATION,
KARUR DISTRICT.

3. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY-20.

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

ORDER
IN
CRL MP (MD) No.72 of 2023
in
CRL A (MD) No.215 of 2022
Date :08/03/2023

RD/SKN/SAR-IV (13/03/2023) 4P 5C