



Crl.M.P.No.587 of 2024 in Crl.A.No.76 of 2024

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M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner vide judgment, dated 08.11.2023 in Special S.C.No.70 of 2021 passed by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode (Trial Court).

2.The conviction and sentence imposed on the petitioner by the trial Court are as follows:

- For offence under Section 366 of IPC (1 count), the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for three months.
- For offence under Section 9 of the Prohibition of Child Marriage Act, 2006 (1 count), the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for one year.
- For offence under Section 5(n), 5(l) punishable under Section 6 of the Protection of Children from Sexual Offence Act, 2012, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for twenty years and to pay a fine of Rs.5,000/-, in default to undergo



Simple Imprisonment for three months.

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3.The learned counsel for the petitioner submitted that the petitioner is a married man having two wives. Both the wives are having two children each. The victim child aged about 17 years is a close relative of the first wife. The petitioner developed relationship with the victim girl and instigated her to come out from the house. On 23.03.2021, the petitioner took her to Trichirapalli and married her. After the marriage, they stayed at Thayalnayagi's House at Annur and the petitioner was attending his work. In the meanwhile, the mother of the victim girl made a complaint before the Police for Girl Missing and thereafter, the victim girl was traced out. The only reason for the victim girl to speak against the petitioner is that the petitioner had earlier two marriage. Despite knowing this fact, the victim girl joined the petitioner. Only on the compulsion of the victim girl, the petitioner had gone along with the victim girl. Now, it has been projected as though the petitioner married the victim girl and had committed penetrative sexual assault and thereby committed the offence of Prohibition of Child Marriage Act and kidnapping. The petitioner's first and second wives



examined as PW15 and PW16, they have not spoken against the petitioner.

In this case, the victim girl examined as PW1 and her statement is not corroborated. PW14/Investigating Officer admits the contradictions in the evidence of PW1. PW1 admits that she was in love with the petitioner and on her own willingness, she had gone along with the petitioner. In such circumstances, the trial Court ought to have acquitted the petitioner from the charges levelled against him. Hence, prays for suspension of sentence.

4.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that the defacto complainant/PW2 is having one daughter/victim girl aged about 17 years. The petitioner is having two wives and got two children through each wife. He is a Mason worker. The victim girl's/PW1 family is a close relative of the first wife of the petitioner. The petitioner developed intimacy with the victim girl and induced her to come out of the house on 23.03.2023 and abducted her to Trichirapalli and married her. Thereafter, both of them went to Annur and stayed at Thaiyalnayagi's house and from there went for work. During that period, the petitioner committed continuous penetrative sexual assault



with the victim girl. On coming to know about the same, PW2 lodged a complaint to the respondent Police. During investigation, it reveals that the petitioner married the victim girl. He married his first wife when she was 16 years old and got two children. The petitioner also married another child victim as second wife when she was aged 15 years. On the complaint (Ex.P1), the respondent Police registered FIR (Ex.P9) in Crime No.7 of 2021 under Girl Missing, visited the scene of occurrence, recorded the statement of witnesses, prepared Observation Mahazar (Ex.P14), Rough Sketch (Ex.P15) in presence of witnesses, altered Sections from Girl Missing to 366A IPC, Section 5(l), 5(n) r/w 6 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act, 2006, examined the victim girl, her parents and recorded their statements. Then arrested the petitioner, recorded his confession statement in presence of witnesses, threatened, the victim girl and the petitioner sent for medical examination. Thereafter, on collection of school certificates of the victim girl and medical reports, charge sheet filed before the trial Court. During trial, on the side of the prosecution sixteen witnesses examined as PW1 to PW16 and forty three documents marked as Exs.P1 to P43. On the side of the defence, no witness examined



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but one document marked as DW1. On conclusion of trial, the trial Court convicted the petitioner as stated above. It is further submitted that the prosecution has proved each and every circumstances pointing out the guilt of the petitioner, hence, he prays for dismissal.

5.Considering the submissions and on perusal of the materials, it is seen that the prosecution had let in cogent evidence that the petitioner had kidnapped the victim girl, in the guise of marriage had continuous penetrative sexual assault. Added to it, the petitioner not examined any witness on his side and he just denied the incriminating circumstances from the evidence of prosecution questioned to him.

6.In view of the above, this Court is not inclined to grant suspension of suspension. Accordingly, this Criminal Miscellaneous Petition stands dismissed.

12.03.2024

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