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*Crl.M.P.No.5118 of 2024
in Crl.A.No.334 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5118 of 2024

in

Crl.A.No.334 of 2024

Karal Markes

... Petitioner

Vs.

State Rep. by
The Inspector of Police,
All Women Police Station,
Jayankondam.
(Crime No.14/2017)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed in Spl.S.C.No.6 of 2018 on the file of the Sessions Judge, Fast Track Mahila Court, Ariyalur, against the petitioner/appellant/A1 pending disposal of the above appeal.

For Petitioner : Mr.Ilayaraja Kandasamy

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. Side)



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ORDER

The petitioner/accused in Spl.C.C.No.6 of 2018 was convicted by the learned Sessions Judge, Fast Track Mahila Court, Ariyalur under POCSO Act, Chennai by judgment dated 05.02.2024 and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one year simple imprisonment for the offence under Section 6 of Protection of Children from Sexual Offences Act [POCSO Act], to undergo three years imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment for the offence under Section 498A IPC, to undergo ten years imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one year simple imprisonment for the offence under Section 366A IP and imposed a fine sentence of Rs.500/-, in default to undergo 15 days simple imprisonment for the offence under Section 294(b) IPC. Aggrieved against the same, the petitioner preferred the present criminal appeal and suspension of the sentence.

2.The contention of the learned counsel for the petitioner is that there



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was matrimonial discord between the petitioner and the defacto complainant and they were living separately. Out of their marriage, they had two children and one of the daughter was examined as P.W.2. It is not in dispute that the petitioner and the defacto complainant got separated. The petitioner's mother A2 in this case was taking treatment in Jipmer Hospital, at that time, the petitioner is to attend his mother. P.W.3, who also took treatment in Jipmer Hospital became friendly with the petitioner. The relationship between the petitioner and P.W.3 was not approved by P.W.7/father of P.W.3 and he was ill-treating his daughter. P.W.3 eloped with the petitioner and they got married and were living as husband and wife. P.W.7 earlier lodged a complaint for 'girl missing'. Thereafter P.W.3 was produced and since she was not willing to go along with her father/P.W.7, she was staying with P.W.11/maternal uncle of the petitioner. Even for evidence, P.W.3 came from the house of P.W.11. In this case, the prosecution had blown out of proportion the matrimonial discord between the petitioner and P.W.1 and the second marriage of the petitioner with P.W.3 for the only reason that P.W.3 was a minor. The petitioner was not aware about the age of P.W.3. According to the petitioner, P.W.3 informed



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him that she attained majority and she wanted to marry him. On the force of P.W.3, the petitioner married her. Till date, the victim girl is under the care of the petitioner's family.

3.The learned Government Advocate (Crl. Side) filed his counter and submitted that the petitioner married the defacto complainant on 07.09.2007 and out of their marriage, they had two daughters. Initially, they were staying at Tiruppur. Since the petitioner was jobless, the defacto complainant along with her two daughters went to her parents house and with her parents support, they were sustaining. The petitioner was having relationship with many women and he is having a life of his own. The defacto complainant on coming to know about the petitioner marrying P.W.3, a minor girl lodged a complainant and thereafter, the respondent police registered a case, examined the witness and filed a charge sheet. During the trial, P.W.1 to P.W.26 examined, Ex.P1 to Ex.P19 and M.O.1 marked on the side of the prosecution and on the side of the defence, no witness examined and no documents marked. In this case, P.W.3/victim girl is a minor which is confirmed by the evidence of P.W.20/Head Master of the



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School through whom E.P5 and Ex.P6 marked. The petitioner forced the victim girl to bring the jewels from her house and pledged the same with Manapuram Finance and P.W.25/Manager, Manapuram Finance confirms the same. The petitioner with the subsistence of the earlier marriage had two daughters and again committed sexual assault on the victim girl on the guise of marriage. The Trial Court considering all these aspects had rightly convicted the petitioner. Hence, prayed for dismissal.

4.Considering the submissions made and on perusal of the materials, P.W.3 is the victim girl and she clearly stated that she had voluntarily gone with the petitioner and presently she is residing under the care of the petitioner's family. It is seen that in this case, P.W.1 is estranged wife of the petitioner. The entire case stems out of matrimonial discord. The victim girl had clearly stated that it was she who joined the petitioner and forced him to marry her. The petitioner is not aware of the age of the victim girl. The petitioner utmost can be said to have committed the offence of bigamy. Hence, this Court finds that the conviction and sentence imposed by the Trial Court needs re-consideration.



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5.In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

6.Further, the petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m. until the disposal of the criminal appeal and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

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To

- 1.The Inspector of Police,
All Women Police Station,
Jayankondam.
- 2.The Sessions Judge,
Fast Track Mahila Court,
Ariyalur.
- 3.The Superintendent,
Central Prison,
Trichy.
- 4.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR., J.

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