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Crl.M.P.No.11438 of 2024 in Crl.A.No.877 of 2024

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M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed *vide* judgment, dated 31.10.2022 in Special S.C.No.35 of 2020 passed by the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Tiruppur.

2.The conviction and sentence imposed on the petitioner in Special Special S.C.No.35 of 2020 are as follows:

- For offence under Section 3 r/w 4 of the Protection of Children from Sexual Offences Act, 2012, the petitioner is sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for three months.
- For offence under Section 363 of IPC, the petitioner is sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo three months Simple Imprisonment.
- For offence under Section 376(3) of IPC, the petitioner is sentenced to undergo Rigorous Imprisonment for twenty years and to pay a fine of Rs.2,000/-, in default to undergo three months Simple Imprisonment.



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3.The learned counsel for the petitioner submitted that PW1 is the victim girl, she used to go to her grandmother's house, at that time, the petitioner approached the victim girl (PW1) and became friendly with her. During half yearly examination, when she was in the grandmother's house. On 27.01.2020 when the victim girl (PW1) had gone to buy groceries, she was enticed and taken to a secluded place by the petitioner where he committed penetrative sexual assault on her. On 28.01.2020, the complaint (Ex.P2) was given by the mother of the victim girl (PW2) and the victim girl was produced before the Doctor (PW4) who examined and issued medical certificate (Ex.P5). In Ex.P5, it is recorded that there is no evidence of recent sexual intercourse which would falsify the prosecution case. He further submitted that the mother of the victim girl (PW2) gave exaggerated version and not supported with the evidence of the victim girl (PW1). The victim girl (PW1) admits that she deposed as per her mother's dictum. In such circumstances, convicting the petitioner merely on conjectures and surmises is not proper. Hence, prays for suspension of sentence.

4.The learned Government Advocate (Crl. Side) appearing for the



respondent Police filed counter and submitted that in this case, the victim girl (PW1) clearly deposed about the petitioner committing penetrative sexual assault on her. At the time of occurrence, the victim girl (PW1) was a minor and her date of birth is 27.01.2007 and Ex.P1 confirms the same. The victim girl (PW1) stated that she was taken to the secluded place on 27.01.2020 and from 5.00 p.m to 11 p.m she was taken to maize field behind Ellies Nagar where she was subjected to penetrative sexual assault at the hands of the petitioner. The victim girl (PW1) cried and informed about the incident to her grandmother and mother (PW2) and thereafter, the complaint (Ex.P1) was lodged. In the statement under Section 164 Cr.P.C (Ex.P9), the victim girl confirms the incident. The contention of the petitioner that in the medical certificate (Ex.P5), it is recorded that no evidence of recent sexual intercourse which would prove that no penetrative sexual assault committed on 27.01.2020 is not proper. In this case, Exs.P3 & P4 to be considered together. Since there was no spermatozoa deducted in vaginal smear and swab, it is observed that no evidence of recent sexual intercourse and not otherwise. He further submitted that in this case, the evidence of the victim girl (PW1) is in conformity to the evidence of the Doctor (PW3) and Exs.P3, P4 & P10. Thus, the Trial Court on the evidence of the victim girl and medical evidence had



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rightly convicted the petitioner.

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5.Considering the submissions and on perusal of the materials, this Court is not inclined to grant suspension of sentence to the petitioner. Accordingly, this criminal miscellaneous petition stands dismissed.

26.09.2024

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