



*Crl.M.P.No.11578 of 2024
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M. NIRMAL KUMAR, J.

The petitioner/accused in Spl.C.C.No.50 of 2019 was convicted by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore by judgment dated 25.08.2023 and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment for the offence under Section 6 of Protection of Children from Sexual Offences Act [POCSO Act] and to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month simple imprisonment for the offence under Section 506(i) IPC. Both the sentences to run concurrently. Against which, the present appeal and suspension of sentence petition filed.

2.The contention of the learned counsel appearing for the petitioner is that the petitioner and the victim's sister were in friendly terms and



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thereafter, she got married during March 2018. Having apprehension that the petitioner might still disturb the victim's sister/P.W.5 with regard to the old relationship, the victim girl was used and a false complaint was lodged by P.W.1/mother of the victim girl on 12.05.2018 as though the petitioner entered into the house of the victim during February 2018, threatened her, forced and committed penetrative sexual assault and also further continued the act on several occasions. He would submit that in 164 Cr.P.C. statement/Ex.P14, the victim girl admits that the petitioner and her sister/P.W.5 were in love relationship and later realizing the same, the defacto complainant/P.W.1/mother of the victim girl disclosed the truth during trial. Both P.W.1/mother and P.W.3/father of the victim girl were treated hostile. P.W.11/Doctor, who examined the victim girl issued medical certificate/Ex.P10 and Ex.P11 had recorded that there is no evidence for recent physical relationship and there was no injuries. Further, the swab test also confirms that there was no Spermatozoa. He further submitted that the Trial Court not considering the case in its totality and merely on the evidence of P.W.2/victim girl and P.W.5/sister of the victim girl, who is in the nature of hearsay, convicted the petitioner. The other



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witnesses are formal and official witnesses.

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3.The learned Government Advocate (Crl. Side) filed his counter and submitted that the petitioner was a neighbour to the victim's family. Initially, the victim's family were residing near Sathyanarayana Nagar, Pothanur and since the petitioner was constantly harassing the victim and her sister by starring at them and following them wherever they go, hence they shifted the residence from there. Thereafter to the petitioner was following them and causing harassment. Initially, the petitioner started following the victim girl's sister/P.W.5 and after P.W.5 rejected the petitioner's approach, the victim girl being young aged about 14 years studying 9th Standard was targeted. The petitioner threatened the victim girl psychologically stating that he would commit suicide if she does not speak to him, thereafter taking advantage of it used to knock the window, make her forcibly open the door, get into the house and thereafter, committed penetrative sexual assault. Out of fear, the victim girl not disclosed and later when her periods got delayed, P.W.1/mother of the victim girl got doubt, questioned her and came to know about the



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petitioner's act. Thereafter, the mother of the victim girl lodged a complaint. On receipt of the complaint, the respondent police registered a case, visited the scene of occurrence, recorded the statement of witnesses and the victim girl was sent to medical examination. P.W.11/Doctor examined the victim girl and confirmed the penetrative sexual assault committed on the victim girl through Ex.P10 and Ex.P11. The victim girl/P.W.2 had given 164 Cr.P.C. statement/Ex.P14. The parents of the victim girl, P.W.1 and P.W.3 were forced and they resiled, but the victim girl/P.W.2, P.W.5/sister of the victim girl, P.W.6/husband of P.W.5 and P.W.8/sister of P.W.1 confirm the act of the petitioner. The victim girl clearly deposed about the petitioner's overt act which is confirmed by the medical evidence. The Trial Court considering these aspects had rightly convicted the petitioner. He further submitted that the petitioner is in his 40's and there is no reason or rationale for the petitioner to cultivate any friendship with the victim. The victim girl had been exploited and she had been ravished. Hence, prayed for dismissal.

4.Considering the submissions made and on perusal of the materials,



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it is seen that in this case P.W.2/victim girl clearly deposed about the penetrative sexual assault committed by the petitioner not only once but on several occasions by threat and force. P.W.1/mother of the victim girl lodged the complaint. Thereafter, P.W.2 was referred to Doctor/P.W.11, who confirms the victim girl being subjected to penetrative sexual assault. The 164 Cr.P.C. statement of the victim girl as well as the evidence of P.W.11, Ex.P10 and Ex.P11 confirms the same. P.W.5/sister of the victim girl corroborated the evidence of the victim girl. In this case, the Trial Court on the evidence of the victim girl and the medical evidence convicted the petitioner. In view of the above, this Court is of the view that the petitioner has not made out a case. Hence, this Court is not inclined to grant suspension of sentence.

5. Accordingly, the Criminal Miscellaneous Petition stands dismissed.

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