



*Crl.M.P.No.11960 of 2024
in Crl.A.No.736 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.11960 of 2024
in
Crl.A.No.736 of 2024

Murali

... Petitioner

Vs.

State by the Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
(Crime No.71 of 2020)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 430(1) r/w. 389(1) of Cr.P.C. praying to suspend imposed against the petitioner in Spl.S.C.No.5 of 2021 on the file of the learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District dated 23.04.2024 and enlarge the petitioner on bail pending disposal of the said Crl.A.No.736 of 2024.

For Petitioner : Mr.S.Priyadarshini

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



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ORDER

The petitioner / accused in Spl.S.C.No. 5 of 2021 convicted by the Trial Court and sentenced to 10 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment for the offences under Section 18 r/w. Section 3 & 4 of the POCSO Act and the petitioner was acquitted for the charges under Section 352 of IPC by judgment dated 23.04.2024. Aggrieved against the same, the present revision and the suspension of sentence petition.

2. The contention of the petitioner is that the petitioner and the victim girl are neighbours and 20 days prior to the complaint, the petitioner's parents had made arrangement to raise a compound wall, for which, a trench was dug around the house. There was a dispute with the neighbours with regard to the boundary and victim's parents raised objections and stopped the work and there was a village Panchayat in this regard. This being so, it is projected as though on 05.02.2020 at about 6.30 p.m. when the victim girl was proceeding in the backyard to attend nature's call, at that time, the petitioner said to have closed her mouth, pushed her down, forcibly removed her panties and attempted to commit penetrative sexual assault. The victim girl



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escaped from the clutches of the petitioner, ran away and informed her parents. Thereafter, a complaint has been lodged.

3. It is admitted that 20 days prior to the occurrence, there was a dispute and they are neighbours, residing for years together. Suddenly, there is no justification to project that the petitioner had committed such an offence. Further, in this case due to the compound wall dispute there was a wordy quarrel and the petitioner was attacked with knife by P.W.2 and he took treatment in Government Hospital, Kaveripattinam and thereafter at Krishnagiri as an impatient. Ex.D1 to D2 and Ex.C1/ Court documents reveals that the petitioner was taking treatment as an impatient from 06.02.2022 to 11.02.2020. P.W.19 / Doctor, who examined the victim girl had given a report Ex.P16 and Ex.P17 stating that sexual intercourse may might have had happened. It is only a suggesting report. P.W.21, the Doctor who had examined P.W.3 / Sumathi and P.W.4 / Singaravelan, mother and brother of the victim given Exs.P20 & P21 Accident Register in which it is stated there was a fight on 05.02.2020 and 06.02.2020, due to which the P.W.3 & P.W.4 sustained injuries.



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4. P.W.16, the Sub-Inspector of Police who registered the First Information Report / Ex.P13 admits that the alleged occurrence said to have taken place on 05.02.2020 at about 6 p.m and the complaint was lodged on 06.02.2020 at about 4.30 p.m., the next day. He admits that the petitioner getting treatment in Kaveripattinam Government Hospital on 06.02.2020. Hence, the petitioner has been falsely implicated. The petitioner's medical records Ex.D1 to D3 and Ex.C1 were withheld by the prosecution, since it would affect the prosecution case. Ex.D1 to D2 & C1 were marked through Investigation Officer / P.W.20. There is no explanation for withholding the documents. These factors not considered by the Trial Court and the petitioner has been sentenced to 10 years of rigorous imprisonment.

5. The learned Additional Public Prosecutor has filed his counter and submitted that in this case, P.W.1 has lodged a complaint to the respondent Police on 06.02.2020. P.W.16 received the complaint, registered the First Information Report. Thereafter, P.W.20 conducted investigation and prepared observation Magazar, rough sketch, examined the witnesses. In this case, the parents and brother of the victim girl questioned the petitioner and there was a fight which took place on 06.02.2020. The petitioner is



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attempting to confuse the two different occurrence and projecting as though the petitioner has been falsely implicated. In this case, the victim girl was produced before the Doctor, P.W.19 and 164 statement also recorded. The victim statement is corroborated with the evidence of P.W.2 to P.W.5 who are father, mother, brother and sister of the victim girl. The victim is a minor which is proved by P.W.10 and on conclusion of the investigation, charge sheet filed.

6. During trial, P.W.1 to P.W.21 examined. Exs.P1 to P22 marked. On the side of the defendants, Ex.D1 to D3 and the Court document / Ex.C1 marked. On conclusion of the trial, the Trial Court had convicted the petitioner. It is not is dispute the petitioner and the victim are neighbours. It is seen that 20 days prior to the occurrence there was a dispute with regard to construction of compound wall and the work was stopped on the objections raised by P.W2 & P.W.3. Thereafter, village Panchayat held in this regard which was not disputed. The petitioner and respondents are neighbours. From the evidence of the victim, it is seen a stranger, unknown person had closed her mouth, pushed her down attempted penetrative sexual assault. The Doctor evidence is otherwise. On the other hand, for the injuries sustained by the petitioner, he took treatment as impatient at Government



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Hospital from 06.12.2020 to 11.02.2020 has been completely withheld by the prosecution. There is no answer to Ex.D1 to D2 and C1.

7. Considering the entirety of the case, it is highly doubtful, whether such attempt could have been made. The Trial Court acquitted the petitioner for charges under Section 352 of IPC on the same lines. In view of the same, this Court finds that the conviction of the petitioner needs reconsideration. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/accused 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 learned Sessions Judge, Fast Track Magalir Neethimandram, Krishnagiri, Krishnagiri District.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.



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(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar once in three months at 10.30 a.m., until the disposal of the 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

22.10.2024

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No



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To

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1. The Sessions Judge,
Fast Track Magalir Neethimandram,
Krishnagiri, Krishnagiri District.
2. The Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
3. The Superintendent,
Central Prison, Salem.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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