



Crl.M.P.No.12274 of 2024 in Crl.A.No.153 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2024
PRONOUNCED ON : 4.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.12274 of 2024
in Crl.A.No.153 of 2023

Adhimoolam,
S/o.Arjunan

... Petitioner

Vs.

State by
The Inspector of Police,
Thellar Police Station,
Thiruvannamalai District.
(Crime No.70 of 2016).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430(1) of Bharatiya Nagarik Suraksha Sanhita, 2023, to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Special Court for POCSO Act Cases, Thiruvannamalai, Thiruvannamalai District in Spl.S.C.No.120 of 2019 by its judgment dated 28.12.2022 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.K.Balu

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



ORDER

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This criminal miscellaneous petition has been filed to suspend the sentence of imprisonment imposed against the petitioner by the learned Special Judge, Special Court (POCSO Act Cases), Thiruvannamalai *vide* judgment, dated 28.12.2022 in Special S.C.No.120 of 2019.

2.The conviction and sentenced imposed on the petitioner are as follows:

- For offence under Section 5(l) r/w 6 of the Protection of Children from Sexual Offences Act, 2012, the petitioner is sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo one year Simple Imprisonment.
- The petitioner is acquitted from the charges under Section 366 of IPC and Section 9 of the Prohibition of Child Marriage Act.

3.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case and he did not commit any offence alleged by the prosecution. The victim girl is PW2, her father is PW1 and her maternal uncle is PW4. PW4 was interest in buying a property of the



petitioner which the petitioner refused and also refused to run the tractor in PW4's land. Due to which, there was some misunderstanding between the petitioner and PW4. The victim girl (PW2) was planned to be married with PW4's son. The victim girl (PW2) was forced to continue her studies against her wish and further she was forced to marry PW4's son. For that reason, the victim girl (PW2) left her parents on her own. After few days on seeing the public notice issued by PW1 through his Advocate, the victim girl (PW2) appeared before the respondent Police and she was taken to the Magistrate on 15.04.2016. Before the Magistrate, the victim girl (PW2) stated that she had gone with the petitioner and she appeared before the Police Station on her own and presently she is inclined to go with her mother (PW3). Based on which, the victim girl (PW2) was permitted to go with her mother (PW3). Exs.D3 & D4 are the documents which confirms the victim girl's voluntariness in joining the petitioner and later going with her mother (PW3). The Trial Court failed to consider these facts and convicted the petitioner mechanically.



4.He further submitted that in this case, PW2 is the victim girl, PW1 and PW3 are her parents, PW4 is her uncle, PW5 is the Observation Mahazar witness and other witnesses are official witnesses. Before the Doctor (PW7), the victim girl (PW2) stated that she had left her parents voluntarily and later came back by herself. In this case, there are lot of contradictions in the evidence of PW1 to PW4. The FIR (Ex.P9) and the complaint (Ex.P1) reached the Court with a delay of nearly three days and no proper explanation given. The statement under Section 164 Cr.P.C (Ex.P3) recorded after lapse of seven months. Ex.P3 is in total contradiction with Ex.D3. In Ex.D3, the victim girl (PW2) not stated anything about the petitioner but her statement under Section 164 Cr.P.C recorded after seven months is with improvised version. PW1 lodged a complaint (Ex.P1) that his daughter/victim girl/PW2 was kidnapped in a car but the evidence of the victim girl (PW2) is that she had gone with the petitioner in a two wheeler. The victim girl (PW2) informed her father (PW1) through her mobile phone that she is forcibly kidnapped by the petitioner. In this case, the mobile phones of the petitioner, victim girl (PW2) and PW1 not seized and no tower location particulars collected to



confirm there was abduction and kidnap by the petitioner. The age certificate of the victim girl not marked through the school or public authorities. The Doctor (PW7) admits that she issued two different medical reports which are marked as Exs.P6 & D2. Both medical reports are in total variance. Likewise, Exs.P5 & D1 are in variance. The Medical Officer (PW9) admits that her opinion (Ex.P7) was given after lapse of nearly two years. The evidence of the victim girl (PW2) is unbelievable which is an improvised version at each stage. The Trial Court finding that the prosecution not proved the charges under Section 9 of the Prohibition of Child Marriage Act and Section 366 IPC, acquitted the petitioner. On the contrary and on the same set of evidence, the Trial Court convicted the petitioner as stated above. Hence, prays for suspension of sentence.

5.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that the victim girl (PW2) was 17 years old at the time of occurrence. On 09.04.2016, the victim girl (PW2) had gone to collect flowers from backyard, at that time, the petitioner proposed his love to her which she refused. By sugar coated sweet words,



the petitioner kidnapped the victim girl in his two wheeler to Melmaruvathur from there they had gone to Chidambaram by bus and stayed in a Hotel at Chidambaram, thereafter took her to the temple tied Thali and committed penetrative sexual assault during the stay of three days. Thereafter, the victim girl (PW2) was taken to the sister's house of the petitioner at Puducherry. Later on coming to know about the registration of the case, the victim girl (PW2) appeared before the respondent Police Station. Earlier, on the complaint of PW1, a case in Crime No.70 of 2016 for offence under Section 366A IPC registered on 09.04.2016. On 15.04.2016 when the victim girl came back, Sections altered and she was produced before the Doctor who examined her. Later, the victim girl was produced before the Magistrate where the victim girl categorically stated about the petitioner kidnapping her, confining her in the lodge, tying Thali and committing penetrative sexual assault.

6.He further submitted that there was some delay in sending FIR (Ex.P9) and complaint (Ex.P1) to the Court for the reason that the victim girl (PW2) was in a state of shock and she took sometime to reconcile. In



164 Statement and in her evidence, the victim girl (PW2) clearly stated how she was kidnapped by the petitioner and how she was subjected to penetrative sexual assault at the hands of the petitioner. The medical evidence is in conformity to the victim girl's statement. The Trial Court on the evidence of PW1 to PW13 and documents Exs.P1 to P11 and Exs.D1 to D7 had convicted the petitioner. Hence, strongly opposed for suspension of sentence.

7.Considering the rival submissions and on perusal of the materials, the case projected against the petitioner is that on 09.04.2016, the victim girl (PW2) had gone to backyard to collect flowers but not returned back home. In the morning hours, the father of the victim girl (PW1) received phone call from her daughter (PW2) that she was forcibly abducted and taken away by the petitioner. Thereafter, PW1 lodged a complaint (Ex.P1) to the respondent Police and FIR (Ex.P9) registered. In the meanwhile, it is stated that since the mobile phone was switched off, the petitioner and victim girl (PW2) unable to be traced. The victim girl (PW2) in her evidence admits that she travelled in the bike along with the petitioner for



quite a distance up to Melmaruvathur Bus Stand. The vehicle was parked in the bike stand, thereafter both of them got into the bus, travelled up to Chidambaram where they stayed for three days. During this travel, the petitioner and victim girl (PW2) visited the temple where the petitioner tied Thali and thereafter, the petitioner said to have committed penetrative sexual assault. During the travel from the village up to Chidambaram and thereafter to Puducherry, the victim girl admits that she not raised any alarm or drew public attention complaining that she was forcibly kidnapped by the petitioner. In this case, admittedly, the mobile phone of the petitioner, victim girl and PW1 not seized and no call records and tower location details collected. Likewise, no witness examined and no document collected to show that the petitioner and the victim girl (PW2) stayed in a lodge at Chidambaram. On these grounds, the petitioner was acquitted from the charges under Section 9 of the Prohibition of Child Marriage Act and Section 366 of IPC.

8.In this case, the victim girl birth certificate not marked and her educational certificate (Ex.P2) marked through PW2 and not through the



school authorities. The Doctor who treated the victim girl in this case are PW7 and PW9. PW9 admits that two years after her examination she issued the certificate (Ex.P7). PW7 issued Exs.P5 & P6. There are variations in Exs.P5, P6 and P7 and no proper explanation given. On the other hand, the petitioner marked Exs.D1 to D7. Exs.D1 & D2 are the medical records given by PW7 which is contrary to Exs.P5 & P6. Likewise, in Exs.P3 & P4, the victim girl's statement recorded where she admits going along with the petitioner and willing to go with her mother (PW3). The statement under Section 164 Cr.P.C of PW3 marked as Ex.D5 which gives a different version. But on the evidence of PW2 and the medical evidence, the petitioner was convicted as stated above which needs reconsideration.

9.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.



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10.Further, the petitioner shall appear before the Trial Court once in three months commencing from the first working day of November 2024 at 10.30 a.m till the disposal of the criminal appeal. Accordingly, this Miscellaneous Petition is ordered.

4.10.2024

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To
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- 1.The Special Judge,
Special Court (POCSO Act Cases),
Thiruvannamalai.
- 2.The Central Prison,
Vellore.
- 3.The Inspector of Police,
Thellar Police Station,
Thiruvannamalai District.
- 4.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
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in Crl.A.No.153 of 2023

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