



*Crl.M.P.No.12339 of 2024
in Crl.A.No.1107 of 2024*

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M. NIRMAL KUMAR, J.

The petitioner/accused in Spl.S.C.No.48 of 2023 was convicted by the learned Special Sessions Judge, Fast Track Court exclusively to deal with offences under the POCSO Act, Puducherry by judgment dated 14.08.2024 and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one month simple imprisonment for the offence under Section 8 of Protection of Children from Sexual Offences Act [POCSO Act]. 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 has been falsely implicated in this case. He would submit that both the petitioner and P.W.1/defacto complainant are Tailors, there was some dispute between them and to brook vengeance, the victim girl/P.W.2 was used and the petitioner was falsely framed in the above case.



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P.W.1/mother of the victim girl in her evidence stated that she went to the School of P.W.2 on 28.09.2020, from there both P.W.1 and P.W.2 went to Sri Gajalakshmi Textile shop where the petitioner is said to have made improper touch, but P.W.1 suppressed the real facts and gave an exaggerated statement. P.W.1 states that the shop was empty and only two to three persons available, the victim girl who had some difficulty in fixing the handle of the handbag and the petitioner offered help to the victim girl and taking advantage of no crowd in the shop the petitioner is said to have placed his hands on the chest of the victim girl, pinched her and also tapped her on the back. But the evidence of P.W.2/victim girl as well as P.W.3 and P.W.5, who are the employees of P.W.3 and P.W.5 is that the shop was crowded and there were 20 to 25 persons available at that time. Both P.W.3 and P.W.5 stated that they heard some commotion and P.W.1 picked up fight with the petitioner. In this case, the primary evidence relied upon by the Trial Court is the evidence of P.W.2 which is contrary to the evidence of P.W.1/mother of the victim girl. The electronic evidence relied on by the Trial Court is not proper. P.W.6 is not an expert and he admits that he was called by the Textile Shop owner to download the CCTV recording which he



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had done. Further, the DVR and the CD were not subjected to any forensic examination. Hence, the evidence of P.W.6 cannot be considered as an expert evidence. Further, the complaint is lodged with a delay but no explanation given for the delay. P.W.4/uncle of the victim girl, who is said to have written the complaint and accompanied the victim girl/P.W.2 and P.W.1 to the Police Station states that the complaint was written by the Police Personnel in the Police Station. Further, the Textile shop owner was not examined and it was a Covid-19 situation and only due to previous enmity, the petitioner has been falsely implicated which the Trial Court failed to consider. The Trial Court solely relying on the evidence of P.W.6, M.O.1 to M.O.4 and Ex.P5 without subjecting the electronic evidence to forensic examination is not proper. He further submitted that the Trial Court had already suspended the sentence imposed on the petitioner. Hence, prayed for suspension of sentence.

3.The learned Public Prosecutor (Puducherry) filed his counter and submitted that on 28.09.2020 at about 11.45 hours, the petitioner committed the offence by making improper touch on P.W.2. P.W.1/mother of the



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victim girl lodged the complaint and gave evidence about the improper act of the petitioner. Further the petitioner with sexual intent committed the offence. P.W.2/victim girl narrated as to what happened in the textile shop and her evidence corroborates with her 164 Cr.P.C. statement given earlier which was marked as Ex.P2. He would submit that P.W.1 and P.W.2 immediately called P.W.4/uncle of the victim girl, who came there and accompanied them to the Police Station. Thereafter, the Police Officials visited the shop, verified and confirmed the petitioner's act through CCTV recording and thereafter, the recordings were downloaded through P.W.6 in the presence of P.W.7. The DVR captures the act of the petitioner which was produced by way of material objects. Ex.P5 and Ex.P6/Section 65B Certificates were issued by the respective witnesses, the petitioner was arrested in the presence of P.W.8/Village Administrative Officer and confession statement recorded. The victim girl had given statement in the presence of P.W.9/Social Worker and P.W.10/Police Photographer recorded the statement of the victim girl. All the legal safeguards and provisions were followed in this case. During trial, P.W.1 to P.W.16 examined, Ex.P1 to Ex.P9, M.O.1 to M.O.4 marked on the side of the prosecution and on the



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side of the defence, no witness examined and no documents marked. The Trial Court on the evidence produced had rightly convicted the petitioner. He further submitted that the Trial Court had already suspended the sentence imposed on the petitioner.

4.Considering the submissions made and on perusal of the materials, it is seen that P.W.1/mother of the victim girl/P.W.2 states that she was busy in selecting garments, at that time, her daughter/victim girl was alone in the shop. Taking advantage of the loneliness of the victim girl, the petitioner is said to have made improper touch on the victim girl. On the other hand, P.W.2/victim girl, P.W.3 and P.W.5, who are the employees of the textile shop state that the shop was crowded and there were 20 to 25 persons in the shop and hence, such act is not possible. P.W.3 and P.W.5 clearly state that they were only informed and they had not seen the occurrence. P.W.4/uncle of the victim girl was informed by P.W.1 and he came there and accompanied P.W.1 and P.W.2 to the Police Station. Hence, P.W.3 to P.W.5 are in the nature of hearsay witness. The evidence of P.W.6 is that he runs a CCTV Sales and Service Centre and on the request of Sri



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Gajalakshmi Textile Shop owner Saravanan, he came there and downloaded the recordings and issued Section 65B certificate. In his evidence, he had stated that Ex.P5/65B Certificate was issued by him in the Police Station as prepared by them and from his evidence, it cannot be stated that he is an expert. Further, in this case M.O.1 to M.O.4 were not subjected to forensic examination. Hence, based on M.O.1 to M.O.3 and Ex.P5 it cannot be conclusively state that the electronic evidence has been proved in the manner known to law. Now the only evidence available is the evidence of P.W.1 and P.W.2. The evidence of P.W.1 and P.W.2 are contradictory to each other. Further, it is seen that the Trial Court had already suspended the sentence imposed on the petitioner. Hence, this Court finds that the conviction and sentence imposed by the Trial Court needs re-consideration.

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.



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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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