



*Crl.M.P.No.14841 of 2023
in Crl.A.No.1013 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

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

Crl.M.P.No.14841 of 2023
in
Crl.A.No. 1013 of 2023

Karthick

... Petitioner

Vs.

The State Represented by,
The Inspector of Police,
All Women Police Station,
Ariyalur, Ariyalur District.
(Crime No.14 of 2021)

... Respondent

Prayer: Criminal Miscellaneous Petitions filed under Section 389(1) and 439 of Cr.P.C., to suspend the sentence imposed on the petitioner / appellant in Spl.S.C.No.23 of 2021 dated 16.08.2022, Sessions Judge Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore pending disposal of the above said criminal appeal.

For Petitioner : Mr.K.Gandhi Kumar

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



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ORDER

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The petitioner / accused in Spl.SC.No.23 of 2021 was convicted by the Trial Court by judgment dated 16.08.2022 and sentenced to undergo 20 years rigorous imprisonment for offences under Section 6 of the POCSO Act and directed to pay a fine of Rs.10,000/-, in default to undergo 2 years simple imprisonment and 10 years of rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo 2 years simple imprisonment for offences under Section 366 of IPC, against which, he had preferred the appeal and suspension of sentence petition.

2. The contention of the petitioner is that the petitioner and the victim girl were in love with each other and they were constantly talking through mobile phone and one such occasion, the victim girl's parents, PW.2 & P.W.3 questioned and objected and they had also treated the victim girl very badly and the victim girl informed the petitioner about the ill treatment and the victim girl forced the petitioner to take her away and save her life. On 14.04.2021, the petitioner and the victim girl had eloped. Thereafter, the victim's father / P.W.2 had lodged a complaint of girl missing. Thereafter, First Information Report was registered. During their elopement, they had stayed in petitioner's uncle house, friends place and at that time, they had also



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had physical relationship.

3. On coming to know about the registration of the case, the petitioner brought the victim girl and the victim girl had appeared before the respondent Police. Thereafter, a case has been registered showing as if the petitioner had kidnapped the victim girl and committed penetrative sexual assault. In this case, P.W.1 / victim girl, in her evidence had categorically stated that she had taken the phone from her mother on the guise of online class and talking with the petitioner. On 13.02.2021, while she was talking with the petitioner, she was caught by her parents and thereafter, she had been warned, beaten and ill treated. Further, she confirms in the evidence that she only called the petitioner and asked him take her away from the home. Thereafter, both of them eloped together for a week happily had gone to various places. At that time, they got married and further they had physical relationship. She further submitted that since the petitioner and the victim belong to different communities, the parents of the victim felt that their pride of their community would be lost and for that reason, they had not accepted the marriage and relationship between the petitioner and the victim.



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4. The victim / P.W.1 had clearly stated about the disparity in the social life and the objections of her parents. The evidence of P.W.2 & P.W.3 they admit that the petitioner and the victim belong to different communities and that the victim had eloped with the petitioner. Initially, they gave a complaint for girl missing, later, on the girl kidnapped and that she had physical relationship with the petitioner and a case was lodged under POCSO Act.

5. He further submitted that in this case, along with the petitioner, petitioner's brother and uncle were arrayed as A2 & A3. The Trial Court finding that there is no abetment and they were acquitted from all charges. From the evidence of P.W.1 / victim, it is clear that there is no kidnapping. Further, the petitioner was informed by the victim that she had attained majority and the petitioner was not aware about the victim, being a minor.

6. The learned Public Prosecutor had filed a counter and submitted that the P.W.2 / father of the victim had lodged a complaint initially for girl missing stating that his daughter was not at home from 14.04.2021. Earlier, the daughter / P.W.1 were having contact with the petitioner who belongs to a different community which was objected by P.W.2 & P.W.3 parents of



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P.W.1. On the complaint, the accused were arrested the petitioner and the victim was secured. From the statement of the victim, it is clear that she was forcibly taken and thereafter in the guise of marriage, penetrative sexual assault committed and altered as offences under Section 366(A) of IPC r/w. 5(i), 6 & 7 of the POCSO Act against the petitioner and his brother and uncle.

7. On registration of the case, P.W.10 who received the complaint from the victim's father and registered the FIR. P.W.11 had deposed that she took investigation of the case, visited the scenes of occurrences, prepared observation Magazars I & II and Rough Sketchs. P.W.4, P.W.5 & PW6 are the persons who attested in the observation Magazar, which had not supported the case of the prosecution. P.W.7 is the Headmistress in which the victim girl studied in the school. Ex.P9 / birth certificate of the victim shows her date of birth on 19.06.2005. The Doctor was examined as P.W.8 and the same confirmed that the victim had sexual intercourse. On completion of investigation, charge sheet was filed in this case. During trial, P.W.1 to P.W.11 were examined. Exs.P1 to P17 marked. Ex.C1, 164 statement of the victim girl marked.



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8. The learned Public Prosecutor further submitted in this case, the victim girl was not co-operative with her parents and there was some misunderstanding even after she deposed the case. Thereafter, she has gone to her aunt's place at Ariyalur and there, she had consumed monophosphorus pesiticide on 06.03.2022 and she passed away on 08.03.2022, for which, the case in Crime No.44 of 2022 under Section 174 of Cr.PC registered and later, it has been closed as further action dropped on 14.05.2022.

9. Considering the submission and perusal of the material available, in this case, P.W.1 / victim girl admits that she and the petitioner in love with each other for sometime and she used to talk with him. When her parents came to know about the same, they opposed, since the petitioner petitioner is from different community and the petitioner's social status is below to victim family, the relationship was opposed and the victim was beaten by her parents and her brothers. Unable to withstand the beating and suffering, during the month of March, she had left her parents house and went to petitioner's grand mother's place at K.K.Nagar seeking asylum. Thereafter, she joined the petitioner in the Udayarpalayam bus stand and from there they had travelled in various buses and finally they have gone to Jayankondam, from there to Virudhachalam and later to Salem. They have been residing in various places and the victim voluntarily joined the petitioner. Even in the



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164 statement / Ex.C1 and in her deposition, she categorically confirms and asserts her relationship with the petitioner and their social status seems to be the main reason for non-approval of the relationship by victim's parents. It is also be seen that the victim is now no more, consumed poison, died in a mysterious circumstances After the deposition, she had been sent to her aunt's place and there she consumed poison and ended her life on 08.03.2022.

10. In this case, A2 & A3 both acquitted. As regards the petitioner, from the statement of victim, it is clear that it is the victim who was more oriented towards the petitioner. PW2 & PW3 parents of the victim's girl confirms the relationship of the petitioner and the victim. Due to the difference in social status, they not approved the relationship of the petitioner and the victim girl.

11. In view of the positive evidence of the victim, 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



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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 Fast Track Mahila Court, Ariyalur.

(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.

(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.

11. Accordingly, this Criminal Miscellaneous Petition is ordered.

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No



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To

1. The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Cuddalore.
2. The Fast Track Mahila Court,
Ariyalur.
3. The Inspector of Police,
All Women Police Station,
Ariyalur.
4. The Superintendent,
Central Prison, Trichy.
5. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

KKN

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