



Crl.M.P.No.14707 of 2023 in Crl.A.No.743 of 2023

Crl.M.P.No.14707 of 2023
in Crl.A.No.743 of 2023

WEB COPY

M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment imposed on the petitioner in Special S.C.No.3 of 2020 passed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri (Trial Court), dated 31.05.2023, till the disposal of the main criminal appeal.

2.The conviction and sentence imposed on the petitioner is as follows:

- For offence under Section 6 of the Protection of Children from Sexual Offence Act, 2012, the petitioner to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.10,000/- in default to undergo six months Simple Imprisonment.
- For offence under Section 3(1)(w), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the petitioner to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo three months Simple Imprisonment.

3.The learned counsel for the petitioner submitted that the petitioner made as scapegoat since there was a dispute in the village with regard to conducting Pooja and management of the two temples viz., Kanniyamman Temple and Eswaran Temple. The case projected against the petitioner is that the victim girl



(PW6) was playing near the temple, at that time, the petitioner called the victim girl (PW6) inside the temple and committed penetrative sexual assault. On hearing the cry of the victim girl (PW6), the villagers (PW2, PW3 and PW4) said to have rushed there, rescued the victim girl (PW6), beaten the petitioner and panchayat was held. Thereafter, the petitioner is said to have handed over the keys of the temple and left the place. In this case, the villagers (PW3 and PW4) not supported the case of the prosecution. PW2 is the another villager whose evidence stands uncorroborated. Added to it, the evidence of the victim girl (PW6) is contrary to the medical evidence (PW17 and Ex.P11). Further, there was corrections in the Accident Register of the victim girl (Ex.P11) which is admitted by the Doctor (PW17). In this case, even the paternal grandfather (PW7) not supported the case of the prosecution finding that the petitioner falsely implicated in this case. Added to it, no mahazar witness supported the case of the prosecution. He further submitted that PW1, the maternal grandfather only stated about the happenings to the Doctors (PW17 and PW18). Added to it, there was some dispute with regard to the petitioner being the Priest of the temple and to remove him from Pooja work, a case is foisted against him. He further submitted that the petitioner is aged about 71 years and recently he has lost his wife. The petitioner shall not visit the village and shall reside with his son who is residing in Chennai, hence, he may be granted bail.



WEB COPY

4.The learned Government Advocate (Crl. Side) appearing for the respondents 1 and 2 filed counter and submitted that the victim girl is aged 6 years aged at the time of occurrence and she was staying in her grand-mother's house (PW1) and she is studying 2nd standard at Panchayat Union Elementary School, Erulapatti. They belong to Schedule Tribe community. The petitioner Subramani belongs to Backward Community and he is the priest of Kanniamman temple situated at Erulapatti. There is also Easwaran kovil in Erulapatti. On 25.07.2019 at about 04.30 p.m, near the staircase entrance of Easwaran kovil at Erulapatti located near Kanniamman Kovil, the petitioner committed aggravated penetrative sexual assault on the victim girl by pinching her private part and also licked her private part and then pressed the breasts of the victim child with sexual intent. He further submitted that based on the complaint (Ex.P1), an FIR (Ex.P15) in Crime No.101 of 2019 was registered for offence under Sections 7 & 8 of the Protection of Children from Sexual Offence Act on 25.07.2019. Thereafter, the Inspector of Police took up the investigation, visited the scene of occurrence, drew rough sketch (Ex.P17), prepared observation mahazar (Ex.P16) in the presence witnesses and also examined the witnesses and recorded the statements. Later, collected community certificates of the victim girl and the petitioner (Exs.P14 & P19), then sent requisition to Harur Deputy Superintendent of Police for further investigation.



During the course of investigation, on 26.07.2019, the Deputy Superintendent of Police arrested the petitioner, recorded his confessions statement, later, sent the petitioner for judicial custody. On completion of investigation, the Deputy Superintendent of Police altered the Sections to 6 r/w 5(m) and 10 r/w 9(m) of Protection of Children from Sexual Offence Act, 2012 and Section 3(i)(w) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and filed charge sheet before trial Court. During trial, on the side of the prosecution, 27 witnesses examined as PW1 to PW27 and 25 documents marked as Exs.P1 to P25. On the side of the defence, no witness examined and no document marked. Based on the evidence of the prosecution witnesses support by the medical version and the prosecution exhibits, the trial Court had rightly convicted the petitioner. Hence, prays for dismissal.

5.Ms.Vanmathi, learned counsel appearing for the 3rd respondent filed written submission and submitted that in this case, the victim girl (PW6) was aged about 6 years at the time of occurrence and there is no reason for the victim girl to utter falsehood against the petitioner. The victim girl deposed about the manner in which she was subjected to penetrative sexual assault at the hands of the petitioner and she also explained the same by action which is recorded in the evidence. Further, she also identified the petitioner by his name. The Trial Court on the



evidence of PW6 and also finding that the petitioner not dislodged the statutory presumption against him under Section 29 and 30 of POCSO Act, convicted the petitioner as stated above. Hence, prays for dismissal of this petition.

6.Considering the submissions and on perusal of the materials, it is seen that in this case, the victim girl (PW6) in her 164 Cr.P.C., statement (Ex.P6) as well as in her evidence clearly narrated the sequence of events. Further, the Doctor (PW17) evidence is corroborated with the evidence of the victim girl (PW6) and which confirms that the victim girl was subjected to the penetrative sexual assault at the hands of the petitioner.

7.In view of the above, this Court is not inclined to grant suspension of sentence to the petitioner. Accordingly, this Criminal Miscellaneous Petition stands dismissed.

8.This Court appreciates Ms.M.Vanmathi, appointed as legal aid counsel for the 3rd respondent in rendering her sincere efforts in this regard.

29.02.2024

vv2



WEB COPY



Crl.M.P.No.14707 of 2023 in Crl.A.No.743 of 2023

M.NIRMAL KUMAR, J.

vv2

Crl.M.P.No.14707 of 2023
in Crl.A.No.743 of 2023

29.02.2024