



Crl.M.P.No.15805 of 2023 in Crl.A.No.1069 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2024
PRONOUNCED ON : 30.01.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.15805 of 2023
in Crl.A.No.1069 of 2023

D.Sozharajan,
S/o.Dhandapani.

... Petitioner

Vs.

State Represented by
Inspector of Police,
All Women Police Station,
Panruti PS,
Cuddalore District.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(2) of Cr.P.C., to suspend the execution of the sentence dated 05.01.2023 passed in S.C.No.52 of 2021 against the petitioner / Appellant by the Special Court (POCSO case) Cuddalore District and pending disposal of the above appeal.

For Petitioner : Ms.S.Thamizharasi
For Respondent : Mr.S.Rajakumar,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the judgment, dated 05.01.2023 in Special S.C.No.52



of 2021 by the learned Sessions Judge, Special Court (POCSO Act Cases), Cuddalore (trial Court) and enlarge him on bail pending disposal of the main appeal.

2.The conviction and sentence of the petitioner are as follows:-

- For offence under Section 451 of IPC, the petitioner to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment.
- For offence under Section 324 of IPC, the petitioner to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment.
- For offence under Section 9(m) r/w 10 of Protection of Children from Sexual Offence Act 2012, the petitioner to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo three months Simple Imprisonment.

3.Gist of the case is that at the time of occurrence, the victim girl (PW1) aged about 12 years was staying with her grandmother since her mother's had undergone hernia operation. On 14.04.2021, at about 07.30 p.m., the victim girl went to her house situated in the next street to collect clothes for her mother, at that time, the petitioner is said to have followed



her behind, entered into the house, pulled her, attempted to remove her pant and committed sexual assault. The victim girl escaped from his clutches, raised alarm and came out from the house. At that time, PW4 & PW5, the nearby residents saw the victim girl crying and coming out from the house and enquired her. The victim girl informed happenings and thereafter, she was taken to Government Hospital, Panruti and produced before the Doctor (PW9). PW9 examined the victim girl and issued Accident Register (Ex.P6).

4.On 16.04.2021, PW1, the father of the victim girl went to the respondent Police and lodged the complaint (Ex.P4). On his complaint, an FIR (Ex.P11) in Crime No.9 of 2021 was registered. PW13, the Investigating Officer took up the investigation, examined the victim girl (PW1), produced her before the Doctor (PW12) of the Government Hospital, Cuddalore. PW12 examined the victim girl and issued medical report (Ex.P9). On the same day, the petitioner was arrested near the Panruti bus stand at about 05.00 p.m., and in presence of witnesses, he gave confession and thereafter, he was produced before the concerned Magistrate for remand. PW13 is the Doctor examined the petitioner and issued the potency



certificate (Ex.P10). On recording the statement of witnesses, preparing Observation Mahazar (Ex.P5), Rough Sketch (Ex.P12), collecting medical records (Exs.P6, P9 & P10) and other documents, charge sheet filed before the trial Court.

5.During trial, on the side of the prosecution, fourteen witnesses examined as PW1 to PW14 and fourteen documents marked as Exs.P1 to P14 and marked one Material Object as MO1. On the side of the defence, four witnesses examined as DW1 to DW4 but no document marked. The trial Court marked one document as Ex.CD1. On conclusion of trial, the trial Court convicted the petitioner as stated above. Challenging the same, the present Criminal Appeal and the Suspension of Sentence.

6.The learned counsel for the petitioner submitted that the petitioner is a neighbour to the victim girl's family and they had dispute over throwing garbage around the garbage bin near the petitioner's house. On 14.04.2021, the victim girl threw garbage near the petitioner's house which was questioned by the petitioner who had also beaten her. PW6, Aunt of the victim girl came there, picked up a fight with the petitioner and thereafter,



the relatives of the victim girl came there and assaulted the petitioner as well as his mother and there was scuffle. Since the petitioner's wife was seven months pregnant, the petitioner not further pursued with any complaint. Two days thereafter, Panruti Police called the petitioner and his mother for enquiry and the petitioner alone was taken to the respondent Police and the above false case foisted against him. The learned counsel further submitted that prior to this incident, there was dispute with regard to writing of political slogans in the petitioner's compound wall by PW1's family members. The petitioner had also produced the photographs confirming the same. Further, the petitioner examined DW1 to confirm about the dispute between the petitioner and the victim girl's family. The petitioner also examined himself as DW2, gave explanation and probablized his defence. In this case, the Casualty Doctor (PW9) recorded in the Accident Register that there was bruises behind the neck of the victim girl which is simple in nature. Two days, the medical report (Ex.P9) obtained from PW12 which shows that there have been marked improvement in the injuries, no explanation given for the same. In this case, prior to the occurrence, there was a clear motive between the petitioner and the victim girl's family. The trial Court failed to consider these aspects, on the other hand convicted the



petitioner as though sexual assault committed by him. Hence, prays for suspension of sentence.

7.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that in this case, PW2 is the father of the victim girl and an FIR (Ex.P11) registered in Crime No.9 of 2021 for offence under Sections 324, 354(D), 450 of IPC and Section 5(i) r/w 6 & 18 of the Protection of Children from Sexual Offence Act, 2012 and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act and thereafter, the petitioner was arrested on the same day and he confessed admitting about his guilt. The victim girl clearly narrated about the incident and the sexual assault committed by the petitioner and the same also informed to PW9 and PW12, the Casualty Doctors of Panruti Government Hospital and Cuddalore Government Hospital respectively. Further, 164 Cr.P.C., statement of the victim girl recorded and the same produced as MO1. In this case, fourteen witnesses examined as PW1 to PW14. PW1 is the victim girl and PW2 is her father. PW4 and PW5 are the witnesses present immediately near the scene of occurrence stated about the cry of the victim girl and about the sexual assault committed by the petitioner. PW6 is



the Aunt of the victim girl whose evidence is in conformity to the evidence of PW2. PW7 and PW8 are the witnesses to the Observation Mahazar (Ex.P5). PW9, PW12 and PW13 are the Doctors who examined the victim girl and the petitioner. On the evidence and materials produced, the trial Court convicted the petitioner as stated above.

8.Considering the submissions and on perusal of the materials, it is seen that the evidence of PW1 is exaggeration and doubtful. PW9 is the Doctor initially examined the victim girl and found some bruises in the neck which is simple in nature and also found her dress was in proper condition, which deface the evidence of PW1, PW2, PW4, PW5 and PW6. It is also seen that the occurrence had taken place on 14.04.2021 but the complaint lodged with a delay of two days. The reason given by PW1 for such delay is doubtful. Prior to the occurrence, there was dispute between the petitioner and the victim girl's family which confirmed from the evidence of defence witnesses. The reason given by the trial Court in not considering the photographs produced by the petitioner that 65-B Certificate is not produced, is not proper. Further, the petitioner is only expected to probablize his defence. The petitioner had also examined himself as DW2 and clearly



deposed the motive. The trial Court not gave any reason for discarding the evidence of the defence witnesses. In view of the same, the conviction of the petitioner needs reassessment.

9.In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner 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.

10.The petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m., till 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. Accordingly, this Miscellaneous Petition is ordered.

30.01.2024

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To

WEB COPY

- 1.The Sessions Judge,
Special Court (POCSO Act Cases),
Cuddalore.
- 2.The Inspector of Police,
All Women Police Station,
Panruti PS,
Cuddalore District.
- 3.The Superintendent,
Central Prison, Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



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M. NIRMAL KUMAR., J.

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