



*Crl.M.P.No.14423 of 2024
in Crl.A.No.1290 of 2024*

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M. NIRMAL KUMAR, J.

The petitioners/A2 and A3 in Spl.S.C.No.83 of 2019 was convicted by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore by judgment dated 18.09.2024 and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo three months simple imprisonment for the offence under Section 354C of IPA and to undergo three years rigorous imprisonment and to pay a fine of Rs.50,000/-, in default, to undergo three months simple imprisonment for the offence under Section 67 of Information Technology Act each. Against which, the present appeal and suspension of sentence petition filed.

2.The contention of the learned counsel appearing for the petitioners is that A1/Sathishkumar @ Satheesh had a love affair with the victim girl, a minor. When the victim girl was coming back from the temple festival



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during Tamil New Year day, A1 is said to have sent a message to the mobile phone of victim girl's father asking her to come near the School Flag post where they normally meet. Further, he also pressurized her that if she failed to come, he will not talk to her anymore. When the victim girl came to the place at about 2.00 p.m., A1 took her to the Toilet, removed her clothes, took a nude photographs and thereafter A1 also removed his clothes and committed physical sexual assault. Later with the help of the petitioners herein/A2 and A3, the pictures of the victim girl is said to have circulated in public. Hence, a case registered. During Trial, P.W.1 to P.W.20 examined, Ex.P1 to Ex.P26 marked, M.O.1 to M.O.7 produced and Ex.C1 marked on the side of the prosecution and on the side of the accused, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioners as stated above. He would submit that the first petitioner/A2 is arrayed as accused in this case for the reason that his mobile phone was used to picturize the obscene activities of A1 with the victim girl. It is not the case that the first petitioner/A2 had knowingly given his mobile phone and he was not the person who took the picture. The case of the prosecution is that A1 had recorded the alleged action. Likewise, as



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regards the second petitioner/A3, he had not knowingly sent the photographs to another phone and he is not the reason for any publicity or circulation of photographs in public. The Trial Court considering the petitioners' plea and finding that the petitioners have become the victim of circumstances, had rightly convicted the petitioners with minimum sentence and also suspended the sentence imposed on them till 23.10.2024. He further submitted the petitioners are young and they are in the blossom of their career. Hence, prayed for suspension of sentence.

3.The learned Government Advocate (Crl. Side) submits that petitioners/A2 and A3 and A1 are friends and they planned for committing the offence. A1 taking advantage of his relationship with the victim girl forced her and took her to the toilet, made improper touch and sexual assault on the victim girl. A1 also picturized the same using the mobile phone of A2 and A3 circulated the photograph in public. Thus, all the three accused had committed the offence. The Trial Court on the evidence of the witnesses and scientific evidence and materials had rightly convicted the petitioners. He further submitted that the Trial Court had already suspended



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the sentence imposed on the petitioners.

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4.Considering the submissions made and on perusal of the materials, it is seen that as regards these petitioners, the mobile of A2/first petitioner is used in the offence and A3/second petitioner is said to have circulated the pictures. The petitioners are at the adolescent age and the entire offence is committed by the other accused. Further, the Trial Court had already suspended the sentence imposed on the petitioners. 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 petitioners 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) each with two sureties, each for a like sum to the satisfaction of the trial Court.

6.Further, the petitioners shall appear before the Trial Court on the



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first working day once in three months at 10.30 a.m. until the disposal of the criminal appeal and if they are not able to appear before the Trial Court on that day, they 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 their absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered.

22.10.2024

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