



Crl.M.P.No.19781 of 2023 in Crl.A.No.1615 of 2023

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M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner *vide* judgment, dated 04.11.2023 in Special S.C.No.41 of 2022 passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Tiruppur (Trial Court) till the disposal of the main criminal appeal.

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

- For offence under Section 366 IPC, the petitioner to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months Rigorous Imprisonment.
- For offence under Section 342 IPC, the petitioner to undergo one year Rigorous Imprisonment.
- For offence under Section 506(i) IPC, the petitioner to undergo one year Rigorous Imprisonment.
- For offence under Section 7 r/w 8 of the Protection of Children from Sexual Offence Act, 2012, the petitioner to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to



undergo three months Rigorous Imprisonment.

- For offence under Section 11(iv) r/w 12 of the Protection of Children from Sexual Offence Act, 2012, the petitioner to undergo two years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default to undergo three months Rigorous Imprisonment.

3.The case of the prosecution is that the petitioner had expressed his love to the victim girl (PW1) which was objected by her as well as her cousin's sister and the petitioner was warned and sent away. This incident happened on 16.10.2021. On 20.10.2021, at about 12.00 noon, when the victim girl had gone to attend nature call, the petitioner is said to have forcibly abducted her and took her in two wheeler. On the way, the petitioner is said to have hugged and kissed her and taken her to various places. On coming to know about lodging of complaint (Ex.P2) for girl missing, the petitioner dropped the victim girl in her grandfather's house. Thereafter, the investigation commenced, the petitioner was arrested and on completion of investigation, charge sheet filed.



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4. During trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and twelve documents marked as Exs.P1 to P12. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

5. The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case and he is no way connected with the alleged crime. According to the prosecution, the victim girl found missing from 20.10.2021 and the complaint was lodged on 21.10.2021 and thereafter, investigation commenced. The evidence of PW1 is that on 21.10.2021, she was found in her grandfather's house who informed the father of the victim girl (PW2) and thereafter only, the complaint has been lodged. From the evidence of PW5, the Inspector of Police who registered the complaint, it is seen that after the victim girl came back home, a case was registered as though she was found missing. PW7, the Investigating Officer admits the contradictions and stated that the victim girl in her 161



Cr.P.C., statement as well as 164 Cr.P.C., statement, she has not stated anything about kissing of the petitioner and it is only for the first time in the evidence, such statement has been made. He further submitted the trial Court acquitted the petitioner from the charges under Section 3(1)(R) r/w 3(2)(v) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On the same breadth, the petitioner ought to have been acquitted from all the charges. On the contrary, the petitioner was convicted by the trial Court. He further submitted that the trial Court had already suspended the sentence, hence, prays for suspension of sentence.

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that based on the above complaint, a case was registered by the respondent Police in Crime No.1018 of 2021 under Girl Missing on 21.10.2021 at about 19.00 hours by the Sub Inspector of Police and the same was submitted before the Inspector of Police, All Women Police Station and she took up the case for investigation. He further submitted that during the course of investigation, PW7 went to the scene of occurrence and prepared observation mahazar (Ex.P3) and rough sketch



(Ex.P6) in presence of witnesses and examined the witnesses and recorded their statements. On 07.12.2021, at about 11.00 hours, after getting the statement from the victim girl and her father, Section was altered to 7 r/w 8 of POCSO Act, 2012 and Sections 3(1)(r) of SC/ST (POA) Act and Section 506(i) IPC. On 07.12.2021, the petitioner was arrested and confession statement was recorded in presence of witnesses and sent for judicial custody. He further submitted that after completion of investigation, based on the statements of witnesses, material evidence, on 26.02.2022, charge sheet against the petitioner before the Trial Court. The deposition of the prosecution witnesses is as follows:

Rank of Witnesses	Witnesses	Gist of the Deposition
P.W.1	Victim girl	Deposed the narrated facts of the case
P.W.2	Tr.Gopal/father of the victim /defacto complainant	Deposed that corroborated the same version of P.W.1 and lodged a complaint before the respondent police Ex.P.1 – complaint
P.W.3	Tr.Thangavel/mahazar witness	Deposed that attested in the observation mahazar and rough sketch Ex.P.3 & 6
P.W.4	Dr.Dhurvaragesh Apparaj/ Thirupur	Deposed that conducted examination of the accused and issued Medical



Rank of Witnesses	Witnesses	Gist of the Deposition
	Medical College Hospital	Memo Ex.P.4 & A.R./Ex.P5
P.W.5	Tmt.Vijayalakshmi/ Inspector of Police AWPS, Kangeyam	Deposed that took up the case for investigation, went to the place of occurrence and prepared observation mahazar and rough sketch in the presence of witnesses and enquired the witnesses and recorded their statements.
P.W.6	Tmt.Ramadevi/Inspector of Police	Deposed that took up the case for further investigation and sent the girl for medical examination and @ the offences from Girl Missing to Sec.7 r/w. 8 POCSO, Sec. 3(1)(r) SC/ST (POA) Act 2015 and 506(i) IPC and arrested the accused. Filed the altered report Ex.P7
P.W.7	Tr.Kumaresan Deputy Superintendent of Police	/ Deposed that took up the case for further investigation and relied upon the rough sketch, observation mahazar, the statements recorded by P.W.5 & 6. Recorded the confession statement of the accused, sent the accused to judicial custody. Given requisition to Tahsildar for Kangeyam for Community Certificate of victim and the accused and forwarded the victim to JM, Kangeyam for recording 164 statement of the victim through video conferencing with the assistance of Tr.Suresh Babu,



Rank of Witnesses	Witnesses	Gist of the Deposition
		Videographer and received a certificate in support of electronic evidence under Sec.65B Indian Evidence Act. After completion of investigation, filed a charge sheet against the accused before the competent court in accordance with law.

8.Finding force and arguable points in the appeal, this Court is inclined to suspend the sentence of the trial Court. Accordingly, 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.

9.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 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.



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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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