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*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2024

CORAM:

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

Crl.M.P.No.59 of 2024
in
Crl.A.No.15 of 2024

Kuttiyandi

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Thavalakuppam Police Station,
Pondicherry.
[Crime No.9 of 2021]

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed upon the petitioner/appellant herein by the Special Court judge, Pondicherry in Special S.C.No.47 of 2021 dated 04.04.2023 and enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.Prakash Adiapadam

For Respondent : Mr.K.S.Mohandas assisted by
Ms.K.S.Dhanalatchomy,
Public Prosecutor [Pondicherry]



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*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Special Judge, Pondicherry by judgment dated 04.04.2023 made in Special S.C.No.47 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in Spl.S.C.No.47 of 2021 and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment for the offence under Section 10 of Protection of Children from Sexual Offence Act, 2012 [POCSO Act] and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment for the offence under Section 506(i) IPC. Both the sentences shall run concurrently. Against which, the present appeal is filed along with



*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

suspension of sentence.

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3.The case of the prosecution is that on 05.02.2021, P.W.11/Sub-Inspector of Police received a proceedings of Child Welfare Committee, Puducherry dated 05.02.2021 and a complaint given by one Palanivel/defacto complainant, who is residing at 1st Cross, Sabthagiri Nagar, Thanampalayam, Thavalakuppam, Puducherry. The petitioner, who is the defacto complainant's friend made improper touch on the private parts of the defacto complainant's daughter with sexual intention, who is aged about 10 years and thereby committed the offence of sexual assault on the victim child. Based on the complaint, a case in Crime No.9 of 2021 under Section 8 of POCSO Act registered and took up for investigation. During the course of investigation, P.W.12/Investigating Officer visited the scene of occurrence with Police photographer, examined the witnesses and recorded the statement of witnesses. It is revealed that in the month of May 2019, the said improper touch with sexual intent was made by the petitioner. During that period, whenever he took the defacto complainant's minor daughter and son in his bike to drop them in School, he would ask the



*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

victim girl to sit in front of the bike and would make improper moves and touches on her. The victim girl confirmed the act of the petitioner confirming the report of the Child Welfare Committee. Thereafter, the victim girl was produced before the Magistrate, there too, the victim girl confirmed the act of the petitioner. On recording of statement and collection of documents, investigation completed and charge sheet filed before the Trial Court.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.12 examined, Ex.P1 to Ex.P8 and M.O.1 marked. On the side of the petitioner/accused D.W.1 and D.W.2 examined, Ex.D1 to Ex.D4 and M.O.1 marked. On conclusion of the trial, the Trial Court convicted the petitioner/accused as stated above.

5.The contention of the learned counsel for the petitioner is that the defacto complainant is a Law Graduate, enrolled himself as an Advocate and thereafter joined the Police Department. The defacto complainant and his wife had a estranged relationship and got separated. The defacto



*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

WEB COPY

complainant had a doubt that the petitioner was in friendly terms with his wife and that is the reason, she left the matrimonial home. Further, his children, namely, the victim girl and his son are residing with the defacto complainant, hence he tutored his daughter and using the victim girl, lodged a false complaint against the petitioner. The Trial Court failed to find out the real facts but had merely gone on the false statement made by the defacto complainant and the victim girl, who had given a tutored version. In this case, the victim girl was examined as P.W.2 and the paternal grandmother of the victim girl was examined as P.W.3. The specific case of the complainant is that though the occurrence took place in the year 2019, he was not aware of the same and it was P.W.6/Manivannan who informed the defacto complainant that his wife had informed about the improper touch made by the petitioner on the victim girl. But P.W.6 not supported the case of the prosecution. P.W.5/estranged wife of the defacto complainant has categorically stated that during the year 2019 she was residing along with the defacto complainant and the victim girl, at that time, there was no such incident took place. Further, she had also stated that when they were together, the defacto complainant in a clandestine manner



*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

obtained an exparte divorce giving false particulars as though P.W.5 deserted the matrimonial home. This would clearly prove that to what extent the defacto complainant can manipulate and turn things in his favour.

6.Learned counsel for the petitioner submitted that in this case, admittedly there is a strained relationship between the defacto complainant/P.W.1 and P.W.5. It is further seen that these facts have been made by way of a complaint to the Child Welfare Committed by P.W.5 which is marked as Ex.D1. P.W.4 is the wife of the petitioner/accused and she also not supported the case of the prosecution. P.W.7 is the Field Worker of Child Welfare Committee who states that on the orders of the Chairman, Child Welfare Committee, statement from the victim girl was recorded. P.W.8/Chairman, Child Welfare Committee confirms about the complaint given by P.W.5/wife of the defacto complainant about the strained relationship and the complaint lodged by her against the defacto complainant. These facts have not been considered by the Trial Court and merely on the evidence of P.W.1 and P.W.2, the Trial Court failed to look into fact that P.W.1 is a sly person who obtained divorce with criminal



*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

WEB COPY

intention when his wife was with him and thereafter, chased her away and now she is staying in the hostel. He would submit that the defacto complainant took advantage of the tender age of the minor girl and lodged a complaint after two years after the matrimonial dispute between P.W.1 and P.W.5 reached a point of no return. He would further submit that in this case D.W.1 is an Engineer by profession who downloaded the conversation between the defacto complainant and his wife challenging that he would use his daughter to pin down the petitioner and M.O.1 is the DVD containing the recordings along with Ex.D3/65B Certificate. Further, D.W.2/Child Protection Officer was also examined but the Trial Court had not considered any of these witnesses. It is not in dispute that the petitioner and the defacto complainant were good friends, they were together and visiting each others house. The petitioner is in the habit of dropping the defacto complainant's daughter and son in the School. Further, at the time of wiping the child after bath it is quite natural that the towel will go around the body and these two aspects now been projected against the petitioner as though he made improper touch with sexual intent and that too, after two years of the incident.



*Crl.M.P.No.59 of 2024
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WEB COPY

7.The learned Public Prosecutor [Pondicherry] appearing for the respondent Police submitted that on 05.02.2021, at about 08.00 p.m., received the complaint from the Child Welfare Committee which was lodged by defacto complainant alleging that his friend touches the private parts of his daughter with sexual intention. Based on the complaint, a case in Crime No.9 of 2021 for offence under Section 8 of the Protection of Children from Sexual Offence Act, 2012 was registered. During the course of investigation, the respondent Police visited the scene of occurrence, examined the witnesses, recorded their statements and altered the Sections to 10 of the Protection of Children from Sexual Offence Act, 2012. On completion of investigation, charge sheet filed before the trial Court and the same was taken on file as Special S.C.No.47 of 2021. On conclusion of trial, the trial Court convicted the petitioner as stated above. He further submitted that the petitioner was working in Electricity Department at Puducherry. The evidence of the victim girl is in conformity to the statement recorded under Section 161 Cr.P.C. Hence, prays for dismissal of this petition.



*Crl.M.P.No.59 of 2024
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WEB COPY

8.Considering the submissions made and on perusal of the materials, it is seen that the petitioner and the defacto complainant were good friends till the defacto complainant and his wife developed matrimonial dispute between them and got separated. The petitioner was suspected to be supporting P.W.5 against the defacto complainant and thereafter, for the incident which took place in the year 2019, complaint was lodged in the year 2021. The defacto complainant was an Advocate for quite sometime and thereafter joined the Police Department cannot be lost sight of, in view of the evidence of P.W.5 and M.O.1. Further, P.W.4 and P.W.6 not supported the case of the prosecution thorough whome it is projected that the defacto complainant came to know about the incident. In the absence of motive and ill-feeling between the petitioner and the defacto complainant with regard to the petitioner's involvement and role in the dispute between P.W.1 and P.W.5, the above incident would have passed over as normal conduct. These factors have not been considered by the Trial Court. In view of the same, the conviction of the petitioner needs re-look and re-consideration. Hence, this Court is inclined to suspend the Substantive



*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

Sentence of Imprisonment alone till the disposal of the appeal.

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9. 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.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge, Pondicherry.

10. Further, the petitioner shall appear before the Trial Court on the first working day 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 Miscellaneous Petition is ordered.

07.02.2024

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*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

Note: Issue order copy on 08.02.2024

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To

- 1.The Inspector of Police,
Thavalakuppam Police Station,
Pondicherry.
- 2.The Special Judge,
Pondicherry.
- 3.The Superintendent,
Central Prison, Kalapet,
Pondicherry.
- 4.The Public Prosecutor,
High Court, Madras.



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*Crl.M.P.No.59 of 2024
in Crl.A.No.15 of 2024*

M. NIRMAL KUMAR, J.

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**Crl.M.P.No.59 of 2024
in
Crl.A.No.15 of 2024**

07.02.2024