



CRL MP(MD) No.9656 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Third day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.9656 of 2024

in

CRL A(MD) No.748 of 2024

KAATHAIYAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE,
KUMBAKONAM ALL WOMEN POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO. 2 OF 2015)

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the conviction and the sentence passed by the learned Mahila Court (Fast Track Mahila Court) Thanjavur dated 24.07.2019 made in Spl.S.C.No. 02 of 2016.

Prayer in CRL A(MD) No.748 of 2024 :

To call for the records and set aside the conviction and sentence passed by the learned Mahila Judge (Fast Track Mahila Court), Thanjavur dated 24.07.2019 made in Spl.S.C.No.02 of 2016.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.C.KARTHIKEYAN, Advocate for the petitioner and of MR.M.SAKTHI KUMAR, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed



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by the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Thanjavur, dated 24/07/2019, in Special SC No.2 of 2016 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that the victim girl was studying 4th Standard. She was staying with the maternal grand-mother's house and was attending the school. Some 2 years prior to the occurrence, the de-facto complainant went to the house of the mother to see the victim girl and other childrens. At that time, the accused took the victim girl in a nearby place and committed sexual assault by penetrative. Upon the occurrence, a case in Crime No.2 of 2015 was registered by the respondent police for the offences under sections 8 and 9(m) of the POCSO Act.

3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in Special SC No.2 of 2016 by the Sessions Judge, Mahila Court (Fast Track Mahila Court), Thanjavur.

4.Before the trial court, on the side of the prosecution, 16 witnesses were examined and 9 documents were marked. On the side of the accused, no oral and documentary evidence was adduced.

5.At the conclusion of the trial process, the trial court found the petitioner guilty



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of the offence and sentenced him to undergo 10 years RI and to pay a fine of Rs.1,000/-, in default to undergo 3 months SI for the offence under section 6 r/w 5(m) of POCSO Act, 2012.

6.Challenging the conviction and sentence, this appeal is preferred by the appellant. Pending appeal, this criminal miscellaneous petition was taken out by the petitioner seeking suspension of sentence.

7.Heard both sides.

8.The learned counsel appearing for the petitioner would submit that as per the case of the prosecution, no external injuries were found on the private part of the victim girl; the eye witnesses namely PW7 and PW8 turned hostile and did not support the case of the prosecution; The de-facto complainant himself admits that there was a civil dispute between them; In view of the inconsistency in the prosecution case, he is entitled for suspension of sentence.

9.Per contra, the learned Government Advocate (Criminal side) would submit that medical evidence clearly supported the case of the prosecution; civil dispute alleged to have been existing between the parties are not established. So, no indulgence need be shown.

10.We will straightaway go to the evidence of the victim girl. She would say some of things in a specific manner; the language itself shows that the petitioner



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herein committed sexual assault upon the victim girl. PW16 Doctor, who examined the victim girl has stated that her hymen was not intact and 2 mm holes were found in the private part and there is no external injuries. Under these circumstances, whether the above said allegation and charge of sexual assault are established are all matters for consideration at the time of hearing the main appeal.

10. But prima facie the evidence of the victim girl is against the petitioner. Whether her evidence can be believed in view of the eye witnesses namely PW7 and PW8 turned hostile, the property dispute between the PW2's father and the accused are all matters for consideration at the time of hearing the main appeal. So, this court is not inclined to exercise the discretionary power in favour of the petitioner.

11. In the result, this criminal miscellaneous petition is dismissed.

sd/-

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Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SESSIONS JUDGE, MAHILA COURT (FAST TRACK MAHILA COURT),
THANJAVUR.

2 THE INSPECTOR OF POLICE,
KUMBAKONAM ALL WOMEN POLICE STATION,
THANJAVUR DISTRICT.



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3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

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4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.9656 of 2024
in
CRL A(MD) No.748 of 2024
Date :23/09/2024

RS/JGB/SAR-(17.10.2024) 5P 5C
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