



CRL.A(MD).No.955 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated:17.04.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

CRL.A(MD).No.955 of 2023  
and  
CRL.MP(MD).No.15058 of 2023

Kannan

...Appellant/Sole Accused

Vs.

State Rep. By

The Inspector of Police,

Vathalakonda Police Station,

Dindigul District.

(Crime No.1347 of 2020)

...Respondent/Complainant

**Prayer :** This Criminal Appeal is filed under Section 374(2) of Cr.P.C. to call for records connected with the judgment rendered by the Sessions Judge, Fast Track Mahila Court, Dindigul in Special S.C.No.48 of 2023 dated 02.09.2023 and set aside the same and consequently, acquit the appellant.



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For Appellant : Mr.S.Vellaichamy

For Respondent : Mr.B.Nambi Selvan,  
Additional Public Prosecutor

### **JUDGMENT**

This appeal has been filed to set aside the order passed by the Sessions Judge, Fast Track Mahila Court, Dindigul in Special S.C.No.48 of 2023 dated 02.09.2023.

2.The appellant who is the sole accused in Special S.C.No.48 of 2023 on the file of the learned Sessions Judge, Fast Track Mahila Court, Dindigul, has filed this appeal challenging the conviction and sentence imposed for the offences under Sections 363 of IPC and 6 of POCSO Act, 2012, by the impugned order dated 02.09.2023.

### **3. Prosecution Case:-**

According to the prosecution, at the time of occurrence, the victim girl was a minor and her date of birth is 19.04.2004. In this case, the victim girl has informed her parents that she was in love with the



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petitioner/accused. When the parents of the victim girl reprimanded her, she informed the same to the appellant. Immediately, the appellant eloped with the victim girl making a promise to marry her and treat her as his wife. On the basis of the promise and assurance, the victim girl left her home on 03.10.2020, around 14.00 hours. The appellant took her to the Ukkadam and then, he settled at Chinnakalaiyamputhur, and stayed in a rental house and worked in the brick Kiln situated in the said village. Thereafter, P.W.1 father of the victim girl gave a complaint to the respondent Police and the same was registered in Crime No.1347 of 2010 as “girl missing” and thereafter, the respondent Police altered the section into 5(1) r/w 6 of POCSO Act and 363 of IPC. The investigating officer conducted the investigation and arrested the accused and collected the materials filed the final report before the learned Sessions Judge, Fast Track Mahila Court, Dindigul. The same was taken on file in Special S.C.No.48 of 2023.

3.1.After taking cognizance, the learned trial Judge framed the charges against the appellant for the offences under Sections 363 of IPC and Section 6 of POCSO Act, 2012. On the basis of charges, he questioned the appellant and the appellant pleaded not guilty and hence, the trial was



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conducted and the prosecution adduced the evidence of P.W.1 to P.W.9 and marked the documents under Ex.P1 to Ex.P.20.

3.2. The learned trial Judge, considered the same, examined the appellant under Section 313 Cr.P.C., by putting the incriminating material available against him and he denied the same and hence, the case was posted for examination for the defence witness. On the side of defence, two witnesses were examined as D.W.1 and D.W.2 and no document was marked.

3.3. The learned trial Judge after considering the oral and documentary evidence, convicted the accused under Sections 363 IPC and 6 of POCSO Act, 2012, by the impugned order dated 02.09.2023 and also sentenced him to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- and in default, to undergo 3 months Simple Imprisonment for the offence under Section 363 IPC and sentenced him to undergo 20 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo 6 months Simple Imprisonment for the offences under Section 6 of POCSO Act, 2012.



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4. Aggrieved over the same, the appellant filed this appeal on the grounds stated in the memorandum of grounds of appeal.

5. During the pendency of the suspension of sentence, the victim appeared before this Court with her child and stated that both the appellant and she loved each other and her mother refused to accept the same and hence, she went along with the appellant and the appellant married her and he arranged a separate house and maintained her by doing coolie works in the Brick kiln and after the registration of the criminal case on the file of the respondent, she returned to the Police Station along with appellant and her parents refused to accept the same and hence, she was confined in the observation home. She attained majority on 20.01.2023. After the appellant came out on bail, he married her and out of the wedlock, a female child was born on 06.01.2024. In the mean time, the learned trial Judge convicted him by passing the impugned order on 02.09.2023. Due to the conviction and confinement in prison from the date of the judgment, she was not able to meet her daily livelihood and she and her child are under starvation and hence, she seeks to accept the compromise memo and compound the offence. Her father also present along with her. The appellant also submitted the affidavit before this Court, stating that he



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agreed to lead a happy matrimonial life along with their three months old baby. He also stated that after the conviction, the victim frequently visited the jail to see him. He also submitted that knowing the love affairs between the victim and himself, the parents of the victim made arrangement for her marriage with another person. In the said circumstances, without any other option, both left the village and she started living with him and he was working in a brick kiln and took care of her. Therefore, there was no intention to cheat her. After she becoming major, he married her. Therefore, he pleaded that he acted with all *bona fides* and also undertakes to keep his wife and his female child safe all his life. He also appeared through video conference from jail and affirmed the contents of the sworn affidavit produced before this Court and reiterated the above statement.

6.The learned Additional Public Prosecutor submitted that it is true that the victim married the appellant and also female child was born out of wedlock and they are inclined to compound the offence. But, there is no provision to compound the offence. He also submitted that the appellant committed the offence of aggravated penetrative sexual assault and hence, he did not deserve any sympathy.



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7.This Court considered the rival submissions and also perused the materials and the impugned order and the precedents relied upon by both parties.

8.Now the question in this case is whether the conviction and sentence passed against the appellant by the Court below under Sections 363 of IPC and 6 of POCSO Act, 2012, is in accordance with law?

9.The said submission of the learned Additional Public Prosecutor that the appellant did not take any steps after the occurrence deserves to be rejected. His specific case is that he loved the victim girl. The victim's mother and father refused to accept the affair. But, they made arrangement for the marriage of the victim with another person. Therefore, the situation necessitated elopement with the victim girl. The subsequent development that a female child was born on 06.01.2024 after a lawful marriage taking place on attaining the majority of the victim girl on 20.01.2024 has to be taken into consideration. In the said circumstances, this Court feels that there are *bonafides* in the submission of the both the victim and the appellant.



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10. This Court is duty bound to consider the interest of the small child. The child has right to live with dignity. It includes the social status of his father. If his father is allowed to undergo the sentence in spite of the above marriage, the development of the child with the stigma attached with the conviction of her father would get affected. There is a vast difference between the growth of the child as a son of convict and a child growing under normal circumstances. Allowing the wife without sufficient means to meet her livelihood would lead to vagrancy and destitution. As per the evidence of the victim, the appellant took her and worked in the Brick Kiln and provided nourishment to the victim girl with responsibility. Hence, this Court is duty bound to find a way to redress the grievance from all sides. Therefore, this Court feels that this is an extraordinary circumstance in the extraordinary situation of the case and the Constitutional Court has power to mould the Law so as to serve the needs of time in order to achieve a harmonious adjustment in human relations by acquitting the appellant and further, prevent the vagrancy and destitution adopting the law laid down by the Hon'ble Supreme Court in the following cases:



|                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Lord Denning once said:</b></p>                                                                                                                                                                                        | <p><b>B.P.Achala Anand v. S. Appi Reddy, (2005) 3 SCC 313</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p><b>Prithipal Singh v. State of Punjab: 2012(1)SCC10</b></p>                                                                                                                                                                                                                         |
| <p><i>“Law does not stand still; it moves continuously. Once this is recognised, then the task of a judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time.”</i></p> | <p>9.Further, the Hon'ble Supreme Court in held as follows:<br/> <i>“Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice. The law does not remain static. It does not operate in a vacuum. As social norms and values change, laws too have to be reinterpreted, and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts.</i></p> | <p><i>“50.Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures.”</i></p> |

11.This Court also considered and inclined to follow the judgment of this Court rendered in similar circumstances in Crl.A.(MD).No.247 of 2018 and the relevant paragraphs No.4 to 6 are extracted hereunder:



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*4. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of Ramgopal and others vs. The State of Madhya Pradesh reported in 2021 (6) CTC 240 and the relevant paragraphs are extracted hereunder:-*

*18. It is now a well crystalized axiom that the plenary jurisdiction of this Court to impart complete justice under Article 142 cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sublime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.*



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*19. We thus sum up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.*

*20. Having appraised the aforestated parameters and weighing upon the peculiar facts and circumstances of the two appeals before us, we are inclined to invoke powers under Article 142 and quash the criminal proceedings and*



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*consequently set aside the conviction in both the appeals. We say so for the reasons that: Firstly, the occurrence(s) involved in these appeals can be categorized as purely personal or having overtones of criminal proceedings of private nature; Secondly, the nature of injuries incurred, for which the Appellants have been convicted, do not appear to exhibit their mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest; Thirdly, given the nature of the offence and injuries, it is immaterial that the trial against the Appellants had been concluded or their appeal(s) against conviction stand dismissed; Fourthly, the parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s); Fifthly, the occurrence(s) in both the cases took place way back in the years 2000 and 1995, respectively. There is nothing on record to evince that either before or after the purported compromise, any untoward incident transpired between the parties; Sixthly, since the Appellants and the complainant(s) are residents of the same village(s) and/or work in close vicinity, the*



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*quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any illwill and have no vengeance against each other; and Seventhly, the cause of administration of criminal justice system would remain unaffected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the Appellants; more so looking at their present age.*

*5. In view of the aforesaid, the judgment in Spl.CC.No.45 of 2015 dated 19.02.2018 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal is set aside. The appellant/accused is acquitted of all charges in Spl.CC.No.45 of 2015 dated 19.02.2018 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.*

*6. It is made clear that if the appellant leaves the victim anytime in lurch, the conviction and sentence imposed by the trial court shall stand automatically restored and the respondent*



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*can secure the appellant to serve the remaining period of sentence.*

12. Accordingly, the appeal is allowed in the following terms:

*9.1. The judgment passed by the Sessions Judge, Fast Track Mahila Court, Dindigul in Special S.C.No.48 of 2023 dated 02.09.2023 is set aside .*

*9.2. The appellant is acquitted from all the charges in Special S.C.No.48 of 2023, dated 02.09.2023 passed by the Sessions Judge, Fast Track Mahila Court, Dindigul.*

*9.3. Fine amount paid by the appellant shall be refunded to the appellant forthwith.*

*9.4. Bail bond executed by the appellant shall stand cancelled.*



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*9.5.It is made clear that if the appellant leaves the victim any time in lurch, the conviction and sentence imposed by the trial Court shall stand automatically restored and the respondent can secure the appellant to serve the remaining period of sentence.*

Consequently, connected criminal miscellaneous petition is closed.

**17.04.2024**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
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***Note: Issue order copy on 30.04.2024***



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To

1. The Sessions Judge,  
Fast Track Mahila Court,  
Dindigul.
2. The Superintendent,  
Central Prison,  
Madurai.
3. The Inspector of Police,  
Vathalakundu Police Station,  
Dindigul District.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
5. The Section Officer,  
Criminal Section(Records),  
Madurai Bench of Madras High Court, Madurai.



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**K.K.RAMAKRISHNAN,J.**

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Order made in  
**CRL.A(MD).No.955 of 2023**

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