



Cr1.MP(MD)No.16383 of 2023 in Cr1.A(MD)No.939 of 2023

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G.ILANGOVAN, J

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This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioners in Special SC No.95 of 2023, dated 21/09/2023 passed by the Sessions Judge, Special Court for POCSO Act Cases, Dindigul and enlarge them on bail pending disposal of the Criminal Appeal.

2.The case of the prosecution in brief:-

The de-facto complainant is the Uncle of the victim girl. On 22/01/2021, the victim girl along with her sister came to her Thottam. At about 05.00 pm, they told that on 20/01/2021, when she was in her house, in the night, the first accused Perumal came to the house and lied by the side of the victim girl and caused penetrative sexual assault with finger. On hearing the noise of the victim, the mother of the victim and her brother picked up quarrel with A1 and A2. A2 misbehaved with the victim girl's mother also. On hearing the noise of the persons, neighbours gathered. On the basis of the occurrence, he lodged a complaint on 23/01/2021 before the Vadamadurai Police station. Upon which, a case in Crime No.57 of 2021 was registered by the respondent police for the offences under sections 147, 447, 323, 354, 506(ii) IPC r/w section 3(b), 4 of POCSO Act, 2012.



Cr1.MP(MD)No.16383 of 2023 in Cr1.A(MD)No.939 of 2023

3.After completion of the investigation, the respondent police filed a final report and the same has been taken cognizance in Special SC No.100 of 2021 by the Sessions Judge, Special Court (POCSO Act cases), Dindigul.

4.On the side of the prosecution, 11 witnesses were examined and 15 documents were marked. On the side of the accused, 5 witnesses were examined and 11 documents were marked.

5.At the conclusion of the trial process, the trial court found the 1st petitioner/A1 guilty of the offence and sentenced him to undergo 2 years RI and to pay a fine of Rs.500/-, in default to undergo 3 months SI for the offence under section 450 IPC; sentenced to undergo 20 years RI and to pay a fine of Rs.2,000/- in default to undergo 1 year SI for the offence under section 6 of POCSO Act; and sentenced to undergo one year RI and to pay a fine of Rs.10,000/-, in default to undergo one month SI for the offence under section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. Similarly, the 2nd petitioner/A2 was sentenced to undergo 1 year RI and to pay a fine of Rs.500/- in default to undergo 1 month SI for the offence under section 451 IPC; and sentenced to undergo 3 years RI and to pay fine of Rs.500/-, in default to undergo 1 month SI for the offence under section 354(B) IPC; and also



Cr1.MP(MD)No.16383 of 2023 in Cr1.A(MD)No.939 of 2023

sentenced to undergo 3 years RI and to pay a fine of Rs.10,000/- in default to undergo 1 month SI for the offences under section 4 of the Tail Nadu Prohibition of Harassment of Women Act, 1998. Both were directed to run the sentences concurrently.

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

7.Heard both sides.

8.The learned counsel appearing for the petitioners would submit that there was previous enmity between the victim girl's family and the accused; the date of the occurrence is stated to be 20/01/2011. Before that, on 17/01/2021 a case in Crime No.45 of 2021 was registered against Thangapandi, Bommi Naicker and others. On the basis of the complaint given by Bommi Naicker, s/o.Chinnaiya Naicker. In the complaint, it has been stated that there was enmity between A6 to A8 namely Bommabasamy, Palanisamy and Jayakannan and the complainant's mother-in-law over the settlement of the properties. On the particular date I.e., on 20/11/2011 at 12.00 noon, all the persons trespassed into the house and caused assault to his mother-in-law. On



Cr1.MP(MD)No.16383 of 2023 in Cr1.A(MD)No.939 of 2023

that basis, the above said case was registered. As mentioned above, the present occurrence said to have been taken place on 20/01/2021 just 3 days of the occurrence in Crime No.45 of 2021. On 21/01/2021, Perumal, S/o.Bommanasamy lodged a complaint stating that over the issue of the property, Bommanasamy was severally assaulted. Over which, Crime No.54 of 2021 was registered. On 20/01/2021, again at about 11.30 am, the accused trespassed into the house and caused assault to the family members and damaged the household articles worth about Rs.2,00,000/- and stolen away 4 cows. In between the two occurrence, now the present subject occurrence said to have been taken place.

9.By pointing out these two FIRs, the learned counsel appearing for the petitioners would submit that probability of this occurrence said to have been taken place is highly doubtful and remote. Because of the enmity only, the present case has been foisted. He would further submit that the conduct of the parents of the victim is very unnatural, does not satisfy the requirement of the conduct of an ordinary prudent man. The reason for this argument is that the complainant has stated in his evidence that after the above said occurrence, fearing over the quarrel the victim girl's mother and her brother came to his place by walk, stayed in the midway for one day. They



were searched brought by his brother. So, the argument of the petitioners appears to be appreciable.

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10.The learned Additional Public Prosecutor would submit that the victim statement alone is sufficient enough to prove the case of the prosecution and the medical evidence also supported.

11.Whether because of the enmity, the present complaint has been given as an act of vengeance is a matter for consideration in the main appeal.

12.Considering the above said facts and the period of incarceration and also considering the fact that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future, this criminal miscellaneous petition is **allowed** and the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that they shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties each for a like sum to the satisfaction of the Sessions Judge, Special Court (POCSO Act cases), Dindigul and on further condition that the petitioners shall appear



Cr1.MP(MD)No.16383 of 2023 in Cr1.A(MD)No.939 of 2023

before the said Court on the first working day of every month at 10.30 am until further orders.

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12/09/2024

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Sessions Judge,
Special Court for POCSO Act cases,
Dindigul.
- 2.The Inspector of Police,
Vadamadurai Police Station,
Dindigul.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent,
Central Prison,
Madurai.



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