



Crl.M.P.(MD)No.6348 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24-02-2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.6348 of 2024

in Crl.A.(MD)No.542 of 2024

Veerapandi
S/o.Ramesh,
Kaliyammankovil Street,
Adanjur, Budalur Taluk,
Thanjavur District.

Petitioner(s)

Vs

The Inspector of Police
All Women Police Station,
Thiruvaiyaru,
Thanjavur District.

Respondent(s)

For Petitioner(s):

Mr.D.Rameshkumar,
Advocate

For Respondent(s):

Mr.P.Kottaichamy,
Government Advocate (Crl. Side)

ORDER

The petitioner is an accused in Spl.S.C.No.101 of 2022 on the file of the learned
Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act,

<https://www.mhc.tn.gov.in/judis>



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Thanjavur. After the trial, the trial Court, by its Judgment dated 22.08.2023, found the
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petitioner guilty for the offence under Section 6 of POCSO Act and convicted and
sentenced him as follows:

(i) for the offence under Section 6 of POCSO Act, to undergo 20 years rigorous imprisonment and to pay a fine of Rs.20,000/-, with the default sentence of one year rigorous imprisonment.

Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A.(MD)No.542 of 2024 along with the petition for suspension of sentence. The Criminal Appeal was admitted by this Court on 25.06.2024.

2. The learned counsel appearing for the petitioner submits that the age of the victim girl was more than 18 years at the time of occurrence. But, the prosecution has filed to prove the age of the victim girl by adducing proper evidence and they have produced the course certificate given by the Headmistress of the School that was taken into consideration that the age of the victim girl was 17 ½ years and the trial Court has convicted the petitioner under Section 6 of the POCSO Act. The learned counsel, by relying on a Judgment of the Division Bench of this Court in Crl.A.(MD) No.518 of 2019 dated 18.10.2022, submits that the document relied on by the prosecution is not a document, based on which, it cannot be considered that the age of the victim girl has been proved. The relevant paragraph of the said Judgment is



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extracted as under:

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“10. It is now a settled law that insofar as ascertaining the age of the minor girl, there is no procedure under the POCSO Act and hence, only the procedure prescribed under the Juvenile Justice (Care and Protection of Children) Rules, 2007, has to be followed. The law on this issue was settled by the Division Bench of this Court in Subramaniam Vs. The State reported in 2016(4) MLJ (Crl.) 385.

11. Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the Rules) reads as under :

“12. Procedure to be followed in determination of Age.:-

(1) xxxxx

(2) xxxxx

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) the matriculation or equivalent certificates, if available;

and in the absence whereof;



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(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict



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with law.

12. It is clear from the aforesaid provision that the option that is available in the preceding clause will over-ride the option expressed in the subsequent clause.

13. The prosecution has not complied with the procedure prescribed under Rule 12(3) (a) and has straight-away resorted for the option provided for medical opinion under Rule 12(3) (b) of the Rules.”

4. The learned Government Advocate (Crl. Side) by referring the evidence of P.W.5, the Headmistress of the School, submits that the course certificate relied on by the prosecution has been issued by the Headmistress of the School based on the birth Certificate.

5. This Court considered the rival submissions and perused the materials placed on record.

6. Admittedly, the victim girl is having a birth certificate. The course certificate relied on by the prosecution has been purported to be issued based on the birth certificate. However, the prosecution failed to collect the birth certificate and produce the same before the Court.

7. Considering the period of incarceration and since the petitioner is having arguable points in this appeal and there is no likelihood of listing the criminal appeal



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for final hearing in the near future, this Court is inclined to suspend the sentence imposed on the petitioner.

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8. Accordingly, the substantive sentence of imprisonment alone is suspended pending disposal of the criminal appeal and the petitioner is ordered to be enlarged on bail on executing a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Thanjavur and on further condition that the petitioner shall appear before the said Court on the first working day of every English Calender month at 10.30 a.m., till the disposal of the appeal.

sd/-
24/02/2025

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/02/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO
1 THE SESSIONS JUDGE,
PRINCIPAL SPECIAL COURT FOR
EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
THANJAVUR

2 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

<https://www.mhc.tn.gov.in/judis>



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3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
THIRUVAIYARU, THANJAVUR DISTRICT.

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

+1 CC to M/s.M.RAMESHKUMAR, Advocate (SR-1997[I] dated 24/02/2025)

ORDER
IN
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in Crl.A.(MD)No.542 of 2024
Date :24/02/2025

SA/SAR. /24.02.2025/7P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.