



Crl.M.P.(MD)No.9752 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.9752 of 2022

in

Crl.A.(MD)No.512 of 2022

Shanmugavel,
S/o.Krishnan,
Andankovil, Keelpagam,
8th Cross Street,
Karur District,
Karur.

Petitioner(s)

versus

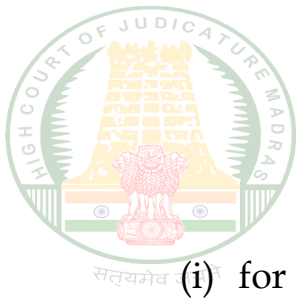
The State rep. by
The Inspector of Police,
Karur Town Police Station,
Karur District.

Respondent(s)

For Petitioner(s): Mr.E.Somasundaram, Advocate
For Respondent(s): Mr.A.S.Abul Kalam Azad,
Government Advocate (Crl. Side)

ORDER

The petitioner is the sole accused in Spl.S.C.No.3 of 2022 on the file of the learned Additional Sessions Judge (Fast Track Court), Karur. He was tried for the offence under Section 366 IPC and Section 6 of POCSO Act. In conclusion of trial, the Trial Court, by its Judgment dated 29.03.2022, found the petitioner guilty for the offence under Section 366 IPC and Section 6 of POCSO Act and convicted and sentenced him as under:



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(i) for the offence under Section 366 IPC, to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year simple imprisonment;

(ii) for the offence under Section 6 of POCSO Act, to undergo 20 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year simple imprisonment.

Challenging the Judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A.(MD)No.512 of 2022 and the same has been admitted by this Court on 08.09.2022. The petitioner has also moved this petition to suspend the sentence imposed by the trial Court.

2. The petitioner is a washerman. The allegation is that the petitioner said to have committed aggravated penetrative sexual assault on the victim boy/P.W.3. Therefore, the petitioner was prosecuted for the offence under Section 366 IPC and Section 6 of POCSO Act and was found guilty and convicted and sentenced as stated above.

3. The learned counsel appearing for the petitioner submits that the alleged occurrence had taken place on 19.09.2021, for which, a complaint was lodged on 28.09.2021. The case of the prosecution is that there was a penetrative sexual assault on the victim boy. However, the victim boy was produced before the Hospital only



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after the complaint on 28.09.2021. The Doctor/P.W.4, who examined the victim boy, has stated that there is no external injury on the victim boy. The learned counsel has also relied on the evidence of P.W.1 and P.W.2, the parents of the victim boy and submits that according to P.W.1, the father of the victim boy, he was taken to a nearby hospital, namely, Nandhini Hospital, on the next day. However, the same was disputed by P.W.2, the mother of the victim boy that the victim boy was taken to the Karur Medical College and Hospital. The victim boy has also stated that he was taken to the Karur Medical College and Hospital. However, the Doctors, who examined the victim boy either at Nandhini Hospital or Karur Medical College and Hospital were not examined by the Investigating Officer. Apart from the evidence of P.W.1, P.W.2 and P.W.3, the prosecution has also examined P.W.6, a neighbour to the petitioner. According to P.W.6, she only witnessed the occurrence and reported the same to P.W.2, the mother of the victim boy. However, this fact has not been referred by P.W.1 in his complaint, which was lodged after 9 days from the date of occurrence. Since the petitioner is in jail from the date of conviction, i.e. from 29.03.2022, he prays to suspend the sentence imposed by the trial Court.

4. The learned Government Advocate (Crl. Side) submits that the FIR is not an encyclopaedia. Therefore, the non-reference of P.W.6 in the FIR is not fatal to the case of the prosecution. However, it was mentioned that the neighbours have



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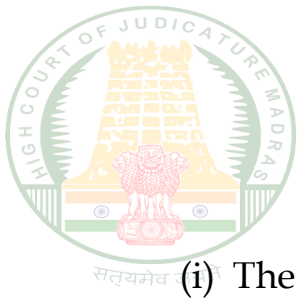
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rescued the victim boy on that day. The learned Government Advocate further submits that the surgeon, who examined the victim boy, has noted that there was a simple injury on the victim boy. The learned Government Advocate further submits that the presumption is against the accused. Therefore, the conviction and sentence imposed by the trial Court need not be interfered with.

5. The occurrence had taken place on 09.09.2021. It is alleged that the petitioner has committed aggravated penetrative sexual assault on the victim boy. The case of the prosecution is that the victim boy also suffered an injury with ousting of blood. However, he was not immediately taken to any of the Hospitals. Further, there was no explanation as to whether any treatment was provided to the victim boy immediate to the occurrence.

6. The petitioner has raised certain arguable points, which can be considered only during the final hearing of the appeal. However the appeal could not be taken up for final hearing for want of time. Considering the points raised by the petitioner, his period of incarceration and for the reasons that the appeal could not be taken up immediately, this Court is inclined to allow this petition.

7. 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 the following conditions:



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(i) The petitioner shall execute 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 Additional Sessions Judge (Fast Track Mahila Court), Karur;

(ii) The petitioner shall file an undertaking affidavit before the respondent that he will not visit the village of the victim boy till the disposal of the appeal and will not disturb the victim boy at any point of time.

(iii) the petitioner shall stay at Tiruppur and report before the Inspector of Police, Tiruppur Town Police Station, Tiruppur, daily at 10.30 a.m. for a period of one month and thereafter, report before the trial Court once in a month, i.e. on the first working day of every English Calender month at 10.30 a.m., till the disposal of the appeal.

sd/-
16/04/2025

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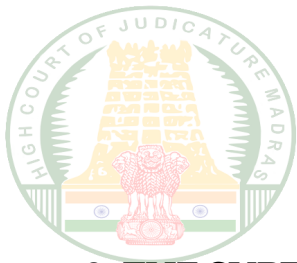
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Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

OGY

TO

1. THE ADDITIONAL SESSIONS JUDGE
(FAST TRACK MAHILA COURT), KARUR;



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2. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

3. THE INSPECTOR OF POLICE,
KARUR TOWN POLICE STATION,
KARUR DISTRICT.

4. THE INSPECTOR OF POLICE,
TIRUPPUR TOWN POLICE STATION, TIRUPPUR,

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

+1 CC to M/s.E.SOMASUNDARAM, Advocate (SR-4309[I] dated 16/04/2025)

ORDER

IN

Crl.M.P.(MD)No.9752 of 2022

in

Crl.A.(MD)No.512 of 2022

Date :16/04/2025

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