



CRL MP(MD) NO. 7360 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02-04-2025

CORAM

THE HONOURABLE MR JUSTICE B.PUGALENDHI

CRL MP(MD) NO. 7360 of 2024

in

CRL A(MD)No.356 of 2024

Joseph Jeyaseelan
S/o.Vedhamuthu, Middle Street,
Kodai Road, Dindigul District.
Now confined at
Central Prison, Madurai.

Petitioner(s)

Vs

The Inspector of Police
All women Police station,
Nilakottai,
Dindigul District.

Respondent(s)

For Petitioner(s) : Mr.G.Karuppasamypandiyam
For Respondent(s) : Mr.A.S.Abulkalam Azad
Government Advocate

ORDER

The petitioner was prosecuted by the respondent police that he has misbehaved with his daughter who was aged about 10 years. The case was registered at the instance of the petitioner's wife/PW1 in Crime.No.1 of 2023 and a final report was also filed against him and the same was tried in Spl.S.C.No.261 of 2023, on the file of the learned Special Court (POCSO Act Cases) Dindigul. The trial Court found him guilty for the offence under Section 6 of the POCSO Act and



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convicted and sentenced him to undergo 20 years of rigorous imprisonment with a fine of Rs.2,000/-, and in default, to undergo 12 months of simple imprisonment.

2. As against the conviction and sentence imposed by the trial Court, this petitioner has filed a Criminal Appeal in CrI.A(MD)No.356 of 2024 and the same has been admitted by this Court. The petitioner has also moved this application to suspend the sentence imposed on him by the trial Court.

3. The learned counsel for the petitioner submits that this petitioner is an army man. When he was in army, the petitioner's wife/PW1 had developed an illicit intimacy with her sister's husband and therefore, there was a dispute between the husband and the wife.

4. According to the learned counsel for the petitioner, the petitioner is having three children. Two children were living with him and one child was living the petitioner's wife/PW1. These two children who are living with the petitioner are also permitted to stay along with the petitioner's wife/PW1 in the weekend. The petitioner's wife/PW1 has lodged a complaint as if that this petitioner has attempted a sexual assault on one of the daughters/victim on 19.02.2023 at about 03.00 am.

5. Admittedly, the other child was also staying along with the victim child at the time of occurrence. However, the other child who was sleeping along with the victim child was not at all examined by the prosecution. The entire prosecution was

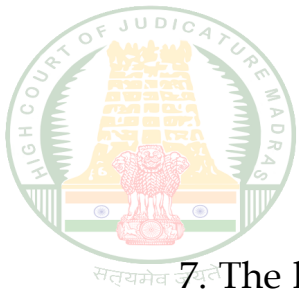


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relied on the statement of the petitioner's wife/PW1 and the victim child. The petitioner counsel has projected the case of the prosecution that it is an attempt to make the petitioner's wife/PW1 as a guardian for the property which he has already gifted in favour of the children. Since there was a misunderstanding between the petitioner and his wife both were living separately. The petitioner has also gifted a prime property at Nilakottai in favour of the three children and appointed his sister's son as the custodian of the property. Aggrieved over that, the petitioner's wife/PW1 was creating problem with the petitioner and this complaint has been foisted with the help of the child in order to put him under threat and coercion to get the properties in favour of her.

6. The learned counsel for the petitioner by referring the complaint submits that the complaint was lodged for the alleged occurrence said to have taken place on 19.02.2023. Even as per prosecution case, the children were taken by the defacto complainant for the weekends viz., saturday and sunday and would be dropped on monday. The petitioner's wife/PW1 has also admitted in her evidence that the children were dropped in the house of the petitioner only on 19.02.2023, whereas the alleged occurrence is said to have taken place at about 3.00 am in the morning on 19.02.2023. Therefore, according to him, the very veracity of the complaint is doubtful.



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7. The learned counsel for the petitioner has also pointed out that the incident is said to have taken place on 19.02.2023 and the complaint was lodged on 06.03.2023. The prosecution has also projected that the victim girl was produced before the Doctor PW11 on 06.03.2022, itself. This has also been contradicted by the evidence of the doctor that the victim girl was examined only on 08.03.2023. He also submits that this petitioner is in jail right from the date of arrest from 06.03.2023.

8. The learned Government Advocate for the respondent submits that the doctor who examined the victim child has noted that the hymen has been ruptured. The victim girl has narrated in the statement recovered under Section 164 of CrPC and also evidence as to the manner in which occurrence has taken place and therefore, according to the learned Government Advocate for the respondent, the prosecution has substantially proved the case that this petitioner is the person who abused his own daughter and he is not entitled for suspension of sentence.

9. This Court considered the rival submissions made and perused the materials available on record.

10. Admittedly, there is a dispute between the petitioner and his wife and the wife is living separately. Two children were living with the petitioner and one child with the defacto complainant. As per the evidence of the petitioner's wife/PW1, the child was returned to the house of the petitioner only on 19.02.2023 by evening. The



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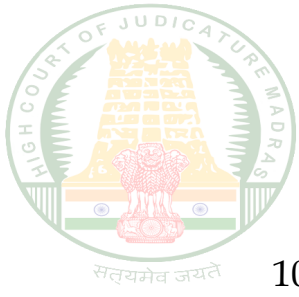
alleged offence happened to be on 19.02.2023 and the victim was handed over to the petitioner on 19.02.2023. The another child was also staying along with the victim in the house of the petitioner at the relevant point of time. The non-examination of the other child who was present along with victim at the time of occurrence is a material defect which has to be considered only at the time of final dismissal.

11. 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 and accordingly the sentence imposed by the trial Court as against the petitioner is suspended pending this appeal with certain conditions:-

- i. The petitioners shall furnish two sureties for a sum of Rs.50,000/- each for a like sum to the satisfaction of the learned

(*)Special Court for POCSO Act Cases, Dindigul;

- ii. The petitioner shall file an affidavit that he will not disturb the victim child and the defacto complainant.
- iii. The petitioner shall stay at Coimbatore and report before the Inspector of Police, Katoor Police Station, Coimbatore daily at



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10.30 am until further orders.

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sd/-
02/04/2025

(*)Corrected as per order of this Hon'ble Court in
CRL MP(MD).7360/2024 in CRL A(MD).
356/2024 Dated 15/04/2025

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16/04/2025

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

rgm

To

1. The Special Court (POCSO Act Cases),
Dindigul.
- 2 The Special Judge cum Chief Judicial Magistrate,
Thanjavur at Kumbakonam;
3. The Inspector of Police
All women Police station,
Nilakottai,
Dindigul district.
4. The Central Prison,
Madurai.
5. The Inspector of Police,
Katoor Police Station,
Coimbatore.



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6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.KARUPPASAMY PANDIYAN, Advocate (SR-3856[I] dated
03/04/2025)

ORDER
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in
CRL A(MD)No.356 of 2024
Date :02/04/2025

MK/SAR /03.04.2025 7P/8C
RS/SAR /16.04.2025 7P/8C
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