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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :13.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.MP(MD) Nos.10363 & 16529 of 2023

in

Crl.A(MD) Nos.573 & 14 of 2023

Kalimuthu

... Petitioner in
Crl.MP(MD) No.10363 of 2023

Vijai

... Petitioner in
Crl.MP(MD) No.16529 of 2023

Vs.

State of Tamil Nadu,
Rep by the Inspector of Police,
All Women Police Station,
Rajapalayam,
Virudhunagar District.
Cr.No.6 of 2018.

... Respondent in both Crl.MPs

For Petitioner : Mr.S.Mayaperumal
For Respondent : Mr.P.Kottaichamy
Government Advocate (Crl Side)
(in Crl.MP(MD) No.10363 of 2023)

For Petitioner : Mr.S.Mayaperumal
For Respondent : Mr.P.Kottaichamy
Government Advocate (Crl Side)
(in Crl.MP(MD) No.16529 of 2023)



COMMON ORDER

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The petitioners are accused 1 & 2 in Spl.S.C.No.44 of 2018, on the file of the Special Court for POCSO Act Cases, Virudhunagar at Srivilliputhur and they were found guilty by the trial Court and were convicted and sentenced as under:-

A1/Petitioner in Crl.MP(MD) No.10363 of 2023:-

Sl.No	Sections	Punishment	Fine amount	Default
1.	363 IPC	1 year Rigorous imprisonment	Rs.1,000/-	3 months simple imprisonment
2.	506(i) IPC	6 months Rigorous Imprisonment	Rs.1,000/-	1 month simple imprisonment
3.	5(I) r/w 6 of POCSO Act, 2012	10 years Rigorous imprisonment	Rs.2,000/-	1 year simple imprisonment

A2/Petitioner in Crl.MP(MD) No.16529 of 2023:-

Sl.No	Sections	Punishment	Fine amount	Default
1.	363 IPC	1 year Rigorous imprisonment	Rs.1,000/-	3 months simple imprisonment
2.	506(i) IPC	6 months Rigorous Imprisonment	Rs.1,000/-	1 month simple imprisonment
3.	5(I) r/w 6 of POCSO Act, 2012	10 years Rigorous imprisonment	Rs.2,000/-	1 year simple imprisonment



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Challenging the sentence imposed on the petitioners, they have filed Criminal Appeals in CrI.A(MD) Nos.573 & 14 of 2023 and the same were admitted by this Court on 20.07.2023 and 26.01.2023 respectively. A2 has already moved applications twice for suspension of sentence before this Court and this Court has dismissed those applications on 23.01.2023 and 19.07.2023. Now the petitioners have moved these Criminal Miscellaneous petitions to suspend the sentence imposed on them.

2. The learned senior counsel appearing for A2 by referring to the statements recorded from the witnesses PW 1, 2 and 3, under Section 164 of Cr.P.C states that there was a vague allegation as against A2. The case itself has been registered based on the commission of offence said to have been taken place on 28.02.2018. The allegation of sexual assault on 28.02.2018 is as against the accused No1 and on that day, the Accused No.2 has not committed any offence. According to him, the accused No.2 had a love affair with the victim girl and to establish the same, the accused No.2 has also produced the conversation between the victim girl and the accused No.2 in their mobile phones as documents in Exhibit D1. Therefore, according to the learned senior counsel, A2 has not caused any injury to the victim on 28.02.2018. However, he was implicated in this case, through the vague statement of the victim child.



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3.The learned counsel for accused No.1 submits that he was charged for the offence under Section 5(u) of the POCSO Act, however, he was convicted under Section 5 (1) of the POCSO Act. Even according to the prosecution, A1 has committed an offence on 28.02.2018 alone and it has not been committed repeatedly.

4.The learned Government Advocate by referring to the Birth Certificate of the victim child submits that admittedly, she was 14 years at the time of occurrence and she was subjected for sexual harassment by both the petitioners. The learned Government Advocate by referring the evidence of the Doctor states that the doctor, who investigated the victim on 28.02.2018 has noticed blood stains and injuries on the private part of the victim child. He further submits that the earlier applications for suspension of sentence have been dismissed by this Court and there is no change in circumstances.

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

6.Considering the nature and gravity of offence and also considering the fact that the petitions filed for suspension of sentence have already been decided by this Court, this Court is not inclined to entertain these petitions. Accordingly, these Criminal Miscellaneous Petitions are dismissed.



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7. Since this Court is denying the suspension of sentence and it is reported that the typed set of papers is also made available, Registry is directed to list the Criminal Appeals for final hearing.

sd/-
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/03/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

vrn

TO

1 THE JUDGE,
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

3 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, RAJAPALAYAM,
VIRUDHUNAGAR DISTRICT

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



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ORDER
IN
CrI.MP(MD) Nos.10363 & 16529 of 2023
in
CrI.A(MD) Nos.573 & 14 of 2023

Date :13/03/2025

MK/SKN/SAR /26.03.2025 6P/5C

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