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Crl.A. No. 1352 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2026

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A. No. 1352 of 2023
& Crl.M.P.No.18623 of 2023

Arunkumar

..Appellant/Accused

Vs.

The State Rep. By its
The Inspector of Police,
Avinashipalayam Police Station,
Tiruppur District,
Crime No.45 of 2022

..Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence against the appellant in Spl.S.C.No.107 of 2022 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur dated 01.11.2023 and allow this appeal.

For Appellant	::	Mr.P.Thinesh
For Respondent	::	Mr.S.Raja Kumar
		Additional Public Prosecutor



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J U D G M E N T

The appeal challenges the conviction and sentence imposed on the appellant for the offences under Section 366 of IPC and under Section 9 of Prohibition of Child Marriage Act.

2.(i) The case of the prosecuton is that the appellant and the victim, aged about 17 years at the time of occurrence, had a love affair; that on 27.01.2022, the appellant called the victim and promised to marry her; that he took the victim to Tiruppur, married the victim girl, took a house on rent and thereafter, committed penetrative sexual assault

(ii) On the complaint given by PW2, the mother of the victim, (which was originally registered for 'girl missing'), an FIR (Ext.P10) was registered by PW8 in Crime No. 45 of 2022. The investigation was conducted by PW9 and thereafter, by PW10. PW10 filed the final report for the offences under Secton 366, 5(l) r/w 6 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act against the appellant. The charges



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under Section 366 of IPC, Section 9 of the Prohibition of Child Marriage Act and 5(l) r/w 6 of the POCSO Act were framed against the appellant and when questioned, the appellant pleaded 'not guilty'.

(iii) The prosecution examined 10 witnesses and marked 15 documents to prove its case. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witness nor marked any documents.

(iv) On appreciation of oral and documentary evidence, the trial Court found that the petitioner was not guilty of the offence under Section 5(l) r/w 6 of the POCSO Act as the victim girl turned hostile to the prosecution in respect of penetrative sexual assault. The trial Court found the appellant guilty of the offence under Section 9 of the Child Marriage Act and Section 366 IPC and sentenced him to undergo 3 years RI and to pay a fine of Rs.1000/-, (id), to undergo 3 months RI for the offence under Section 366 of IPC and also sentenced him to undergo 1 year RI for the



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offence under Section 9 of the Prohibition of Child Marriage Act. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard Mr.P.Thinesh, the learned counsel appearing for the appellant/accused, and Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

4. Mr.P.Thinesh, the learned counsel for the appellant submitted that the victim was born on 15.12.2004 and was 17 years and 1 month old at the time of occurrence; that her act was voluntary and admittedly, there was a consensual relationship between the appellant and the victim; and that since the appellant was acquitted of the offence under Section 5(l) r/w 6 of the POCSO Act, the appellant ought to have been acquitted of the other charges and in any case, the sentence imposed is excessive and prayed for reduction of sentence.



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5.The learned Additional Public Prosecutor (Crl. Side) *per contra* submitted that the prosecution had established its case beyond reasonable doubt; that the victim's evidence in so far as the offence committed by the appellant under the Prohibition of Child Marriage Act and kidnapping cannot be disbelieved; and therefore, the impugned Judgment does not call for any interference.

6.As stated above, the prosecution had examined 10 witnesses. PW1 is the victim girl. PW2 is the mother of the victim girl. PW3 and PW4 are observation mahazar witnesses. PW5 is a seizure mahazar witness. PW6 is the doctor, who had examined the victim. PW7 is the doctor who had examined the appellant and issued the potency certificate Ext.P9. PW8 is the head constable, who had registered the FIR. PW9 and PW10 are the investigating officers.

7.The prosecution case therefore, rests on the evidence of PW1 and PW2, the victim and her mother. PW2 had lodged a complaint that her daughter (PW1) went missing and thereafter, the FIR was registered for 'girl



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missing'. The victim had admitted in her evidence that she went with the appellant and that the appellant had also tied thali. However, the victim, as stated above, turned hostile, in respect of the allegation of penetrative sexual assault said to have been committed by the appellant. Admittedly, the marriage is invalid. The victim was aged 17 years and 1 month at the time of occurrence. It cannot be stated that she was not aware of the consequences of her Act. She had a love affair with the appellant.

8. Therefore, considering the fact that the relationship was consensual, though it would not absolve the appellant of the offences, this Court is of the view that the sentence imposed on the appellant can be reduced to three months imprisonment.

9. Accordingly, the Criminal Appeal stands partly-allowed and it is ordered as follows:

(i) The conviction of the appellant by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, vide judgment in Spl.S.C.No.107 of 2022 dated 01.11.2023, for the offences under Section 366 of IPC and Section 9 of Prohibition of Child Marriage Act, is confirmed.



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(ii) However, the sentence imposed by the trial Court to undergo three years RI and to pay a fine of Rs.1,000/- (id) to undergo 3 months RI for the offence under Section 366 IPC and to undergo 1 year RI for the offence under Section 9 of the POCSO Act, is ***reduced to three months rigorous imprisonment for each of the offences and the sentences are ordered to run concurrently.***

(iii) The fine amount for both the offences and the default sentence imposed by the trial Court shall remain unaltered.

(iv) The period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C.

Consequently, the connected criminal miscellaneous petition is closed.

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Neutral Citation: Yes/No

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SUNDER MOHAN,J.

Tsg

To

- 1.The Sessions Judge,
Magalir Neethimandram,
Fast Track Mahila Court, Tiruppur.
- 2.The Inspector of Police,
Avinashipalayam Police Station,
Tiruppur District
- 3.The Public Prosecutor,
High Court, Madras.

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