



*Crl.MP(MD) No.11793 of 2023 in
Crl.A(MD) No.728 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.M.P.(MD)No.11793 of 2023
in Crl.A.(MD)No.728 of 2023

Murugesan

... Petitioner

Vs.

State represented by its,
The Inspector of Police,
Kallimandayam Police Station,
Dindigul District.
Crime No.346 of 2020

... Respondent

Prayer: Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence of the petitioner imposed in Judgment dated 20.04.2023 in Spl.S.C.No.28 of 2020, dated 20.04.2023, on the file of the learned Sessions Judge, Fast Track Mahila Court, Dindigul pending disposal of the Criminal Appeal.

For Petitioner : Mr.V.Thirumal

For Respondent : Mr.A.S.Abul Kalam Azad
Government Advocate (Crl. Side)



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ORDER

The petitioner, sole accused in Spl.S.C.No.28 of 2020, on the file of the learned Sessions Judge, Fast Track Mahila Court, Dindigul was found guilty by the trial Court and was convicted and sentenced as under:-

Sl.No	Sections	Punishment	Fine amount	Default
1	363 IPC	7 years RI	Rs.5,000/-	6 months SI
2	Section 6 of POCSO Act	25 years RI	Rs.10,000/-	1 year SI

As against the conviction and sentence imposed by the trial Court in Spl.S.C.No.28 of 2020, dated 20.04.2023, the petitioner has filed a Criminal Appeal in Crl.A(MD)No.728 of 2023 and the same was admitted by this Court on 16.08.2023. The petitioner has also moved this application to suspend the sentence imposed on him by the trial Court.

2. The case of the prosecution is that on 19.05.2020, at about 07.00 p.m., the petitioner has taken the victim child to a remote place and sexually assaulted her. Hence, the case.



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3. The learned counsel appearing for the petitioner submits that the victim child was found missing from 19.05.2020. A complaint was lodged by the father of the victim along with his sister PW4 on 20.05.2020. However, this complaint has been suppressed by the prosecution. The prosecution is based on the complaint Ex.P2 said to have been given on 21.05.2020. He further submits that the father of the victim girl PW2 in his evidence claims that the clothes of the victim girl were recovered by the Police. However, the same were not marked before the trial Court. The learned counsel by relying on the evidence of victim girl PW3, states that according to the victim girl, the clothes have been washed by her mother on the next day of occurrence. Hence, evidence of PW2 and PW3 are contradictory. He also relied on cross examination of PW3, wherein she has stated that she was tutored by the Police and therefore, he submits that the evidence of the victim cannot be taken into account for convicting the petitioner for 25 years. He further submits that the petitioner is in jail for 3 years and 3 months and prayed for grant of suspension of sentence to the petitioner.



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4. The learned Government Advocate appearing for the respondent submits that the victim girl is aged about 14 years. She is intellectually challenged. The petitioner, a neighbour has induced the victim, taken her to a remote place, abused her and had physical relationship with her. The victim child was missing from 19.05.2020. The father of the victim went to the police station on 20.05.2020 and the child returned on 20.05.2020, at about 03.00 p.m. Thereafter, a complaint was lodged on 21.05.2020 and the victim child was subjected for medical examination on 21.05.2020 itself. The Doctor PW9 who examined the victim child had found that the hymen was not intact. PW11 Doctor was examined by the prosecution and he has stated that the victim child is intellectually not sound. He also relied on the evidence of victim child and her statement recorded under Section 164 of Cr.P.C. on 19.06.2020 and states that the victim child has narrated the incident cogently and hence, there is no infirmity in her evidence. He admits that the victim in her cross examination without understanding the question posed on her, has stated that the police has instructed her. However, that alone cannot be taken into account to disbelieve her evidence, since the same question has been made to her in chief examination and her statement under Section 164 Cr.P.C.



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and she denied being instructed by Police. With regard to the averment that the clothes have not been marked, however, PW2 in his cross examination has stated that the clothes have been handed over to the Police for investigation, he states that the clothes were washed by the mother of the victim on the next day of occurrence and since the investigation agency could not get any materials, they were not marked before the trial Court.

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

6. The victim child is aged about 14 years old on the date of occurrence and that has been proved by examining the Head Master of the School, where the victim child was studying. The victim girl is not intellectually sound and that has also been proved by examining PW11 Doctor. The victim child in her statement under Section 164 of Cr.P.C. and during her examination in the course of trial, has cogently narrated the incident, and the same has been corroborated by the evidence of the Doctor who examined her on 21.05.2020, that hymen was not intact. Based on the above available evidence, this Court is of the opinion that this is not a fit



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case for grant of suspension of sentence. Hence, this Criminal

Miscellaneous Petition is dismissed.

7. Registry is directed to list the main appeal for final disposal on
04.06.2026 under the caption 'accused in jail cases'.

01.04.2026

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To

1.The learned Sessions Judge,
Fast Track Mahila Court,
Dindigul.

2.The Inspector of Police,
Kallimandayam Police Station,
Dindigul District.

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



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B.PUGALENDHI, J.,

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