

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2026

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THE HONOURABLE MR.JUSTICE S.KARTHIKEYAN

Crl.A(MD)No.523 of 2019

Kannan

... Appellant/Sole Accused

Vs.

State through,
The Inspector of Police,
W-1, Thirunagar Police Station,
Madurai.

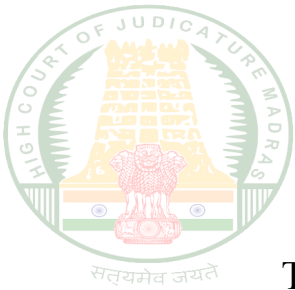
In Crime No.372 of 2016.

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to call for the records, set aside the conviction and sentence passed against the appellant by the learned Sessions Judge, Mahalir Neethimandram, Madurai in Special Sessions Case No.1 of 2017, dated 16.10.2019 and acquit the appellant/Accused.

For Appellant : Mr.G.Bhagavath Singh

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)



JUDGMENT

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This appeal is directed against the judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, Madurai, in Special Sessions Case No.1 of 2017, by judgment dated 16.10.2019.

2.On careful perusal of the records, it is found that the present case came to be registered based on Ex.P2 complaint given by P.W.2. On 04.08.2016 at around 17.00 hours, P.W.10-Santha, the then Sub-Inspector of Police registered Ex.P.6-First Information Report for the offences punishable under Sections 7 and 8 of the POCSO Act. P.W.11 took up the investigation of the above case. He received Ex.P.7 birth certificate of the victim, visited the place of occurrence at around 18.00 hours; prepared Ex.P.8-Observation Mahazar and Ex.P.9-Rough Sketch in the presence of witnesses PW9 Kumar and PW7 Raja; and thereafter, examined the witnesses and recorded their statements. On 05.08.2016 at around 06.00 a.m., he arrested the Accused near Thirunagar First Stop and caused him to be remanded to judicial custody. On 06.08.2016, he caused the victim boy to undergo medical examination. Thereafter, the



statement of the victim under Section 164 of the Cr.P.C. was recorded.

He examined the Doctor who conducted the medical examination of the victim and recorded his statement. On completion of the investigation, he laid the final report before the Special Court on 15.09.2016.

3.The Special Court took cognizance of the said case in Spl.S.C.No.1 of 2017, issued summons to the Accused and upon his appearance, furnished copies of the documents relied upon by the prosecution under Section 207 of the Code of Criminal Procedure. After hearing both sides, the Trial Court framed charges against the Accused for the offence punishable under Section 7 read with Section 8 of the POCSO Act. The charge was read over and explained to the Accused which he denied. Therefore, he was ordered to be tried by the trial Court.

4.On the side of the prosecution, P.W.1 to P.W.11 were examined and Ex.P.1 to Ex.P.9 were marked. Upon closure of the prosecution side evidence, the incriminating circumstances appearing against the Accused were put to him under Section 313(1)(b) of the Cr.P.C. The Accused denied the same as false and stated that he had witnesses on his side.



However, no witnesses were examined on the side of the Accused.

Therefore, the defence evidence was closed.

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5.After hearing both sides, the trial Court found the appellant guilty of the offence punishable under Section 7 read with Section 8 of the POCSO Act and sentenced him to undergo three years of rigorous imprisonment and to pay a fine of Rs.5,000/-, in default of payment of the fine, to undergo one month of simple imprisonment. Aggrieved by the said judgment of conviction and sentence, the appellant is before this Court.

6.The learned counsel appearing for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent were heard. The trial Court records were called for and perused.

7. Point for determination:

Whether the conviction and sentence imposed on the appellant are sustainable or not?



Answer:

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8. On careful perusal of the records, it is found that it the case of the prosecution that the victim boy was aged about 11 years and was studying in the 6th standard at the time of the occurrence. On 02.08.2016, being a holiday, the victim was at his house, and the Accused was doing plumbing work on the terrace of the house of P.W.4, under whom the father of the victim was a tenant. At about 11.00 a.m., when the child went to the terrace, the Accused, under the pretext of playing with him, carried him to a small room upstairs, removed his own dress and asked the victim to kiss his male organ. Therefore, as per the case of the prosecution, the act of the Accused is punishable under Section 7 read with Section 8 of the POCSO Act. To substantiate the said case, the prosecution examined P.W.1 to P.W.11 and marked Ex.P.1 to Ex.P.9.

9. On careful perusal of the evidence of P.W.1, it is found that P.W. 1, the victim, deposed in his evidence that on 02.08.2016, plumbing work was being carried out in his house and that the Accused was working there. At around 11.00 a.m., the Accused took him to a small room situate on the terrace, removed his dress and shown his male



organ. The victim pushed him and came out. Near the said room, there was a terrace where the appellant came and stood near him touching him. The victim thereafter went and reported the incident to his mother. His mother informed his father over the phone. On the next day, his father called Childline and informed them about the incident. On 05.08.2016, he was examined at Rajaji Government Hospital, Madurai. He gave Ex.P.1-164(5) statement before the Magistrate.

10.The learned counsel for the appellant submitted that, except for the evidence of P.W.1, no other evidence was available on record to prove the occurrence. He further contended that the evidence of the victim does not disclose any physical contact between the appellant and the victim. According to the learned counsel for the appellant, to attract Section 7 of the POCSO Act, there must be physical contact between the Accused and the victim. In the absence of physical contact, the offence under Section 7 of the POCSO Act would not be attracted. Hence, he prayed for setting aside the conviction and sentence imposed on the appellant.



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11.It is true that the evidence of the victim did not disclose that that there is a physical contact between the victim and the appellant.

Even as per the victim, the only overt act alleged as against the appellant is that he shown his male organ to him. Though the said act would not attract the offence punishable under Section 7 of the POCSO Act, it would fall under Section 11(i) of the POCSO Act.

12.Section 11(i) of the POCSO Act reads as follows:

“11.Sexual harassment.- A person is said to commit sexual harassment upon a child when such person with sexual intent,-

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or”

Therefore, this Court is of the considered view that the appellant herein has committed an offence punishable under Section 11 of the POCSO Act, which is punishable under Section 12 of the POCSO Act. Therefore, this Court is inclined to set aside the conviction and sentence passed against the appellant for the offence punishable under Section 7 read



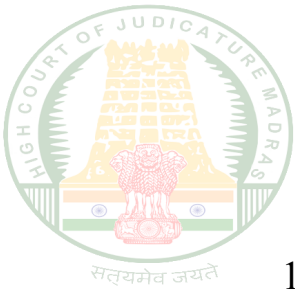
with Section 8 of the POCSO Act and convict him for the offence punishable under Section 11 read with Section 12 of the POCSO Act.

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13.The learned counsel appearing for the appellant submitted that the appellant was aged about 32 years at the time of the occurrence. He is a first-time offender and there are no bad antecedents against him. The appellant is a plumber, and the victim, being a child, had misunderstood the incident and lodged the present complaint. Therefore, he prayed for a lenient sentence for the appellant.

14.Considering the fact that the appellant is a plumber and a first-time offender, this Court is of the considered view that a lenient sentence can be imposed on him.

15.Accordingly, this Court convicts the appellant for the offence punishable under Section 11 of the POCSO Act and sentences him to undergo one year of rigorous imprisonment and to pay a fine of Rs.5,000/-, in default of payment of the fine, to undergo one month of simple imprisonment.

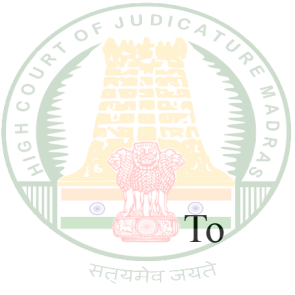


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16. In the result, this Criminal Appeal is partly allowed. The judgment of conviction and sentence passed under Section 7 read with Section 8 of the POCSO Act is set aside, and the appellant is convicted for the offence punishable under Section 11 read with Section 12 of the POCSO Act and sentenced to undergo one year of rigorous imprisonment and to pay a fine of Rs.5,000/-, in default of payment of the fine, to undergo one month of simple imprisonment. The bail bond executed by the appellant is cancelled. The appellant is directed to surrender before the Trial Court within a period of one week from the date of this judgment. If he fails to surrender, the trial Court is directed to secure the appellant to serve out the remaining period of sentence. The appellant is entitled to set off the period of imprisonment already undergone by him under Section 428 of the Cr.P.C.

02.09.2026

NCC : Yes/No
Index : Yes/No
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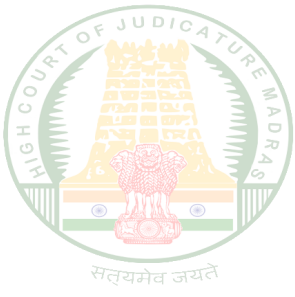


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- 1.The Sessions Judge,
Mahalir Neethimandram, Madurai.
- 2.The Inspector of Police,
W-1, Thirunagar Police Station,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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S.KARTHIKEYAN, J.

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