

Crl.A.No.912 of 2022

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WEB CODE **D.BHARATHA CHAKRAVARTHY, J.**

Admit. The learned Government Advocate (Crl.Side) takes notice for the respondent. Registry to call for the records and prepare the appeal book ready. Post the appeal for hearing in the month of December 2022.

2.When the matter came up for admission, the learned Government Advocate (Crl.Side) brought to the notice of this Court that inspite of charges being framed under Section 5 (m) r/w 6 of the POCSO Act and the learned Judge convicting the appellant for the said charges under Section 5 (m) r/w 6 of the POCSO Act and the fact that the occurrence is said to have happened in the year 2018 on 24.03.2018 and the minimum punishment of ten years having been provided under the Act and there is not even any proviso to impose any punishment less than the minimum punishment, the Trial Court had erroneously imposed only five years of rigorous imprisonment.

3.The submission of the learned Government Advocate (Crl.Side) is noted. His further submission that an appeal for enhancement of sentence



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under Section 377 of Cr.P.C. will be duly filed is also noted. However,

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when the matter is brought to the notice of this Court, the learned counsel for the appellant would submit that in this case, a perusal of the allegations even taken on face value, as made by the victim child, would not make any offence under Section 5 (m) r/w 6 of the POCSO Act, but only an offence punishable under Section 10 of POCSO Act. In any event, the learned counsel would submit that the appellant/accused is contesting the entire charge on merits and according to the learned counsel for the appellant, he is innocent in this case and therefore, the entire appeal has to be heard on merits.

4.I have taken the said submissions into consideration. In any event, this appeal is being admitted, it will be open for the accused to argue that he is not guilty and he has to be acquitted in the matter. Only after considering the entire case, this Court has to decide whether the accused is guilty or not guilty and if found guilty, whether an offence under Section 5 (m) r/w 6 of the POCSO Act or 9(m) r/w 10 of the POCSO Act is made out or not. However, since the mistake of the Trial Court has been brought to notice, apart from the appeal to be filed by the prosecution, on its behalf, this Court



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suo motu issues notice to the appellant/accused as to why the sentence

cannot be enhanced against him in exercise of the powers under Section 377

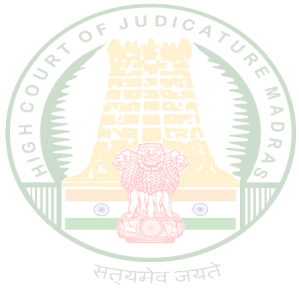
Cr.P.C. and a copy of this order shall be served on the learned counsel for the appellant/accused and the respondent police shall also serve on the appellant/accused himself as he is now in custody. Therefore, while presenting the arguments in the main appeal, it will be open for the accused to defend himself regarding the question of enhancement of sentence also apart from his arguments that he is not guilty of any offence.

sli

18.08.2022
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Copy to:

The Special Court for Exclusive Trial of cases under POCSO Act,
Coimbatore.



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