



Crl.O.P.No.9812 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	: 26.06.2023
Pronounced on	: 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.9812 of 2023

and

Crl.M.P.Nos.6438 and 8356 of 2023

1.Vijay Anand
2.Shruthi Thilak

...Petitioners

Vs.

1.The State represented by
The Inspector of Police,
W-27, All Women Police Station,
Vadapalani, Chennai - 600 026.
(Crime No.03/2023)

2.Prabhu Thilak

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the FIR in Crime No.3 of 2023 dated 30.03.2023 on the file of 1st respondent police.

For Petitioners : Mr.John Sathiyam, Senior Counsel
for M/s.P.Divakar

For R-1 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)



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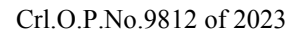
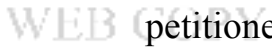
For R-2 : Mr.S.Prabakaran, Senior Counsel
for Mr.R.Krishna Kumar

ORDER

This Criminal Original Petition has been filed to call for the records and quash the First Information Report in Crime No.3 of 2023 dated 30.03.2023 on the file of 1st respondent police.

2. Learned Senior counsel for the petitioners submitted that, petitioners are the accused in Crime No.3 of 2023 registered for the offences under Sections 8, 12 of Protection of Child From Sexual Offences Act, 2012 and 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The allegations made in the First Information Report are totally false. The First Information Report came to be registered, on the influence of 2nd respondent/defacto complainant's mother, who was a former high ranking police officer.

2.1. The marriage between the 2nd petitioner and 2nd respondent had taken place in the year 2007 and they had one female child aged 14 years and male child aged 8 years. Due to marital discard, 2nd petitioner and 2nd



2.2. The case of the prosecution in Crime No.3 of 2023 is that on 2022, 2nd petitioner's daughter called her over phone to return her



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jewels, costly watch, clothes and cosmetics purchased by the 2nd respondent. It is stated that, 2nd petitioner had shouted at and abused her and 1st petitioner threatened and abused her during the mobile conversation. It is the further case of the prosecution that, 2nd respondent messaged 2nd petitioner to return the articles of the child and 2nd petitioner replied him to send the child and collect the articles. On 23.12.2022, at about 7.00 a.m, when the child went to 1st petitioner home, she was scolded by the petitioners in abusive language and 1st petitioner slapped her and touched her private parts inappropriately and told her that her articles would not be returned. It is submitted that, these allegations are totally false and made only to book the petitioners under POCSO Act.

2.3 Learned Senior counsel for the petitioners further submitted that, the visit of the child to the petitioner's house was videographed using a cellphone. The video shows that, the child had come with a person and taken her belongings and nothing of the allegations stated in the First Information Report had taken place, especially the allegation with regard to sexual abuse, said to have been committed by the 1st petitioner against the child. The cellphone with video recording was sent to the Truth Labs for analysis. Petitioners are prepared to produce the original mobile phone with video recording of the incidents that had happened at the residence of the petitioners on 23.12.2022 or the secondary



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evidence of video recording with certificate under Section 65B of Indian Evidence Act. If the 1st respondent police analyzes the video recording, it would be evident that, the allegations made in the First Information Report are totally false. He also produced a copy of the video recording for the perusal of this Court. Unless this Court interferes under Section 482 Cr.P.C and quashes the First Information Report, petitioners would be harassed by way of prosecution on the basis of false complaint.

3. In reply, learned Government Advocate (Criminal side) submitted that, victim girl gave a statement under Section 164 Cr.P.C substantiating the allegations made in the First Information Report. The investigation is in preliminary stage and thus, he prayed for dismissing this petition.

4. Learned Senior counsel for the 2nd respondent submitted that, there is a contradiction with regard to electronic evidence available in connection with the incident. It is stated in the petition that, CCTV footage is available, however, now it is claimed that, video recorded by cellphone is available. The possibility of manufacturing/fabricating the video recording cannot be ruled out. The First Information Report allegations clearly make out commission of offence punishable under POSCO Act by the petitioners. The victim girl had



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given clear statement under Section 164 Cr.P.C with regard to the sexual harassment that had taken place on 23.12.2022 and prior to that. Therefore, petitioners cannot seek quashment of First Information Report, on the basis of the video recording. The video recording cannot be looked into now, unless it is seized by the police as an evidence and produced in the Court. It is reiterated that, victim girl was harassed not only on 23.12.2022, but also on previous occasions by the 1st petitioner. Proceedings under POCSO Act cannot be quashed as a matter of routine and offence against a child should be dealt with iron hand.

(i) In support of his submissions, he relied on the judgment reported in **[2018 17 SCC 291]** in the case of *Alakh Alok Srivastava Vs. Union of India and others*, to bring to the notice of this Court about the direction issued by the Hon'ble Supreme Court to establish Special Courts for trying POCSO Act cases, speedy trial of cases in time bound manner, constitution of Committee to monitor trial under POCSO Act cases, constitution of Special Task Force to monitor the investigation, to provide child-friendly atmosphere etc.

(ii) He relied on the Judgment reported in **[2022 5 SCC 545]** in the case of *Attorney General of India Vs. Satish and another*, for the proposition that, the



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POCSO Act provides presumption of culpable mental stage of the accused under Section 30 of POCSO Act and it is for the accused to prove the contrary.

The proof of this aspect can only be considered in the trial and not in an enquiry under Section 482 Cr.P.C

(iii) The judgment reported in [2023 4 SCC 298] in the case of *State of Maharashtra and another Vs. Dr.Maroti s/o Kashinath Pimpalkar*, is relied for the preposition that, if First Information Report and the materials collected disclose a cognizable offence and the final report filed on completion of investigation, reveal that, the ingredients to constitute an offence under the POCSO Act against the accused, the truthfulness, sufficiency or admissibility of the evidence are not matters falling within the purview of exercise of power under Section 482 Cr.P.C and undoubtedly they are matters to be done by the trial court at the time of trial. Thus, he submitted that, first information report cannot be quashed and prayed for dismissal of this petition.

5. In reply, learned Senior counsel for the petitioners submitted that, if the allegations that, victim girl was abused by the 1st petitioner, even prior to the incident alleged in the First Information Report are true, as a custodian of the victim girl, 2nd respondent ought to have reported the incident to the police.



Failure to report an offence under the POCSO Act would invite punishment under Section 21 of POCSO Act. The fact that, no such incident was reported to the police shows that, the allegation of sexual harassment, prior to the incident alleged in the First Information Report are totally false. He further submitted that, it was wrongly mentioned in the petition as CCTV footage instead of cellphone video recording.

6.Considered the submissions and perused the records.

7. From the narration of facts, it can be gathered that, there is no love lost between the 2nd petitioner and 2nd respondent. Due to failed marriage, they are living separately. It is admitted fact that, 2nd petitioner filed H.C.P.No.2607 of 2022 and that was disposed by the Hon'ble Division Bench of this Court with the following observation,

“Taking into consideration the overall facts and circumstances, we are convinced that the custody of the children with the father cannot be said to be per se illegal for issuance of a writ of habeas corpus. Since there are serious disputed facts, the same cannot be gone into in the Habeas Corpus Petition under Article 226 of the Constitution of India”



8. It is clear that, the minor children are in custody of the father namely the 2nd respondent. The relevant portion of the First Information Report in Crime No.3 of 2023 reads that, on 22.12.2022, the minor girl (daughter of 2nd petitioner and 2nd respondent) contacted the 2nd petitioner through cellphone bearing No.7677888888 to the cellphone of the 2nd petitioner bearing No.9944006611 and asked the 2nd petitioner to return her costly diamond jewels, watch, clothes and cosmetic items purchased by the 2nd respondent. It is alleged that, 2nd petitioner scolded the child in filthy language and threatened to beat her. She was joined by the 1st petitioner in abusing and scolding the child, 2nd respondent and 2nd respondent's mother in filthy language. After the incident the girl was weeping and severely stressed. Then the 2nd respondent sent a message to the 2nd petitioner to return the articles to the girl. 2nd petitioner sent a reply asking her daughter to come and collect the articles. On 23.12.2022, victim girl visited the house of the petitioners before going to school. She was badly abused by the 2nd petitioner. 1st petitioner had inappropriately touched her at wrong places and hit her on her cheek and told her that articles could not be returned and asked her to take her suitcase and leave the place. Later the girl informed this incident to the 2nd respondent and therefore, the complaint was given.



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9. Subsequent to the registration of First Information Report, 164 Cr.P.C

Statement was recorded from the victim girl. She had narrated the pending cases between her parents; the incident said to have been happened on 22.12.2022 and 23.12.2022 and also the alleged incident of sexual harassment committed by the 1st petitioner during September 2022.

10. For the purpose of better understanding, the relevant portion of the First Information Report and Section 164 Cr.P.C statement with regard to the sexual harassment are extracted herein under.

(i) First Information Report:

"எனவே 23.12.2022 அன்று காலை தேர்வுக்கு போவதற்கு முன் ஸ்ருதியின் வீட்டுக்கு தன் பொருட்களை எடுத்துக் கொள்வதற்காக நேரில் போன என் மகளை மிகவும் தரகுறைவாக கெட்ட வார்த்தைகளில் மகள் என்றும் பாராமல் ஸ்ருதி மறுபடியும் திட்டி இருக்கிறார். அவருடைய தம்பி விஜய்ஆனந்த் என்பவர் என் மகளைப்பிடித்து தவறாக இடங்களில் தொட்டு இழுத்து கன்னத்திலும் அடித்திருக்கிறார். உன் பொருங்கள் எதையும் தரமுடியாது நீ கொண்டு வந்த பொட்டியை எடுத்துக்கொண்டு போ என்று மறுபடியும் என் மகளை அடித்துத் தூரத்தியிருக்கிறார். என் மகள் இத்தகவலை எல்லாம் கதறி அழுதபடி என்னிடம் தெரிவித்தார்."

(ii) Section 164 Cr.P.C Statement:



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"நானும் 23.12.2022 அன்று என் அம்மாவின் வீடு நான் படிக்கும்பள்ளிக்கு அருகிலேயே இருந்ததால் பள்ளிக்கு செல்வதற்கு முன்பாகவே வந்து பொருட்களை எடுத்துக்கொள்வதாக சொன்னேன். மறுநாள் நான் பள்ளிக்கு போவதற்கு முன்பாக என் அம்மா வீட்டுக்கு போனேன். அப்போது காலை மணி 7.30 லிருந்து 7.45 மணி இருக்கும், முன்றாவது தளத்தில் இருக்கும் என் அம்மாவின் வீட்டிற்கு உள்ளே போனேன். கிரில் கேட் முடியிருந்தது. வீட்டின் உள்பக்கம் உறாலில் என் அம்மா இருந்தார் என்னை பார்த்துவிட்டு எழுந்துவந்தவர் என்னை பார்த்து என்னற நேத்து திமிறா பேசற உன்ன சும்மா விடமாட்டேன் உன்னை ஸ்கூலில் வந்து அசிங்கப்படுத்துறேன் என்றும் என் பையன் இல்லாததுக்கு காரணம் நீதான் என்று திட்டினார். பொருள் எல்லாம் கொடுக்கமுடியாது போடி இங்கிருந்து என்று சொன்னார்கள். நான் கீழே இறங்கிவந்துவிட்டேன். நான் பொருட்களை எடுத்து வருவதற்காக நான் எடுத்து சென்ற பெட்டிகளை என்னுடைய அம்மாவின் வீட்டிலேயே வைத்துவிட்டு வந்துவிட்டேன். என் அம்மா எனக்கு போன் செய்து அந்த பெட்டிகளை வந்து எடுத்துக்கொண்டு போகும்படி சொன்னார். நான் திரும்பவும் போன பிறகு என்னுடைய அம்மா கிரில் கேட்டிற்கு உள்பக்கமாகவே நின்றிருக்கொண்டிருந்தார். நான் என் அம்மாவை பார்த்து பிளீஸ் அம்மா என்னுடைய பொருட்களை கொடுத்துவிடுங்கள் அது வேணும் என்று இரண்டு தடவை கேட்டேன். அதற்கு என்னுடைய அம்மா உனக்கு என்னடி திமிரு அடங்காதா நான்தான் பொருளை தரமுடியாது என்று சொல்லிவிட்டேனடி என்று சொல்லிவிட்டு கிரில் கேட்டை பிடித்தபடி நின்றிருந்த என்னை எனது மாப்பில் கையை வைத்து தள்ளினார். உனக்கெல்லாம் விஜி வந்தாதாண்டி சரிபட்டு வருவ இரு அவனை கூட்டிடுறேன் என்று சொல்லி அவருடைய தம்பியை கூப்பிட்டார். என் அம்மாவின் தம்பி வந்து கிரில் கேட்டை ஓப்பன் பண்ணி கிரில் கேட் அருகில் நின்றிருந்த என்னை கன்னத்தில் இரண்டு தடவை ஓங்கி அறைந்துவிட்டு கழுத்தை பிடித்து நெறித்தான். பிறகு என்னுடைய உடம்பில் அந்தரங்க உறுப்புகளை எல்லாம் தொட்டு தடவி அழுத்திவிட்டு உனக்கு என்னடி திமிரு அப்படி பேசற கோர்ட்டில் வந்து அப்பாவன் போற என்று சொல்ற என்று திட்டினார் அங்கு நின்றிருந்த என்னுடைய அம்மா அவருடைய தம்பியிடம் இன்னும் பண்ணுடா இன்னும் பண்ணுடா அவளுக்கு இது தேவைதான் என்று சொன்னார். நீ எவன் கூடவாவது போயிருப்ப என்று என்னை பார்த்து என்னுடைய



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அம்மாவும் அவருடைய தம்பியும் அசிங்கமாக பேசினார்கள். உங்க அப்பாவிடம் காசு இருப்பதால்தான் நீ அங்கு இருக்கிற என்று சொன்னார்கள். 2022 ம் ஆண்டில் செப்டம்பர் மாதத்தில் சேலத்தில் என்னுடைய தாத்தா பாட்டி வீட்டில் இருக்கும்போது என் அம்மாவின் தம்பி என்னை பின்பக்கமாக வந்து கட்டிப்பிடித்தார். இன்னொரு முறை நான் படுத்துக்கொண்டிருந்தபோது என் மீது வந்து படுத்தான். போட்டோ எடுக்கும்போது என் தோளில் கையை போட்டு மார்கத்தை தொடுவான் என்னுடைய தொடைகளையும் கிள்ளிவிடுவான் நான் சிறிய வயது என்பதால் அதைப்பற்றி யாரிடமும் சொல்லவில்லை. சேலத்தில் என் பாட்டி வீட்டில் என் அம்மாவின் தம்பி என்னை பின்பக்கமாக வந்து கட்டிப்பிடித்ததையும் நான் படுத்துக்கொண்டிருந்தபோது என் மீது படுத்ததையும் என் அம்மாவிடம் சொன்னேன் அதற்கு என் அம்மா இதை வெளியில் யாரிடமும் சொல்கொண்டிருக்காத நான் சொல்லிக்கிறேன் முக்கியமாக உன் அப்பாவிடம் சொல்லாதே என்று சொல்லிவிட்டார். ஆனால் என்னுடைய அம்மா அதைப்பற்றி அவருடைய தம்பியிடம் எதுவும் கேட்கவில்லை. நான் அதைப்பற்றி கேட்டதற்கு இதையெல்லாம் வெளியில் சொல்லாத அசிங்கமாயிடும் என்று சொல்லிவிட்டார்."

11. There is no doubt that, allegations made in the First Information Report make out a *prima facie* case for registration of First Information Report for the commission of sexual harassment as defined under POCSO Act and these allegations are supported by Section 164 Cr.P.C Statement. However, there is a genuine doubt arises in the mind of this Court, as to whether the sexual harassment incident as alleged in the First Information Report could have happened, after all the acrimonious fight in connection with child custody; unpleasant cellphone conversation on 22.12.2022 between the petitioners and victim girl and when there are multiple criminal proceedings pending between



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the 2nd petitioner and 2nd respondent.

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12. This Court viewed the compact disk containing the video recording, allegedly, of the incident that said to have happened on 23.12.2022 at the residence of the petitioners, when the child came to collect the articles. The video recording shows that, the victim girl had visited the house of the petitioner with a safari clad man and collected the articles. Except some exchange of words between the 2nd petitioner and victim girl, no other incident was recorded, especially the alleged sexual harassment said to have been committed by the 1st petitioner against the victim girl.

13. The case is under investigation. When the petitioners are in possession of the video recording of incident that said to have happened at their residence on 23.12.2022, it is expected that the investigating officer should seize/receive the mobile phone or compact disk or pen-drive containing video recording with a certificate under Section 65B of Indian Evidence Act, for the purpose of investigation to find out the truth. The accused is entitled to produce the evidence to prove his/her innocence to the investigating officer during the course of investigation. This Court, at this stage, cannot go deep into the truth or falsity of the allegations made in the First Information Report.



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14. As already indicated, First Information Report *prima facie* makes out a case for registration of First Information Report, for the alleged offence of sexual harassment. However, during the course of the investigation, 1st respondent should take into consideration of the evidences produced by the petitioners, especially the video recording of the incident dated 23.12.2023 to prove the petitioners innocence. After verifying the genuineness of the video recording and truth or falsity of the First Information Report allegations, Section 164 Cr.P.C statement of the victim girl, the investigating officer should file an appropriate final report before the concerned Court.

15. If the allegation that 1st petitioner had indulged in sexual harassment in September 2022 against the victim girl, then why it was not reported to the police is a question which requires to be answered by the 2nd respondent. If he failed to report the incident of sexual harassment, after coming to know of it, certainly he is liable for prosecution under Section 21 of POCSO Act.)

16. Therefore, this Court is of the view that, First Information Report allegations are required to be investigated by the 1st respondent police in a proper and fair manner along with the electronic evidence and other evidence



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produced by the petitioners and appropriate final report should be filed.

Considering the fact that, criminal cases are filed against each other and there is an allegation that, 2nd respondent's mother was a high ranking former police officer and she is influencing the police, this Court directs that, the investigation in this case should be monitored by Deputy Commissioner of Police under whose jurisdiction AWPS, Vadapalani comes and the final report should be approved by him/her before filing in the Court.

17. With the above directions, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

30.06.2023

Index: Yes/No
Speaking/Non speaking order
gd

To

1. The Inspector of Police,
W-27, All Women Police Station,
Vadapalani, Chennai - 600 026.
2. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN.J.,

gd

Pre-Delivery Order in
Crl.O.P.No.9812 of 2023

30.06.2023