

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP.No.23637 of 2012
and M.P.Nos.1 & 2 of 2012

S.Kasiviswanathan ... Petitioner
Vs

1. State of Tamil Nadu
Rep. by its Inspector of Police,
W-7 All Women's Police Station,
Anna Nagar, Chennai-40.
2. Aishwarayakamala
rep. by Child Welfare Committee
No.30 Purasaiwalkam Mani Raod,
Kelly's Chennai. ... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records and quash the entire proceedings in C.C.No.3389 of 2012 pending on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.M.Sivavarthan

For Respondents : Mr.C.Emalias
Additional Public Prosecutor [for R1]
: M/s.K.G.Senthilkumar [for R2]

O R D E R

This petition has been filed to quash the entire proceedings in C.C.No.3389 of 2012 by the accused.

2. Heard Mr.M.Sivavarthan, learned counsel for the petitioner, Mr.C.Emalias, the learned Additional Public Prosecutor appearing for the first respondent and Mr.K.G.Senthilkumar, learned counsel for the second respondent.

3. This quash petition was filed by the accused through a counsel by name Mr.Karthigeyan and Mr.Sreedhar. During the pendency of this quash petition, the petitioner/accused changed his counsel and engaged Mr.Vimal B.Crimson. When the case was listed for hearing on 21.04.2015, Mr.Vimal B. Crimson submitted that the petitioner/accused had taken change of vakalat from him for engaging another lawyer. Since, no change of vakalat was filed in the Registry, this court directed that the case be listed for orders on 24.04.2015. This court also directed the registry to

print the name of the petitioner/accused in the cause list. Accordingly, the name of the petitioner/accused was printed in the cause list of 10.06.2015. When this case was taken up for hearing on 10.06.2015, the court bailiff called out the name of the petitioner thrice. At that juncture, an advocate by name Mr.Sivavarthanan submitted that he has been engaged by the party and undertook to argue the case today. Therefore, the case was posted today for orders.

4. It is the case of the prosecution that this petitioner had sexually abused his own daughter and on the complaint given by the child herself through the Child Welfare Committee, the respondent/police registered a case in Crime No.8 of 2012 on 28.05.2012 for offences under Section 354 IPC and Section 4 of TNPWH Act. After completing the investigation, Final Report was filed on 21.07.2012 before the V Metropolitan Magistrate, Chennai for offences under Section 377, 506[i] IPC and Section 4 [i] of TNPWH Act which is under challenge in this quash application.

5. It is represented by the learned Additional Public Prosecutor that the case records would go frequently missing from the trial court and only when complaints are lodged, the case records would surface after diligent search.

6. This court called for a report from the learned V Metropolitan Magistrate, Egmore, Chennai-8 and a report dated 09.05.2015 has been received, in which, the learned Magistrate has stated that this petitioner/accused has filed a discharge application on 01.11.2012 and the Assistant Public Prosecutor has also filed counter on 28.08.2014 and from then on, the petitioner/accused has been managing to prolong the enquiry in the discharge application till date.

7. It is seen that the petitioner/accused has been taking adjournments before the trial court on the ground of pendency of this quash petition. Thus, it is seen that the petitioner/accused has filed a discharge application before the trial court and has also filed a quash petition before this court suppressing the same.

8. Nevertheless, this Court went through the entire materials to find out whether the petitioner had made out a case for quashing the prosecution. It is the case of the prosecution that the victim girl 'X' aged 12 years [in the year 2012] is the daughter of the accused. The accused and his wife used to quarrel very frequently, on account of which, the children were left in the custody of the accused. The allegation against the accused is that he had incestuous relationship with his 12 year old daughter.

9. This Court read the statement of 'X' that has been recorded by the police under Section 161 Cr.P.C. The statement is indeed appalling and sickening. The girl in her statement has stated that her father would undress in the night and thrust his private parts into her mouth. She has also narrated the other acts of deprivations perpetrated on her by the accused which is not worthy

of recording. Therefore, this court finds that there are sufficient materials for the trial Court to frame charge against the petitioner.

10. From the evidence collected by the police, it cannot be stated that the charge against the accused is groundless. Under Section 239 Cr.P.C, an accused can be discharged only when the charge is groundless. In this case, this petitioner had filed discharge application before the Trial Court and simultaneously, he has preferred a quash application before this Court and he has not permitted the Trial Court to proceed with the hearing of the discharge application, on the ground that the quash application is pending before this Court. In this manner, the case has been dragged from 2012 to 2015, without any progress. Extraordinary cases require extraordinary remedy, especially, when a clever accused is attempting to subvert the criminal justice system.

11. In view of the above, this Court in exercise of the extraordinary jurisdiction vested on this Court under Article 226 of the Constitution of India and Section 482 and 483 Cr.P.C., directs the Trial Court to in limine dismiss the discharge application filed by the petitioner/accused and proceed with the framing of charge. The Trial Court is directed to keep the records in safe custody so that it does not go missing again.

12. While examining the minor girl, the Trial Court shall follow the procedure laid down by the Hon'ble Supreme Court in SAKSHI Vs UNION OF INDIA reported in AIR 2004 SC 3566. The child and the accused must be separated by a screen. The accused should be directed to give his questions in writing for cross examination and the court should put those questions in simple manner for the child to understand and answer. If the accused does not engage a lawyer to defend himself, the Trial Court shall provide assistance through Legal Aid panel. If the accused does not co-operate in the conduct of trial, the Trial Court is directed to cancel his bail and remand him to custody under Section 309 Cr.P.C., even if the bail had been granted by this Court or by the Sessions Court. The Trial Court is directed to complete the trial, within a period of six months, from the date of receipt of a copy of this order. The Trial Court is directed to submit a monthly report to this Court about the progress of trial. The Trial Court while appreciating the evidence shall not in any way be influenced by the observations made herein by this Court.

13. With the above direction, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The V Metropolitan Magistrate Egmore, Chennai.

2. The Inspector of Police,
W-7 All Women's Police Station,
Anna Nagar,
Chennai - 600 040

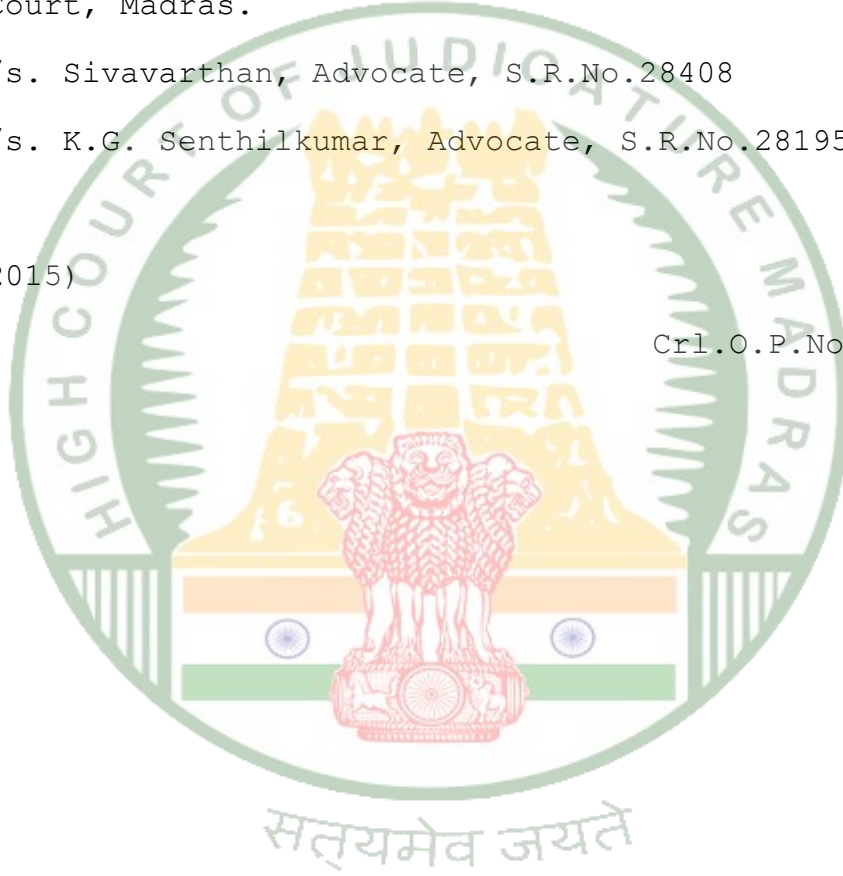
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s. Sivavarthan, Advocate, S.R.No.28408

+2cc to M/s. K.G. Senthilkumar, Advocate, S.R.No.28195

MP(CO)
EU(19/06/2015)

CrI.O.P.No.23637 of 2012



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