

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.22247 of 2016 and Crl.MP.No.10339 of 2016

DR.P.Rajendiran

Petitioner

Vs

1. State Rep. by
The Inspector of Police,
Orleanpet Police Station,
Puducherry.
(Crime No.172 of 2016)
2. B.Loganathan @ Logesh Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.172 of 2016 on the file of Orleanpet Police Station, Puducherry and quash the same.

For Petitioner Mr.A.L.Somayaji
Senior Counsel
for Ms.R.Revathy

For R1 Mr.Thangavel
Addl. Public Prosecutor (Pondy)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.172 of 2016 on the file of the respondent-police.

2 Heard Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioner and Mr.Thangavel, learned Additional Public Prosecutor (Pondy) appearing for the first respondent police.

3 On a complaint lodged by one Balasundaram, the respondent-police registered a case in Crime No.172 of 2016 on 09.07.2016 for the offences under Sections 9(e) and 10 of the Protection of Children from Sexual Offences Act, 2012 (for brevity "the POCSO Act") against Dr.Rajendran, challenging which, this quash petition has been filed.

4 It is the case of the de facto complainant that his daughter "X", aged about 13 years, studying in IX standard, developed pain in her abdomen on 09.07.2016 when he and his wife were away from home. Hence, "X" went with her housemaid Shankari to Madhava Hospital, where, "X" was examined by Dr. Rajendran (accused herein), who is stated to have made the minor girl lie on the bed and under the guise of examination, fondled her breast, as a consequence of which, the girl started weeping and came out and told the housemaid, who was made to wait outside. After she came home, this was informed to the de facto complainant, who lodged the present complaint on 09.07.2016, based on which, the FIR in this case has been registered, as aforesaid.

5 Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioner submitted that accused is protected by Section 41 of the POCSO Act, which reads as follows :

"Provisions of sections 3 to 13 not to apply in certain cases.- The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian."

6 The learned Senior Counsel further submitted that the victim girl was brought by her maternal uncle to the hospital and during the course of regular medical investigation, the petitioner had to touch her abdomen, which has been distorted by the victim girl and a false FIR has been lodged against the petitioner. He further submitted that the petitioner is a physician and that his high reputation and career should not be jeopardized, on account of this false case foisted against him.

7 Mr.Thangavel, learned Additional Public Prosecutor (Pondy) refuted the contentions of the learned Senior Counsel appearing for the petitioner.

8 In the typed set of papers filed by the accused, not only the FIR, but also the Section 161, Cr.P.C. statements of the witnesses examined by the police and also the 164 Cr.P.C. statement of the victim girl, have been enclosed, about which, this Court would, in the later part of the order, make a special mention.

9 Be that as it may, this Court perused the 164 Cr.P.C. statement of the victim girl, recorded by the Judicial Magistrate No.IV, Puducherry on 11.07.2016, wherein, she has

said that she developed pain in her abdomen, on account of which, she went to the hospital of the accused with her housemaid and that she initially saw a lady doctor, who directed that she will be examined by the accused. It is stated in the 164 Cr.P.C. statement that the accused made the housemaid wait outside and made the child lie on the examination table, removed her top, fondled her breast and pinched her cheek.

10 Mr. A.L. Somayaji, learned Senior Counsel, submitted that the expression "khh;ig mKf;fpdhh;" which finds place in the Section 164, Cr.P.C. statement of the victim girl would mean pressing the "chest" and not the "breast".

11 The aforesaid submission of the learned Senior Counsel cannot be countenanced, for, in English language, there is a distinction between "chest" and "breast", whereas, such a fine distinction is not available in Tamil. The expression "khh;ig" can be interpreted to mean both "chest" and "breast", depending upon the context in which it is used. Therefore, this Court cannot give an interpretation to that word while dealing with an application under Section 482, Cr.P.C. and say that the victim girl had meant that the accused had pressed her "chest" and not her "breast". This has to be decided only during trial when the victim girl is examined in the Court. In the teeth of such overwhelming records, it is too premature to quash the FIR. When the child cried of abdomen pain, this Court is at a loss to understand as to what is the good reason for the accused to remove her top and press her breast after asking the housemaid to stay out.

12 The learned Senior Counsel contended that the investigation has been completed and nothing survives. This contention of the learned Senior Counsel does not merit acceptance, because, filing of final report before the jurisdictional Magistrate is the only objective index of completion of investigation. Admittedly, in this case, final report has not been filed by the police before the jurisdictional Court.

13 Mr. Thangavel, learned Additional Public Prosecutor submitted that though the anticipatory bail application of this petitioner has been dismissed by this Court, yet, he has been in hiding and the police have not been able to secure him.

14 In view of the law laid down by the Supreme Court in Bhajan Lal Vs. State of Haryana [AIR 1992 SC 604], this is not a fit case to quash the FIR in Crime No.172 of 2016, in which, the investigation is at the incipient stage.

15 Now, coming to the filing of police statement and Section 164 Cr.P.C. statement in the typed set of papers filed by the accused, a Full Bench of this Court in Selvanathan (supra), has clearly held that during the pendency of investigation, the accused will not be entitled to Sections 161 and 164 Cr.P.C. statements, inasmuch as that will cause prejudice to the investigation. The essence of the Full Bench judgment (supra) is that the police take the Magistracy into confidence and send the investigation records periodically to keep the judiciary informed of the progress in investigation. Until the charge sheet is filed, the investigation papers should be kept under wraps and should not be leaked. Once they are leaked, the accused can tamper with the evidence and suspects will abscond. Following the judgment of the Full Bench, the Registrar General of this Court has issued a Circular to all the Judicial Officers in the State to scrupulously follow the mandates of the said judgment. Despite the decision of the Full Bench of this Court and the Circular issued by the Registrar General, the accused has had access to the police statement and Section 164 Cr.P.C. statement of the victim girl and filed them in the typed set of papers.

16 When the learned Senior Counsel was posed a question as to how the accused could have access to those statements, he, after consulting his instructing advocate, stated that the Trial Court advocate had copied these statements verbatim from the Court records. This explanation does not cut ice with this Court, because, each of the statements runs to several pages and as such, this explanation defies credulity.

17 Therefore, this Court directs the Principal Judge, Puducherry, to conduct enquiry as to how the police statement and Section 164 statement of the victim girl were supplied to the accused in violation of the law laid down by the Full Bench of this Court in Selvanathan (supra) read with the Circular issued by the Registrar General of this Court and take action against the errant Court staff.

In the result, this Criminal Original Petition is dismissed. Consequently, connected M.P.s closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1 The Principal Judge, Puducherry.

2 The Inspector of Police
Orleanpet Police Station
Puducherry

3 The Public Prosecutor
High Court, Madras

+ 1 cc to The Government Pleader (Pnndy) Sr.No.56898

+ 1 cc to Mrs.R.Revathy, Advocate Sr.No. 56620

Crl.O.P. No.22247 of 2016

SV1 (CO)

VS 16/11/2016



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