

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.3903 of 2016

J.Beaula

.. Petitioner

Vs.

State represented by  
the Inspector of Police  
H-5 Puthu Vannarappettai police station  
Chennai-81  
Crime No.654 of 2015

.. Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to alter the FIR No.654 of 2015 dated 26.05.2015 and include relevant sections of Woman Harassment Act and POCSO Act pending on the file of the respondent.

For Petitioner :Ms.Shaikh Mehrunisa

For Respondent :Mr.C.Emalias  
Addl. Public Prosecutor

O R D E R

The petitioner has come forward with this petition seeking for a direction to the respondent to alter the FIR No.654 of 2015 dated 26.05.2015 and include relevant sections of Woman Harassment Act and POCSO Act pending on the file of the respondent.

2.The learned counsel for the petitioner submitted that on the basis of the complaint lodged by the petitioner, a case has been registered in Crime No.654 of 2015 for an offence under Section 376 IPC. The petitioner's elder brother's daughter is the victim girl viz., Anitha, who is 20 years old, is a mentally retarded. Since she is a mentally challenged person, the offences under the Sections of POCSO Act and Women Harassment Act have to be included and to prove the same, she has filed a Doctor Certificate. Thus, she prays for the above stated relief.

3.At this juncture, learned Additional Public Prosecutor filed a status report stating that after due investigation, a charge sheet has been filed, it was taken on file vide P.R.C.No.94 of 2015 and committed to the Mahila Court, Chennai, wherein S.C.No.21 of 2016 has been assigned. The case has been posted for examination of the prosecution side witnesses on 16.03.2016. He further submits that as per the Doctor's certificate, victim girl is aged above 18 years and below 2 years. So if the trial Court comes to the conclusion that POCSO Act and Women Harassment Act attracts, it can alter the Section at any stage after examination of the Doctor.

4.Heard both sides and perused the typed set of papers.

5.On the basis of the complaint given by the petitioner, a case has been registered in Crime No.654 of 2015 for offence under Section 376 IPC. It was specifically mentioned in the F.I.R. that the victim girl, who is aged about 20 years at the time of occurrence, is a mentally retarded girl. It is pertinent to note that whether the victim girl was aged about 20 years at the time of occurrence and whether she is having such mental capacity, to be decided only at the time of trial after letting oral and documentary evidence.

6.A perusal of the status report filed by the respondent reveals that the victim girl was aged above 18 years and below 2 years as per the Doctor's certificate. But it is seen from the Doctor's certificate produced by the petitioner, the victim girl is aged about 21 years, no formal education and the impression has been given as "A case of Down Syndrome has a mental age of four years and IQ of 25, suggestive of severe level of mental retardation". Under such circumstances, I am of the opinion, it is a fit case for giving a direction to the learned Presiding Officer, Mahila Court, Chennai, to consider the medical certificate of the victim girl, after examining the Doctor and decide whether the offence under the provisions of POCSO Act and Women Harassment Act have been made out and if it is made out, the said Court can frame charge and get along with the trial.

7.With the above direction, the Criminal Original Petition is disposed of.

Sd/-  
Asst.Registrar (AS)

/true copy/

Sub Asst. Registrar

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To

1. The Presiding Officer  
Mahila Court  
Chennai

2.The Inspector of Police  
H-5 Puthu Vannarappettai police station  
Chennai-81.

3.The Additional Public Prosecutor,  
High Court, Chennai.

1 cc to Ms.Shaikh Mehrunisa, Advocate, sr. 17410

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MP (CO)  
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