

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.27316 of 2016
and Crl.M.P.No.13889 of 2016

1.Villavarayan B.Antony Joseph
2.Leo Benedict [Petitioners]

Vs

1.The Union Territory of Puducherry rep.by
The Sub-Inspector of Police,
Reddiyar Palayam Police Station,
Puducherry.
Cr.No.42 of 2016.

2.Johnsy Hephzibah [Respondents]

Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the impugned FIR in Crime No.42 of 2016 pending on the file of the first respondent, viz,the Sub-Inspector of Police, Reddiyarpalayam Police Station and quash the same.

For Petitioners : Mr.Prakash Adiapadam

For Respondents : Mr.S.Tamilvanan,
Addl.Public Prosecutor (Puducherry)
for R1

O R D E R

A case has been filed against the petitioners in Crime No.42 of 2016 for the alleged offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012. Later, it was altered into one under Sections 6 and 14 r/w 17 of the Protection of Children from Sexual Offences Act, 2012. The first petitioner is the father of the second respondent and the second petitioner is the brother of the second respondent. The allegation against the petitioners by the second respondent / de facto complainant is that the first petitioner abused her before

she attained puberty and further the second petitioner had taken photograph while she was taking bath.

2.The said allegations were totally denied by the petitioners. The petitioners state that the first petitioner is a strict father and since the second respondent was very poor in her studies, the first petitioner had changed 3 schools from LKG to 9th Standard. It is also stated that the main aim of the second respondent was to get into a hostel at any cost, without any regard to the consequences of her act. It is also stated that she is unable to discriminate between the right and wrong acts. The petitioners also state that when the first petitioner was lodged in prison on 16.04.2016, on a bail petition filed before this Court in Crl.O.P.No.11038 of 2016 this Court directed the police authorities to produce her before this Court and on her production before this Court, she was asked to read a few lines in the complaint, which she was unable to do. Therefore, on 14.06.2016, this Court referred the girl for conducting certain tests and after conducting those tests, it was found out that she wanted to stay in a hostel away from home and that she copied the complaint written by one Ms.Sharmi from the Child Helpline. It was also found out that she was intellectually below average and does not have the capacity to think about the consequences of her acts and behaviour.

3.With the above background facts, the petitioners have come up with this Criminal Original Petition on the ground that on a plain reading of the First Information Report, it would clearly demonstrate that the entire proceedings is maliciously instituted with ulterior motive to wreak vengeance against the petitioners. The learned counsel for the petitioners relied on the judgment of the Hon'ble Supreme Court in State of Haryana and Ors. v. Ch.Bhajan Lal & Ors., reported in 1992 AIR 604 in support of his contention that where the allegations in the First Information Report or complaint are absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused, or where the criminal proceedings is manifestly attended with mala fide and / or where the proceedings is maliciously instituted with ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the First Information Report itself is liable to be quashed. He also submitted that in order to prosecute for an offence under Section 14 of the Protection of Children from Sexual Offences Act, 2012, the child must be used for pornographic purpose, but whereas in this case there is no pornographic picture at all and hence the impugned First Information Report registered for the alleged offence under Section 14, is liable to be quashed.

4.Mr.C.Emalias, learned Additional Public Prosecutor, took notice for the first respondent. A counter affidavit was also filed on behalf of the first respondent, in which it is stated that prima facie case has been established in this case and hence the Criminal Original Petition has to be dismissed.

5.This Court finds considerable force in the submissions made by the learned counsel for the petitioners. In the present case, it is seen that there is no pornographic picture available, so as to implicate the petitioners to the alleged crime. Further, a plain reading of the First Information Report would show that the entire proceedings is maliciously instituted with ulterior motive to wreak vengeance against the petitioners. Furthermore, the findings rendered by the Schizophrenia Research Foundation, Chennai, upon conducting various tests, would show that the second respondent does not have the capacity to think about the outcome of her behaviour and that she copied the complaint letter verbatim as written by one M/s.Sharmi from the Child Helpline. It is also seen that the second respondent wanted to stay in a hostel and wrote a complaint against her father and she did not think about the consequence of her action. Hence, the decision of the Hon'ble Supreme Court in State of Haryana and Ors. v. Ch.Bhajan Lal & Ors., reported in 1992 AIR 604 relied on the learned counsel for the petitioners, applies to the facts and circumstances of the present case.

6.In view of the above stated circumstances, the impugned First Information Report in Crime No.42 of 2016 pending on the file of the first respondent-police is quashed the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM

To

- 1.The Sub-Inspector of Police,
Reddiyar Palayam Police Station,
Puducherry.
- 2.The Public Prosecutor,
Madras High Court, Chennai-600 104.

+lcc to Mr.Prakash Adiapadam, Advocate, S.R.No.43265
+lcc to the Government Pleader, S.R.No.43685

Crl.O.P.No.27316 of 2016
and
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MP (CO)
RS (03/07/2017)



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