



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P. (MD) .No.7949 of 2017

Pandiaraj

: Petitioner

-Vs-

State Rep. by
The Sub-Inspector of Police,
All Women Police Station,
Srivilliputtur,
Virudhunagar District.
In Crime No.2 of 2016.

: Respondent

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to call for the records pertaining in Cr.M.P.No.634 of 2016 in Special S.C.No.38 of 2016 dated 31.05.2017 on the file of learned Sessions Judge (Magalir Neethimandram), Fast Track Mahila Court, Srivilliputtur and set aside the order.

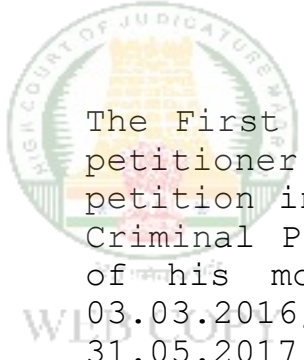
For Petitioner : Mr.S.Muniyandi

For Respondent : Mr.K.Anbarasan,
Government Advocate (Crl.side)

O R D E R

On the complaint lodged by Sheela, the respondent police have registered a case in Crime No.2 of 2016 and after completing the investigation, have filed a charge sheet in Special S.C.No.38 of 2016 for offences under Sections 341, 354(D), 506(I) of the Indian Penal Code and Section 9(1) r/w 10 and 11(IV) r/w 12 and 18 of the Protection of Children from Sexual Offences Act, 2012 @ 341 of the Indian Penal Code, 11(IV) r/w 12, 7 r/w 8, 11(I)(IV) r/w 12 of the Protection of Children from Sexual Offences Act, 2012 and 354(D) and 506(i) of the Indian Penal Code against the petitioner.

2. It is the case of the prosecution that the *defacto* complainant was a minor. The petitioner had developed a one side love for the *defacto* complainant and was following her regularly when she went to College. It is the specific allegation of the prosecution that on 17.12.2015, 10.02.2016 and 03.03.2016, the petitioner misbehaved with the *defacto* complainant by wrongfully restraining her in a public road and pulling her by hand and threatening her that he would kill her if she does not love him.



The First Information Report was registered on 03.03.2016 and the petitioner was arrested. During trial, the petitioner filed a petition in Crl.M.P.No.634 of 2016 under Section 91 of the Code of Criminal Procedure to call for the call details and other records of his mobile phone from the service provider for the date 03.03.2016, which has been dismissed by the Trial Court on 31.05.2017, challenging which, the accused is before this Court.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) for the respondent.

4. The learned counsel for the petitioner submitted that the accused has got a fundamental right to fairly defend himself and, therefore, the Trial Court ought not to have dismissed the petition. He further submitted that if the call details are brought to the Court, it will be obvious that the petitioner was in the Police Station on 03.03.2016 and that he was illegally arrested.

5. Per contra, the learned Government Advocate (Criminal side) refuted the submissions.

6. In the considered opinion of this Court, the power under Section 91 of the Code of Criminal Procedure can be invoked, if it is shown that a particular document is necessary or desirable for the purpose of the case. In other words, the document that is called for must be relevant to decide the facts in issue.

7. In **State of Orissa vs. Debendra Nath Padhi** reported in **AIR 2005 SC 359**, the Supreme Court has stated that Section 91 cannot be used for making a fishing enquiry. In this case, the facts in issue is whether the accused misbehaved with the *defacto* complainant on the three dates mentioned above and not on 03.03.2016. Therefore, the call details with regard to 03.03.2016 can have no bearing to decide the facts in issue. That apart, the service provider would have the records only for a period of three months and not beyond that. In this case, the petition in Crl.M.P.No.634 of 2016 itself has been filed only in August, 2016. Under such circumstances, this Court does not find any infirmity in the order passed by the Court below warranting interference.

8. In the result, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(Crl Side)

/True copy/



To

1.The Sessions Judge (Magalir Neethimandram),
Fast Track Mahila Court, Srivilliputtur.

2.The Sub-Inspector of Police,
All Women Police Station,
Srivilliputtur,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.S.Muniyandi, Advocate in SR.No. 62163

SML

AE/MR KKR/SAR3/12.07.2017/3P/5C

Order made in
CRL.O.P. (MD) .No.7949 of 2017
Dated: **28.06.2017**