

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2018

Pronounced on : 15.03.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1325 of 2017

C.Arumugam ... Petitioner

Vs.

1.Mahalakshmi

2.State Represented by the
Inspector of Police,
Virudhachalam All Women Police Station,
Virudhachalam, Cuddalore District.
(Crime No.15 of 2016) ... Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate No.I, Virudhachalam, Cuddalore District, dated 13.08.2017 made in Crl.M.P.No. not assigned of 2017 in Crime No.15 of 2016 pending on the file of the 2nd Respondent Police.

For Petitioner : Mr.S.Rajanbabu
for M/s.Raji and Rajan

For Respondents : Mr.T.Meganathan (for R1)

Mr.R.Suriya Prakash (for R2)
Government Advocate (Criminal Side)

O R D E R

The petitioner, who is the de-facto complainant in Crime No.15 of 2016, challenging the order in un-numbered Crl.M.P.No. of 2017, dated 13.08.2017, on the file of the learned Judicial Magistrate No.I, Virudhachalam.

2.It is the case of the petitioner/de-facto complainant is that he has given a complaint before the District Social Welfare Officer, Cuddalore District, Cuddalore on 15.04.2016 alleging that the accused Nos.1 to 5 and 7 to 8 in the above Crime Number has conducted Betrothal (Engagement) between the 6th accused and the minor girl namely, Vembu on 11.04.2016.

3.It is also alleged that the accused Nos.1 to 5 has illegally collected consideration of Rs.2,00,000/- and 10 Sovereigns of gold Ornaments from the accused No.6 to 8 to perform a child marriage. After the said complaint, the District Social Welfare Officer has called upon the Accused Nos.1 to 8 in the said case and asked them to stop the said child marriage, since it is forcible marriage and the said minor girl namely, Vembu has also not interested in the child marriage, the accused Nos.1 to 8 were forced the minor girl to accept the marriage.

4.Despite of the Advice given by the District Social Welfare Officer, the 6th accused married the said minor girl Vembu on 08.06.2016 forcibly with the help of the Accused Nos.1 to 5 and Accused Nos.7 and 8.

5.It is also further alleged that the complaint given by the petitioner, after the marriage, the 6th accused has forcibly had physical relationship with the said minor girl Vembu on every day on several occasions for more than five months against the will of the said minor girl. The said barbaric act was done by the 6th accused with the help of accused Nos.1 to 5 and 7 and 8.

6.Originally on registering the case, the 2nd accused namely, one Malliga, who is the mother of the said minor girl Vembu was arrested and sent to judicial custody and subsequently released on bail by the Lower Court itself. The other accused Nos.1, 3, 4, 5, 6, 7 and 8 were obtained Anticipatory Bail before this Court on 26.08.2016 in CrI.O.P.No.16104 of 2016 and CrI.O.P.No.18943 of 2016 respectively, by suppressing all the material facts.

7.It is further case of the petitioner is that on 07.10.2016, the respondent/Police has produced the minor girl Vembu before the Government Head Quarters Hospital, Cuddalore to get the report on Medical Examination of a Female Victim of Sex

Offence. The said victim minor girl was examined by the authorized Government Medical Practitioners of the said Government Hospital on the same day and they found that the said victim girl having sexual intercourse with his husband namely, the 6th accused in the case. Hence, on 23.11.2016, the respondent/Police has altered the said case as offences under Sections 9 and 10 of Prohibition of Child Marriage Act, 2006 and Sections 294(b) and 506(i) of I.P.C. read with Section 4 of POSCO Act, 2012. Thereafter, immediately, the respondent/Police arrested the 6th accused on 23.11.2016 and produced before the learned Judicial Magistrate, Virudhachalam and the 6th accused was remanded by the learned Judicial Magistrate, Virudhachalam. But, on 24.11.2016 itself, the 6th accused was released on bail, but no medical examination was conducted to the 6th accused by the respondent Police.

8.It is the case of the petitioner is that the offences punishable under Section 4 of POSCO Act 2012 are all very serious and grave in nature, which is very much against the society. It is also further stated that the medical examination was not conducted to the 6th accused in the said case and custodial interrogation are very much essential, since the accused would have tamper and hamper the witnesses as well as the evidences. In the interest of justice, the petitioner moved this Court for Cancellation of Anticipatory Bail already granted in Crl.O.P.No.26563 of 2016 and Crl.O.P.No.26564 of 2016 and this Court by order dated 18.04.2017 has cancelled the Anticipatory Bail to the accused Nos.1, 3, 4, 5, 6, 7 and 8.

9.Thereafter, the 2nd respondent has arrested the 4th accused, who is the 1st respondent herein on 13.08.2017 and produced her before the learned Judicial Magistrate, Virudhachalam, Cuddalore District for remand. The learned Magistrate has remanded the 4th accused/1st respondent for 15 days. Further on the same day viz., on 13.08.2017, the learned Judicial Magistrate, Virudhachalam has granted bail to the 4th accused/1st respondent herein on her executing her own Bond for a sum of Rs.10,000/- as if she has committed offences only under Section 10 of Prohibition of Child Marriage Act, read with Sections 294(b) and 506(ii) of I.P.C.

10.The petitioner also states that the learned Judicial Magistrate has ignored the offence committed by the 4th accused under Section 4 of POSCO Act, 2012 in the said case, while passing the bail order. As per the order of the Hon'ble Division Bench of this Court, only the Special Designated Court / Mahila Court of District Judge Cadre can entertain Bail application and

Anticipatory Bail application arising out of POSCO Act. Therefore, the bail granted to the 4th accused by the learned Judicial Magistrate, Virudhachalam, Cuddalore District, dated 13.10.2017 is erroneous and it is liable to be set aside.

11.It is further states that the petitioner is the Paternal uncle of the victim girl namely, Vembu and further the petitioner was the Ward Member of the Local Municipal Panchayat. Therefore, he lodged the said complaint before the Social Welfare Department and also before the concern Police Authority. Therefore, challenging the order dated 13.10.2017 granted bail to the 1st respondent/4th accused, this Criminal Revision has been filed before this Court.

12.I heard Mr.S.Rajanbabu for M/s.Raji and Rajan, learned counsel for the petitioner and Mr.T.Meganathan, learned counsel for the 1st respondent and Mr.R.Suriya Prakash, learned Government Advocate (Criminal Side), for the 2nd respondent and perused the entire records.

13.It is admitted fact that a case has been registered against all the accused Nos.1 to 8 for the offences under Sections 9 and 10 of Prohibition of Child Marriage Act, 2006 and Sections 294(b) and 506(i) of I.P.C. read with Section 4 of POSCO Act, 2012 in Crime No.15 of 2016, on the file of the 2nd Respondent/All Women Police Station, Virudhachalam, Cuddalore District.

14.The offences under Sections 9 and 10 of Prohibition of Child Marriage Act is triable by Sessions Court as per the Act. In this case, it was alleged that the accused were performed the Child Marriage Act to the minor girl namely, Vembu with the 6th accused.

15.Section 10 says as follows:

"10.Punishment for solemnising a child marriage.- Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage."

16.In the Act namely, the Prohibition of Child Marriage Act, 2006, it is made clear that Sections 7 and 8 are as follows:

"7.Power of district Court to modify orders issued under section 4 or section 5.-The district Court shall have the power to add to, modify or revoke any order made under section 4 or section 5 and if there is any

change in the circumstances at any time during the pendency of the petition and even after the final disposal of the petition.

8. Court to which petition should be made.-For the purpose of grant of reliefs under sections 3, 4 and 5, the district Court having jurisdiction shall include the district Court having jurisdiction over the place where the defendant or the child resides, or where the marriage was solemnised or where the parties last resided together or the petitioner is residing on the date of presentation of the petition."

17. As per the above Act, the District Court of the concerned District having jurisdiction over the place where the defendant or the child resides, or where the marriage solemnised or where the parties last resided together or the petitioner is residing on the date of presentation of the petition. Therefore, it is also made clear that Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006, the District Court only having power to deal the matter.

18. Apart from this, as per Section 4 of POSCO Act, 2012, the District Court alone having power to deal the matter. As per Section 28, the Court is Designated as a Special Court namely, the Court of Sessions is notified as Children Court. Therefore, Section 28 of Protection of Children from Sexual Offences Act, 2012 as follows:

"28. Designation of Special Courts.- (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than the offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology

Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online."

19. Therefore, it is made clear that as per Sections 9 and 10 of the Child Marriage Act and Section 4 of POSCO Act, 2012, the District Court, who has Designated as a Special Court alone having power to deal the matter, even the bail and anticipatory bail and the hearing of the case itself.

20. Thus being the case, the learned Judicial Magistrate, Virudhachalam having no power to pass any orders on the bail application filed by any of the accused, but in this case, when the 4th accused has filed an application for bail, the same was considered on 13.08.2017 and the 4th accused, who is the 1st respondent herein was let on bail, the learned Magistrate has passed the order on 13.08.2017 which read as follows:

"13.8.17.

This is an application for bail for the alleged offences U/S 10 of Prohibition of Child Marriage Act, 294(b), 506(1) IPC.

Considering the reasons that the Petitioner is having two children of tender age and nobody to look after and the for that fact notice could not be issued to APP, the Petitioner is enlarged on bail on executing own bond for Rs.10,000/- and on condition to appear before AWPS, VDM at 10 am until further order."

21. This Court while dealing this case, as directed the learned Magistrate, to give explanation why he has passed the bail order when the offences under Sections 9 and 10 of Child Marriage Act and Section 4 of POSCO Act, would be dealt with only by the District Court, which is Designated as a Special Court.

22. In his reply dated 07.02.2018, the learned Magistrate states that Section 4 of POSCO Act, 2012 was made out only against the accused viz., Rajadurai, who is the 6th accused and applied his judicial mind and remanded to judicial custody under Sections 9 and 10 of Prohibition of Child Marriage Act. Both of them are husband and wife, by keeping in mind the well settled law that remand should not be done mechanically.

23. The learned Magistrate also states that Sections 9 and 10 of Prohibition of Child Marriage Act and Sections 294(b) and 506(i) of I.P.C. are triable by the learned Judicial Magistrate. Therefore, the learned Magistrate was under the impression that he could exercise his discretion in favour of 4th accused viz.,

Mahalakshmi and considering her case granted bail.

24. He has also given explanation saying that as per the orders of the Hon'ble Division Bench of this Court in which dealt with the powers of the Special Court under POSCO Act, the learned Magistrate says that the orders only for first remand and for all further proceedings, the accused to be forwarded to the Special Court. By following the decision of the Hon'ble Division Bench of this Court, he has granted bail only to the 4th accused and remanded the 6th accused Rajadurai on presumption that Section 10 of the Prohibition of Child Marriage Act and Sections 294(b) and 506(i) I.P.C. are made out the 4th accused and Section 4 of the POSCO Act is not attract against the 4th accused and granted bail. Even otherwise the Prohibition of Child Marriage Act, the Court is Designated in Section 2(e) it is stated that District Court means in any area for which a Family Court established under Section 3 of the Family Courts Act, 1984 (66 of 1984) exists, such Family Court, and in any area for which there is no Family Court but a City Civil Court exists, that Court and in any other area, the principal Civil Court of original jurisdiction and includes and other Civil Court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act.

25. When the Prohibition of Child Marriage Act clearly states that in the Prohibition of Child Marriage Act, the Court means District Court, but the learned Judge simply stated that Sections 9 and 10 of Prohibition of Child Marriage Act and I.P.C. offences comes under the jurisdiction of Magistrate is not correct. Pursuant to the order of this Court, the explanation given by the learned Magistrate on 07.02.2018 is accepted by this Court and hence there is no necessity arosed this Court to pass any order against the learned Magistrate, since under the impression that the Prohibition of Child Marriage Act comes under the jurisdiction of Magistrate Courts, he granted bail to the 1st respondent/4th accused.

26. Admittedly, the case registered under the offences of Sections 9 and 10 of Prohibition of Child Marriage Act and Section 4 of POSCO Act will lie only under the jurisdiction of the District Court namely, Designated Special Court and hence, the learned Magistrate have no power to pass any order on the bail application filed by the 1st accused, who is the 4th respondent in the case and hence granting bail on 13.08.2017 to the 4th accused who is the 1st respondent herein is totally not maintainable and accordingly the order in un-numbered Crl.M.P.No. of 2017 dated 13.08.2017 is liable to be set aside.

27.In the result:

(a) this Criminal Revision Case is allowed by setting aside the order passed in unnumbered CrI.M.P.No. of 2017 in Crime No.15 of 2016, dated 13.08.2017, on the file of the 2nd respondent Police;

(b) the 2nd respondent Inspector of Police, is directed to arrest the 4th accused the 4th respondent herein immediately and remand into the judicial custody;

(c) the 1st respondent/4th accused is giving liberty to move bail application before the concerned Court, if so she advised.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate No.I,
Virudhachalam,
Cuddalore District.

2.The Inspector of Police,
All Women Police Station,
Virudhachalam.

+1cc to Mr.Raji & Rajan Associates Advocate,S.R.No.20130
(23/03/2018)

CrI.R.C.No.1325 of 2017

RRK(15/03/2018)

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