

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2019

Coram:

The Honourable Dr.Justice G.Jayachandran

CrI.O.P.No.15966 of 2016

and CrI.M.P.Nos.7803 & 7804 of 2016

M.Mahalingam

...Petitioner

Vs.

1.The Union Territory of Puducherry represented by
Inspector of Police,
Thirunallar Police Station,
Karaikal.

2.Kalyani

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records pertaining to the charge sheet in S.C.No.2 of 2016 on the file of the learned District and Sessions Judge cum Children's Court, Karaikal in Crime No.177 of 2013 of Thirunallar Police Station, to quash the same.

For Petitioner : Mr.R.Selvakumar

For R1 : Mr.K.Balamurugane

Additional Public Prosecutor(Pondy)

For R2 : No appearance

ORDER

Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor (Pondy) representing for the State.

2. It is the case under the POCSO Act, wherein the victim girl aged about 13 years, studying in the school, where the petitioner was the correspondent of the school, has alleged sexual assault when she went to the room of the petitioner to get his blessings on her birth day. After completion of investigation, final report has been filed against the petitioner for offence under Section 8 of the POCSO Act. The present petition is filed to quash the case taken on file by the District Sessions cum Children's Court, Karaikal in S.C.No.2 of 2016.

3. The prime contention raised in this petition is that the act alleged against the petitioner does not fall within the purview of Section 7 of the Act, which is punishable under Section 8 of the said Act. The prosecution has deliberately failed to collect and place all the records before the Court pertaining to the enquiry conducted by the police, Collectorate

and the Education Department. The Education Department had given conclusive finding that the alleged complaint has been borne out of malafide intention of rival school discontent by the success of the petitioner's school.

4. The learned Additional Public Prosecutor (Pondy) would submit that the statement of the victim girl, her mother and the staff of the school prima facie indicates that on 06.09.2013, the victim girl was subjected to sexual assault by the petitioner, due to that she became depressed. On 25.09.2013, she consumed kerosine, so she was taken to the doctor and treated. Thereafter, she took TC from the school on 13.10.2013. The statement of the victim, the incident immediately reported to her mother is corroborated by the statement of the mother as well as one Sasikala staff of the petitioner's school. Therefore, it is contended that, since physical conduct with sexual intent by the petitioner being spoken by these witnesses, there are materials to frame the charge against the petitioner. Therefore, the Criminal Original Petition to quash the case is unsustainable.

5. The complaint against the petitioner herein is that on 06.09.2013 when the victim girl went to his room to get blessings on the eve of her birth day, the petitioner who was the Correspondent of the school held her hands and kissed on her cheek. The victim girl was shocked by his conduct, so left the room of the petitioner. She went home and reported about the incident to her mother.

6. It is contended by the learned counsel for the petitioner that the said act is not done with intent of sexual assault, so will not attract Section 7 of the POCSO Act.

7. Reading of the Section 7 of the POCSO Act, this Court is of the opinion that such an act will fall within the definition of sexual assault, provided that he had the sexual intention while doing the act. Whether the offender had sexual intent or not is matter for trial.

8. The learned counsel would submit that the petitioner is the Correspondent of the school aged 65 years, the girl studying in the school was a teenage girl she went to his room to get blessings. This could not be considered as an act done with sexual intent. Whether the age, place and the context will give any inference about the intention of the person who committed the alleged act, all depends upon the facts to be proved in the course of trial. If not, Section 29 of the Act, which provides statutory presumption against the person prosecuted, the contention raised by the learned counsel for the

petitioner would be legally sustainable. Since Section 29 of the Act gives legal presumption against the person prosecuted, when the victim has come forward to give a complaint that the offender had sexual intent, summarily the High Court cannot go into the statement of the accused and draw any inference by exercising its power under Section 482 Cr.P.C. Contra to the presumptive clause, which cause reverse burden of the person prosecuted. The next ground that the investigation is lopsided and had not placed all the records which are to be placed by the prosecution appears to be correct. Admittedly all the witnesses for the prosecution say that the child line team appointed by the Collector made an enquiry and submitted a report. Also the Education Department has conducted enquiry and given report about the incident. While so the Investigating Officer ought to have collected those materials and made an independent assessment of the facts before filing the final report. It appears only part of the documents collected during the course of investigation has been relied and filed by the prosecution.

9. In the said circumstances, this Court is of the opinion that the Investigating Officer has to be directed to conduct further investigation in this case and place all materials which has been collected or available before the trial Court for appropriate appreciation and for further proceedings. Therefore, the charge framed is set aside with liberty to the Investigating Officer to conduct further investigation and file further report before the trial Court. The trial Court is directed to appreciate the records and proceed further in accordance with law.

10. With the above directions, this criminal original petition stands disposed of. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(Insp.cell)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Inspector of Police,The Union Territory of Puducherry
Inspector of Police, Thirunallar Police Station,
Karaikal.

2.The Public Prosecutor (Pondy)
High Court of Madras.

+1 cc to Mr.R.Selvakumar, Advocate, Sr.No. 27337
+1 cc to The Public Prosecutor for Puducherry, Sr.No.27709

Crl.O.P.No.15966 of 2016

BR(CO)
CSL/02.05.2019



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