

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.21414 of 2019

N.Chandramohan

.. Petitioner

-vs-

1. The State by
The Inspector of Police,
W-6, All Women Police Station,
Kilpauk, Chennai-600 010.
(Crime No.11/2018)

2. C.Shakunthala

.. Respondents

Prayer:

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for records and quash the FIR in Crime No.11 of 2018 on the file of the 1st respondent police.

For Petitioner : Mr.V.Ramana Reddy

For Respondents : Mr.M.Mohamed Riyaz (for R1)
Additional Public Prosecutor

ORDER

This is one of those unfortunate cases where the wife has resorted to giving a complaint against her husband alleging that he has committed sexual assault against their daughter, who is aged about 11 years.

2.The 2nd respondent has given a complaint to the respondent police stating that she married the petitioner in the year 2003 and out of the said wedlock, two girl children were born and they are aged about 11 years and 1½ years respectively. The complaint proceeds as if there is an illicit relationship between the petitioner, who is the father and the daughter, who is aged about 11 years and the 2nd respondent is said to have warned the petitioner regarding the same. The 2nd respondent proceeds to allege that she was able to see some bodily changes of her elder daughter and goes to the extent of saying that the

elder daughter also became pregnant and the same was terminated by giving native medicine. Therefore, the 2nd respondent has removed both the daughters from the custody of the petitioner and handed them over to the Government Home.

3. When the above complaint was given by the 2nd respondent, going by the serious allegations made in the complaint, the respondent police registered an FIR in Crime No.11 of 2018 for an offence under Section 6 of the Protection of Child from Sexual Offences Act, 2012.

4. The petitioner apprehended arrest by the respondent police and therefore approached this Court by filing an Anticipatory Bail petition in Crl.O.P.No.30114 of 2018. Since this Court was shocked at the allegations made in the complaint, this Court summoned the minor girl in order to enquire her in person. The minor/victim girl appeared before this Court and completely denied the allegations made against the petitioner.

5. The relevant portion of the order is extracted hereunder:

"2. The case of the prosecution is that the defacto complainant is the mother of the victim girl and she lodged a complaint that the father of the victim girl, that is her husband had sexually assaulted their own daughter aged about 13 years. Hence the complaint.

3. The learned counsel appearing for the petitioner would submit that the petitioner is none other than the father of the victim girl. There was a dispute between the petitioner and the defacto complainant, therefore a false complaint filed as against the petitioner. Further he also submits that the defacto complainant and the petitioner were separated from their matrimonial life and their children are in custody of the petitioner, and he sought for grant of anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that the petitioner is the father of the victim girl and he sexually assaulted the victim minor girl. Hence, she opposed to grant anticipatory bail to the petitioner.

5. In this regard, this Court has enquired the victim girl, during which she completely denied the allegations lodged by the defacto complainant. Further, she stated that she never undergone treatment at any hospital for aborting child as alleged by the defacto complainant. It is seen that the defacto complainant lodged a false complaint with an ulterior motive to threaten the

petitioner."

6.This Court categorically found that the defacto complainant lodged a false complaint with an ulterior motive to threaten the petitioner and thereby granted anticipatory bail to the petitioner.

7.The present petition has been filed seeking to quash the FIR on the ground that the FIR itself is an abuse of process of law and is being used as an instrument to threaten the petitioner and to wreck vengeance against the petitioner.

8.This Court summoned the 164 statement recorded by the learned Additional Family Court Judge, Egmore, from the victim girl. While questioning, the victim girl has clearly narrated the entire incident and it can be seen that the defacto complainant was attempting to take the daughters into her custody and for that purpose she has cooked up a false story against the petitioner. The victim girl has gone to the extent of saying that she and her younger sister wanted to go with their father, when enquired by the learned Judge.

9.The victim girl has taken a very consistent stand both at the time of giving statement under Section 164 of Cr.P.C. and at the time when she was personally enquired by this Court, at the time of considering the anticipatory bail petition filed by the petitioner. It is clear that the allegations made by the 2nd respondent is completely false and she has given the complaint with an ulterior motive against the petitioner. Unfortunately she has gone to the extent of casting aspersion against the petitioner as if he has illicit relationship with his own daughter aged about 11 years.

10.This case has shocked the conscience of this Court and it is unbelievable that the mother just for the sake of taking custody of her child, can go to the extent of making such serious allegations against her husband by alleging that he is having physical contact with his own daughter.

11.There were instances when the attention of this Court was drawn to similar such incidents, where false complaint were given as if the husband has committed an offence under POCSO Act against the daughter and it was informed to this Court that such cheap tactics are adopted in the family court cases, just to arm twist the husband and make him fall in line. This Court was not willing to believe that such instances can happen and this case is an eye opener for this Court. This Court was made aware, the extent to which POCSO Act can be misused.

12.The object of the POCSO Act was to protect children from offence of sexual assault, sexual harassment, etc., and that is why the Act specifically provides for a legal presumption as to the commission of the offence and the culpable mental state, once a prosecution is launched under this Act. The burden of proof is upon the accused to prove that he had no such mental state with respect to the Act charged as an offence in that prosecution. The consequences of prosecuting a person under this Act are very serious and apart from providing for stringent punishments, the person who is prosecuted virtually comes down in the eyes of the society at large and he is virtually shunned from the main stream of the society.

13.Fortunately in this case, the concerned child was able to express herself very clearly both before this Court as well as the Court below and therefore on the face of it, this Court was able to find that the Act has been misused by the 2nd respondent. If that had not happened, the petitioner would have been forced to go through the rigour of a trial and the situation would have turned even more murkier.

14.In the considered view of this Court, the prosecution against the petitioner should not continue even for a minute more and it has to be immediately interfered and the FIR has to be quashed, in order to bring to an end a malicious prosecution which is of monstrous proportions. The 2nd respondent even without caring for the future of her own daughter, has proceeded to give a complaint alleging illicit relationship between her husband and daughter, just to make the petitioner fall in line and to get the daughters into her custody. This is the worst type of false prosecution a Court can ever encounter.

15.In the considered view of this Court, the 2nd respondent should not be let off and she should be made to suffer the consequences for having given a false complaint against her husband at the cost of her own daughter. The respondent police is directed to immediately proceed against the 2nd respondent under Section 22 of the POCSO Act for having given a false complaint and take action against her in accordance with law. This case should be a lesson for all those who attempt to misuse the provisions of this Act, just to satisfy their own selfish ends.

16.In the result, the F.I.R. in Crime No.11 of 2018 is quashed in so far as the petitioner is concerned and the respondent police is directed to alter the FIR based on this order and proceed against the 2nd respondent/defacto complainant under Section 22 of the Protection of Child from Sexual Offences Act, 2012.

17.This Criminal Original Petition is accordingly allowed.

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

vs/jas

To

1. The Inspector of Police,
W-6, All Women Police Station,
Kilpauk, Chennai-600 010.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Ramana Reddy, Advocate, S.R.No.71245

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KS(CO)
CS/17/09/2019



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