

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.Nos.27783 and 29665 of 2018

and Crl.MP.No. 16054, 17416 & 17417 of 2018
and Crl.M.P.No.4557 & 4834 of 2019

Dr.Uma Devi ... Petitioner/Accused 2 in
Crl.O.P.No.27783 of 2018

N.R.Manikandan ... Petitioner/Accused 2 in
Crl.O.P.No.29665 of 2018

Vs.

1. The State of Tamil Nadu,
Rep. by the Inspector of Police,
K-4, Anna Nagar Police Station,
Anna Nagar, Chennai,
Crime No.717 of 2018

2. M.Gnanasuriyan ... Respondents/Complainant,
Defacto Complainant in both
petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C. praying to call for the records pertaining to C.C.No.8014 of 2018 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai and quash the same. (Prayer is amended vide order dated 24.01.2019 in Crl.M.P.No.972 of 2019 in Crl.O.P.No.27783 of 2018)

For Petitioner in
Crl.O.P.No.27783 of 2018 :Mr.B.Kumarasamy

For Petitioner in
Crl.O.P.No.29665 of 2018 :Mr.Anantha Narayanan,
Senior Counsel
For Mr.K.Balu

For Respondents in
both petitions

For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.
For R2 : Mr.M.Babu Muthu Meeran

C O M M O N O R D E R

These petitions have been filed to quash the proceedings in C.C.No.8014 of 2018 on the file of the V Metropolitan Magistrate, Egmore, Chennai, thereby taken cognizance for the offences punishable under Sections 294(b), 342, 406, 506(ii) IPC r/w 75 & 77 of Juvenile Justice Act.

2. The learned Senior Counsel appearing for the petitioner in CrI.O.P.No.29665 of 2018 submitted that there is no material or evidence to substantiate the charge as alleged by the second respondent herein. The alleged occurrence said to have been taken place in the month of January, 2018 and the second respondent has chosen to lodge complaint after seven months i.e., in the month of August, 2018. The first respondent did not follow the procedure contemplated under Section 31 of the Juvenile Justice Act. Since the first respondent ought to have been recorded statement from the juvenile before the committee as contemplated under Section 31 of Juvenile Justice Act, as such the entire proceedings vitiated. The offence under Section 75 of the Juvenile Justice Act is not at all attracted as against the petitioner, since it is applicable only to the persons, who have control over the children who have been subjected to cruelty. Even as per the case of the complainant, the first accused is said to have been mixed the sleeping pills with the milk and given to the children. Therefore there is no question of administration of Narcotic drug or Psychotropic substances on the children.

2.1. Further he submitted that the sleeping pills did not fall under the Narcotic drug or Psychotropic substance, as such the offences under Sections 75 & 77 of Juvenile Justice Act are not at all attracted as against the petitioners. There are no ingredients to substantiate the said charged. Further he submitted that entire allegations are bald and vague as against the petitioners and there is no specific averments to substantiate the charges for the offences under Sections 294(b), 342, 406, 506(ii) IPC r/w 75 & 77 of Juvenile Justice Act. To support of his arguments, the learned counsel relied upon the following judgments :-

- (i) 2006(2) CTC 642 - Sri Krishna Tile and Potteries Pvt. Ltd., Vs. Inspector of Police, Chennai
- (ii) 2008 (2) MWN(CrI.) 288 - Rajan Vs. State rep by Inspector of Police
- (iii) 2015(4) CTC 109 - S.Selvakumar Vs. State rep by Inspector of Police
- (iv) CDJ 2000 HMC 1235 - Ramalingam & anr Vs. State of Tamilnadu & anr

- (v) 2005 CrI.L.J. 3903 - Satinder Kour Vs. S.D. Singh
(vi) CDJ 2006 MHC 2923 - S.Isaiyendhi Vs. Inspector of Police
(vii) 2009 (10) SCC 184 - Neelu Chopra & anr Vs. Bharti
Therefore, he prayed for quashment of the entire proceeding.

3. Per contra, the learned counsel appearing for the second respondent/defacto complainant submitted that there are two accused, in which the petitioner in CrI.O.P.27783 of 2018 is arraigned as A1 and the petitioner in CrI.O.P.No.29665 of 2018 is arraigned as A2. The first accused is the wife of the second respondent/complainant. The second respondent and the first accused got married on 06.07.1997 and gave birth to two children by twins. In fact at the time of marriage, the second respondent was working as clerk in the Railway Cooperative Society and the petitioner/A1 in CrI.O.P.27783 of 2018 had just completed her graduate and thereafter the defacto complainant has spent money for her master degree in Physical Education. While being so, the second accused was introduced by the sister of the first accused, who hails from Delhi. They developed friendship and with his help, the first accused interested in politics and also spent money lavishly. Utilizing these circumstances, the second accused falsely represented that he has so many links in the national parties and he could get the seat for MLA or MP election in Tamil Nadu, and thereby they developed illicit relationship. He is the paramour of first accused and very often he used to visit in the absence of the second respondent/defacto complainant. When the second respondent has questioned with his children, they informed that the accused persons used to administer sleeping pills on them with milk and put them inside the room and locked the door. Whenever they woke up, the accused persons used to threatened them by saying that should not revealed the said incident. It was happened regularly for so many days and out of fear the children also did not reveal the same.

3.1. He further submitted that the defacto complainant came to knowledge from the house maid and when the servant maid questioned them, she was also threatened and scolded by the accused persons. Hence the defacto complainant lodged complaint and the first respondent filed charge sheet for the offences under Sections 294(b), 342, 406, 506(ii) IPC r/w 75 & 77 of Juvenile Justice Act. He further submitted that there are specific allegations and averments to attract all the offences as against the petitioners. He also relied upon the judgement reported in (2002) 3 SCC 89 in the case of State of Karnataka Vs. M.Devendrappa and anr. Therefore, he sought for dismissal of the quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioner in both the

petitions are arraigned as A1 & A2 and they have been charged for the offences under Sections 294(b), 342, 406, 506(ii) IPC r/w 75 & 77 of Juvenile Justice Act, and the same has been taken cognizance in C.C.No.8014 of 2018 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai. There are specific avernments and the allegations in the charge sheet to attract the offences as against the petitioners. Further he relied upon the judgment of the Hon'ble Supreme Court of India passed in Crime No.579 of 2019 dated 02.04.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors. Further he submitted that under Section 482 of Cr.P.C., this Court cannot appreciate the statement of evidence recorded under Section 161(3) of Cr.P.C. and it has to be considered only during the trial. Therefore, he prayed for dismissal of the quash petition.

5. Heard Mr.B.Kumarasamy, learned counsel appearing for the petitioner in Crl.O.P.No.27783 of 2018 and Mr.Anantha Narayanan, learned Senior Counsel appearing for the petitioner in Crl.O.P.No.29665 of 2018, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.M.Babu Muthu Meeran, learned counsel appearing for the second respondent in both the petitions.

6. There are totally two accused in this case and the petitioner in Crl.O.P.No.27783 of 2018 is arraigned as A1 and the petitioner in Crl.O.P. No.29665 of 2018 is arraigned as A2. They are charged for the offences under Sections 294(b), 342, 406, 506(ii) IPC r/w 75 & 77 of Juvenile Justice Act. The prosecution to substantiate the charges, examined ten witnesses including the minor children of the second respondent. It is seen from the statement recorded under Section 161(3) of Cr.P.C., from the second respondent as well as the minor children that there are specific avernments and allegations against the petitioners to attract the offence. Insofar as the offences under Sections 75 and 77 of Juvenile Justice Act, 2015 are concerned, it is relevant to extract the provisions under Section 31 of Juvenile Justice Act, as follows :-

"31. Production before Committee :-

(1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely :-

(i) any police officer of special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit of inspector appointed under any labour law for the time being in force; "

It is clear from the above that any children in need of care and protection may be produced before the committee. In the case on hand, the minors are under the care and protection of the second respondent herein, who is none other than their own father. Therefore, the said provisions is not applicable to the present case, as such the offences under Sections 75 & 77 of the Juvenile Justice Act are sustainable as against the petitioners.

7. It is also seen that the first accused is none other than the mother of the children and the statements revealed that she connived with the second accused administered sleeping pills on the minor children and put them inside the room and locked the door. Further they also threatened them with dire consequences, if they revealed to anybody. The second accused being the paramour of the first accused and utilized the circumstances that the first accused interested in politics and on false assurance, he developed illegal intimacy with the first accused. Therefore, the entire circumstances and evidences on record would clearly attract the offences charged by the prosecution. Therefore, the judgments relied upon by the learned Senior Counsel appearing for the petitioners are not helpful to the case of the petitioners and those judgments were held in different circumstances and no way connected with the facts of the present case.

8. In this regard, the learned Additional Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of ++the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the

aforementioned complaint case to its original file for being proceeded with on merits in accordance with law."

9. In the above judgment, the Hon'ble Supreme Court of India held that while dealing the petitions under Section 482 of Cr.P.C., the High Court has no jurisdiction to appreciate the statement of witnesses and records. It has to be considered only during the trial before the trial Court. Therefore, this Court finds no merit in the quash petitions to quash the entire proceedings. That apart there are specific averments and materials are there to substantiate the charges, as such this Court is not inclined to quash the proceedings. However, considering the fact that the case is of the year 2018, the trial Court is directed to complete the trial proceedings within a period of six months from the date of the receipt of a copy of this Order.

10. Accordingly, both the Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rts
To

1. The V Metropolitan Magistrate Court,
Egmore, Chennai
2. The Inspector of Police,
K-4, Anna Nagar Police Station,
Anna Nagar, Chennai.
3. The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.M.Babu Muthumeeran, Advocate Sr.37799
+2cc to Mr.B.Kumarasamy, Advocate Sr.38043
+1cc to Mr.K.Balu, Advocate Sr.38350

CRL.O.P.Nos.27783 and 29665 of 2018
and Crl.MP.No. 16054, 17416 & 17417 of 2018
and Crl.M.P.No.4557 & 4834 of 2019

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srg 24/04/2019