

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2631 of 2020
Crl.M.P.Nos.1579 & 1580 of 2020

Dr.Sr.Rexline,
Director, Assisi Illam,
No.15, Middle Street,
Nethaji Nagar,
St. Thomas Mount,
Chennai - 600 016. Petitioner/Accused

Vs.

1. The State by
The Deputy Superintendent of Police,
Crime Branch CID,
Anti Trafficking Cell,
Egmore, Chennai - 8.
Crime No.05 of 2017
2. Child Welfare Committee,
Rep by its Chairman and Members,
Government Special Home,
(Opp. to Taluk Office)
Chengalpet - 603 002. Respondents/Claimant,
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.322 of 2019 on the file of the Judicial Magistrate Court No.1, Chengalpet, and quash the same.

For Petitioner : Mr.J.Ananthanarayanan,
Senior Counsel
For Mr.S.N.Nandhie Devhan

For Respondents
For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor.

ORDER

This petition has been filed to quash the proceeding in C.C. No.322 of 2019 on the file of the learned Judicial Magistrate No.1, Chengalpet, thereby taken cognizance for the offences under Sections 42 and 75 of the Juvenile Justice (Care and Protection of Children) Act 2015 (herein after referred to as 'JJ Act'), as against the petitioner.

2. The learned Senior Counsel appearing for the petitioner would submit that the petitioner is the sole accused in the above said proceedings. He further submitted that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.5 of 2019 for the offences under Sections 34 & 42 of JJ Act. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.322 of 2019 by the learned Judicial Magistrate No.1, Chengalpattu, for the offences under Sections 42 and 75 of JJ Act.

2.1. He further submitted that with regard to offence under Sections 42 of JJ Act, non registration of child care institution, the petitioner has got registered her institution with the concerned authority in time and thereafter, she renewed the registration periodically. The commencement of the JJ Act came into effect from 15.01.2016, and stated that all the institutions should be registered within six months from the date the Act came into effect. Accordingly, the petitioner's institution has been registered within a period of six month vide registration certificate No.2077/D1/2016 dated 04.04.2016 in the name of Assisi Illam and the petitioner also issued provisional certificate valid for six months from the Directorate of Social Defence and on 02.08.2017, obtained certificate for registration valid for five years from the Commissionerate of Social Defence. Therefore, the offence under Section 42 of JJ Act is not at all attracted as against the petitioner herein.

2.2. He further submitted that insofar as the offence under Section 75 of JJ Act, the main ingredients of cruelty must be present by way of assault, abandon, abuse, expose or willfully neglect the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering by a person, who has control over the child. But in this case, there is no iota of material or ingredients in the final report to show that cruelty had been meted out on the children in the hands of the petitioner.

2.3. He further submitted that in fact, the Child Welfare Committee filed writ appeal in W.A.No.670 of 2017 and the Hon'ble Division Bench of this Court by an order dated 23.11.2017, observed that the Assisi Illam, Nethaji Nagar, St. Thomas Mount, Chennai is registered one. Earlier, Assisi Illam facility at Magazine Road, was the only one, which was registered and it was on account this fact, that is, non-registration of their facility at Nethaji Nagar, that children housed therein were removed to SOS Village, Tambaram. Further observed that when the report called for in respect of the abuse in the Assisi Illam, the officers reported that no such incident happened as per the investigation done by them. Under those circumstances, the Hon'ble Division Bench of this Court directed that the custody of the children who were moved to SOS Village, Tambaram have been handed over to Assisi Illam.

Further the statement of the children recorded under Section 164 of Cr.P.C., revealed that there is absolutely no assault or abuse by the petitioner to the children. Therefore, no offences have been committed by the petitioner and the petitioner need not to go for ordeal of trial and sought for quashment of the entire proceedings.

3. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that even according to the petitioner, the petitioner's institution was not registered one and even after commencement of the JJ Act, with effect from 15.01.2016, the petitioner did not registered the institution till 04.04.2016. Therefore, the question of the applicability of the JJ Act does not arise. Insofar as the offence under Section 42 of the JJ Act is concerned, there are specific statement of the Child Welfare Committee and other officials to attract the offences under Sections 42 of JJ Act. They are specifically spoken about the assault and other untoward incident happened in the institution and thus the offences under Sections 42 and 75 of JJ Act are clearly attracted as against the petitioner. Hence, he sought for dismissal of the quash petition.

4. Heard Mr.S.Ananthanarayanan, learned Senior Counsel appearing for the petitioner, Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent.

5. The petitioner is a sole accused. According to the case of the prosecution, the petitioner's institution viz., Assisi Illam was started to take care of abandoned and orphaned children during the year 2005-06. The petitioner is the Director and instrumental for running the institution and she had admitted the children of unwed mothers and the children of poor parents, who were unable to look after them, during the period 2006-2014. The institution was not continuously registered, though registered at intervals between 01.10.2011 and 03.04.2016. Further alleged that the petitioner's institution had treated the children with cruelty and thereby the petitioner committed the offences punishable under Sections 42 and 75 of JJ Act. Admittedly, the petitioner's institution registered on 04.04.2016 and the JJ Act was came into force with effect from 15.01.2016. Therefore, there was no registration till 04.04.2016 and as such the points raised by the petitioner cannot be considered by this Court that too under Section 482 of Cr.P.C. It involves mixed question of fact and as such it has to be proved before the trial Court by let in evidence.

6. It is also seen from the statement of LW1 to LW6, there are specific allegations as against the petitioner to attract the offence under Section 75 of the JJ Act. It is also seen that the Hon'ble Division Bench of this Court rendered judgment in W.A.No.670 of 2017, dated 23.11.2017, as follows :-

"2. Our interaction with them has revealed that the children are unhappy, where, they are, presently, residing, i.e., SOS Village, Tambaram (in short, "S.O.S.").

2.1. These children were earlier housed in Assisi Illam, Nethaji Nagar, Tambaram.

2.2. We are informed that the Assisi Illam's facility at Nethaji Nagar, St. Thomas Mount, Chennai, is, presently, registered. Earlier, Assisi Illam facility at Magazine Road, was the only one, which was registered and it was on account this fact, that is, non-registration of their facility at Nethaji Nagar, that children housed therein were removed to S.O.S.

3. We had, in fact, called upon Mr.Raja Srinivas, Deputy Superintendent of Police, Anti-Trafficking Cell, CBCID Cell, to enquire into the matter.

3.1. The Officer has submitted before us a detailed report. We had, in fact, in our directions issued on the last occasion, i.e., on 31.10.2017, asked him to enquire into the activities of Dr.Rexline, with regard to not only the aforementioned children, Baby Mary Sylvia; Baby Spohia Christy, Master George Mark, Master Jacob John and Baby Jasmine Kate, but also with regard to twelve (12) other children. The names of these twelve (12) children and reason that required an enquiry to be made is set out in our order dated 04.10.2017 and 31.10.2017.

3.2. It is in this background that we have also interacted with Mr.Raja Srinivas. The Officer says that the custody of all the five (5) children was handed over to Dr.Rexline, by un-wedded mothers. In so far as the remaining twelve (12) children are concerned, their custody was handed over to her, i.e., Dr.Rexline, on account of lack of financial wherewithal of their parents.

3.3. We have specifically asked the Officer as to whether in his assessment, the children were ill-treated, or, abused, while, they were housed in Assisi Illam facility. The Officer, categorically, reported that such incident had not happened as per his

investigation in the matter.

3.4. Under these circumstances, we are inclined to direct that the custody of all the four children, who are present before us, will be handed over to respondent No.1- Assisi Illam, Tambaram, Chennai.

3.5. In so far as the fifth child, i.e., Master George Mark is concerned, who, we are told, is in the custody of S.O.S., his custody will also be handed over to respondent No.1 - Assisi Illam, Tambaram, Chennai.

3.6. Consequently, all the four children, i.e., Baby Mary Sylvia; Baby Spohia Christy, Master Jacob John and Baby Jasmine Kate, and Master George Mark, will be housed in the Assisi Illam, Magazine Road, St. Thomas Road, Chennai.

4. To be noted, in so far as the captioned appeal is concerned, it was directed against the interim order of the learned Single Judge dated 07.06.2017.

4.1. By this order, the following operative directions were issued:

"..... 16. For the reasons stated above, I am of the view that the custody of the 5 children should be given to the petitioner to accommodate them in Assisi Illam, No.4/92-62, Magazine Road, St. Thomas Mount, Chennai - 16, Kancheepuram District, which is a registered children's home run by the petitioner Society. This order is being passed only as an interim measure and taking into consideration the welfare of the minor children.

17. In these circumstances, I direct the 5th respondent to hand over the custody of the five children viz., Mary Sylvia, Sophia Christy, George Mark, Jacob John, Jasmine to the petitioner before 05.00 pm on 08.06.2017."

4.2. Since, the custody of the children has, now, been directed by us to be handed over to the Assisi Illam, according to us, this appeal has been rendered infructuous, as the appellant had preferred the instant appeal resisting the directions issued by the

Single Judge. Accordingly, no further orders are called for in the appeal."

It is clearly revealed that only for non registration of the institution, the children were removed to SOS, Tambaram. After registration of institution, the children were brought back to the petitioner's institution. Further only after passing the above judgment by the Hon'ble Division Bench of this Court, the first respondent completed the investigation and filed final report only on 11.02.2019. Therefore, there are so may allegations to attract the offences under Sections 42 and 75 of JJ Act. Therefore, the quash petition is devoid of merits and liable to be dismissed.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.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.

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has

recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

9. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C. However, the petitioner is at liberty to raise all the ground before

the trial Court and it is yet open to the trial Court to consider the same on merits and in accordance with law and complete the trial within a period of nine months from the date of receipt of copy of this Order.

10. With above directions, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1,
Chengalpet
2. The Deputy Superintendent of Police,
Crime Branch CID,
Anti Trafficking Cell,
Egmore, Chennai - 8.
Crime No.05 of 2017
3. The Chairman and Members,
Child Welfare Committee,
Government Special Home,
(Opp. to Taluk Office)
Chengalpet - 603 002.
4. The Public Prosecutor,
Madras High Court,
Chennai.

CRL.O.P.No.2631 of 2020 and
Crl.M.P.Nos.1579 & 1580 of 2020

NMI (CO)
GMY (21/09/2020)

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