

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.RC.NO.1183 OF 2020

S.Parameshwaran  
S/o.(Late) Sivakumar

.. Petitioner

/versus/

The Inspector of Police,  
Nangavalli Police Station,  
Salem District.

.. Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the Docket Order in Crl.M.P.No.509 of 2020 dated 04.12.2020, dismissed petition filed under Section 317 of Cr.P.C and issued Non-Bailable warrant against the petitioner in Special S.C.No.219/2019, by the learned Special Judge for exclusive trial of cases under POCSO Act, Salem District.

For Petitioner : Mr.F.Wellington

For Respondent : Mr.C.Iyyappa Raj  
Additional Government Pleader

ORDER

This petition has been filed to set aside the Docket Order in Crl.M.P.No.509 of 2020 dated 04.12.2020, dismissing the petition filed under Section 317 of Cr.P.C and issuing Non-Bailable warrant against the petitioner in Special S.C.No.219/2019, by the learned Special Judge for exclusive trial of cases under POCSO Act, Salem District.

2. The case of the prosecution is that on 22.04.2016, the defacto complainant had lodged a complaint against the petitioner to the respondent police stating that the petitioner

had kidnapped her daughter. Thereafter the F.I.R came to be registered in Crime No.144 of 2016 and on completion of investigation, the charge sheet came to be filed in Spl.S.C.No.20 of 2019. In the final report, L.W.1 is the victim and L.W.2 is the victim's mother. The petitioner/accused filed a petition before the trial Court in Spl.S.C.No.219 of 2019 under Section 317 of Cr.P.C on 04.12.2020. In the meanwhile, the marriage was held between the petitioner and the victim on 29.05.2019 with the blessings of both the families and a girl baby namely Rakshana Sri was born to him on 10.03.2020. Thereafter, the petitioner has filed a quash petition before this Court on 10.11.2020 in CrI.O.P.SR.No.32177 of 2020 and the same is yet to be numbered for the reason that the certified copy of charge sheet is required to be filed, due to which, the petitioner made a copy application before the trial Court on 05.12.2020 and the same was made available and filed in the quash petition.

3. The contention of the petitioner is that the petitioner had filed a petition under Section 317 of Cr.P.C. in Spl.S.C.No.219 of 2019 before the trial Court and the same was dismissed on 04.12.2020, stating that "so far as the petitioner case is concerned witness warrant was issued on 12.02.2020 and so far witness warrant is kept pending as against LW1 and LW2. The petitioner/accused has been managing to hide the witnesses and prevented the police to produce the witnesses before this Court. Hence no merit in the petition. In the result, the petition is dismissed". He would further submit that the petitioner had not stopped the witnesses from appearing before the Trial Court. The Trial Court, without considering the materials and evidence, dismissed the petition for the reason that non-appearance of witnesses namely L.W.1 and L.W.2 are at the instance of the petitioner. He would submit that the petitioner had filed a typed set with the Medical Certificate, 161 statement, Marriage Invitation and Birth Certificate of the baby and affidavit of L.W1/defacto complainant and L.W.2/victim.

4. On considering the submission and materials, this Court finds that after attaining majority, the marriage between the petitioner and the victim was solemnized on 29.05.2019 with the blessings of both the families. Thereafter, a girl baby was born on 10.03.2020. In view of the same, the Trial in Spl.S.C.No.219 of 2019 has become a formality, now S.C.No.219 of 2019 has lost its steam. The trial Court can be liberal in dealing with such cases. The issuance of Non-bailable warrant against the petitioner is unwarranted. Hence, this Court is inclined to set aside the order in CrI.M.P.No.509 of 2020 dated 04.12.2020 and the petitioner is directed to appear before the Trial Court and

co-operate with the trial.

5. Accordingly, the Criminal Revision Petition is allowed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssb

To:

1. The Special Judge for the Exclusive Trial Cases  
Under POSCO Act, Salem
2. The Inspector of Police,  
Nangavalli Police Station,  
Salem District.

+1cc to Mr.F.Wellington, Advocate, S.R.No.41509

CRL.RC.No.1183 of 2020

RSV(CO)  
CS/20/01/2021



WEB COPY