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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.484 of 2021
and
Crl.M.P.No.7842 of 2021

Pushparaj

... Petitioner

Versus

The State Rep. by
The Inspector of Police,
All Women Police Station,
Pennagaram,
Dharmapuri District.
(Crime No.215 of 2016)

... Respondent

Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to allow the above Criminal Revision Petition by setting aside the order dated 05.02.2021 made in Crl.M.P.No.818 of 2019 in Spl.S.C.No.23 of 2016 on the file of the Fast Track Mahila Court, Dharmapuri.

For Petitioner : Mr.V.Sakkarapani

For Respondent : Mr.S.Sugendran
Government Advocate (crl.side)

ORDER

The petitioner is the accused. Challenging the order dated 05.02.2021 made in Crl.M.P.No.818 of 2019 in Spl.S.C.No.23 of 2016 on the file of the Fast Track Mahila Court, Dharmapuri, filed the present petition.

2.The respondent/police registered a case in Crime No.215 of 2016 against the accused/petitioner herein for the offence under Section 366(A) of IPC., subsequently, after investigation, the respondent/police laid a charge sheet before the Special



Court for the offence under Section 366 (A) of IPC., r/w Section 3 & 4 of the Protection of Children from Sexual Offences Act, 2012. Thereafter, it was altered into Section 366 (A) of IPC., and Section 6 r/w 5(1) of POCSO, Act.

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3. After taking the charge sheet, the trial court framed charges and trial commenced. Prosecution side witness were examined and the matter was posted for defence side evidence. At this stage, the petitioner filed a petition under Section 233 (3) of Criminal Procedure Code. The said petition was dismissed by the Trial Court. Challenging the same, he filed the present revision petition.

4. The learned counsel for the petitioner would submit that the petitioner and the victim in this case both loved each other. Since the parents of the victim had taken steps to marry the victim with her uncle, the victim did not like to get married to her uncle and she was interested to marry the accused herein. Therefore, the victim eloped with the petitioner and married him. Subsequently, they appeared before the Sub-Inspector of Police, Papparapetti and entered into a compromise and the same was recorded in the presence of Sub-Inspector of Police, Papparapetti. The compromise was signed by the petitioner, defacto complainant and other witnesses in the presence of Inspector of Police Thiru. Ravikumar. Therefore, the petitioner, during the defence evidence, he filed the petition under Section 233(3) of Cr.P.C., to summons the said the Inspector of Police for recording evidence and also to file the compromise memo before the Trial Court. The Trial Court without giving opportunity, simply dismissed the petition, on the ground that the compromise recorded before the Inspector of Police or in the Police Station cannot be admitted in evidence. It is also stated that the so-called compromise was entered in 20 rupees stamp paper, which cannot be entertained, in this case. It was also stated that in a case of this nature, the police officials are not competent to compromise a dispute. According to the counsel for the petitioner, the victim girl, on her own accord, accompanied the petitioner and got married. Subsequently, the petitioner and the victim girl, fearing retaliation by the parents of the victim girl, surrendered before the police officials where they entered into a compromise. The compromise entered before the Inspector of Police is a vital document and it has to be marked as evidence on the side of the defence. In order to prove the innocence of the petitioner, the documents sought for in the petition is essential and it is necessary, which was not properly considered by the Trial Court. Therefore, the order of the Trial Court is liable to be set aside.



5.The learned Government Advocate (crl.side) would submit that the case was registered against the petitioner under the Protection of Children from Sexual Offences Act, 2012. Now, the victim is a child. The victim is a minor and no marriage can be performed or a compromise can be entered into. The POCSO Act clearly bars such a compromise. The petitioner, in order to prolong the trial and to escape from the clutches of law, has filed this petition under Section 233(3) of Cr.P.C. seeking to summon and the documents for marking it in evidence, which is legally inadmissible in evidence, therefore, there is no merit in the revision and it is liable to be dismissed.

6.Heard the case at the admission stage itself and perused the materials and records placed before this Court.

7.The respondent/police originally registered the case against the petitioner/accused, under Section 366(A) of IPC., subsequently, during the investigation, they altered it into Section 366(A) of IPC., and Section 3 r/w 4 of the POCSO Act. Subsequently, after investigation, the case was again altered into the offences under Sections 363 and 366 of IPC., and Section 6 r/w 5(1) of the POCSO Act. Thereafter, charge sheet was filed and the case was taken for trial, during which prosecution, examined their witnesses. When the defence side witnesses commenced, the petitioner, invoking the Section 233(3) of Cr.P.C., filed the petition in CrI.M.P.No.818 of 2019 in Spl.S.C.No.23 of 2016, on the file of the Fast Track Court, Mahila Court, Dharmapuri.

8.The record shows that the victim was only 17 years. Even reading the statement recorded by the Judicial Magistrate from the victim, under Section 164 of Cr.P.C., she has clearly stated that though she fell in love, she went with the petitioner and married him, he committed penetrative sexual assault. Since the victim is a child, within the meaning of POCSO Act, no consent, even if any, given by the victim or the compromise arrived cannot be considered, since the offence under the provisions of POCSO Act is not a compoundable offence. In any event, the document sought to be marked by the petitioner is inadmissible in evidence, therefore, in such circumstances, the Trial Court rightly dismissed the petition and there is no merit in the revision. Therefore, this Court does not find any perversity in the order passed by the Trial Court and the Revision Petition is dismissed at the admission stage itself. Consequently, the connected miscellaneous petition is closed. The Trial Court is directed to dispose of the case within a period of three months



in accordance with law. Both the parties and counsel are directed to extend their fullest co-operation for earlier disposal of the case.

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Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Fast Track Mahila Court,
Dharmapuri.
2. The Inspector of Police,
All Women Police Station,
Pennagaram, Dharmapuri District.
3. The Public Prosecutor,
High Court, Madras.

CrI.R.C.No.484 of 2021
and
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GP (CO)
SU (21/09/2021)