



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. NIRMAL KUMAR

Crl.O.P.No. 11198 of 2021

S. Satheesh Kumar

... Petitioner

Vs

The State,
The Inspector of Police,
AWPS - Omalur,
Salem.
(Cr.No.16 of 2019)

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and set aside the order dated 17.02.2021 made in Crl.M.P.No.02 of 2021 in New SSC.No.282 of 2019 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Salem (Old SSC.No.83 of 2019).

For Petitioner : Mr.D. Ashokkumar

For Respondent : Mr.A. Damodaran
Counsel for Govt. of Tamil Nadu
(Crl. Side)

ORDER

This Criminal Original Petition has been filed to set aside the order dated 17.02.2021 passed in Crl.M.P.No.02 of 2021 in New SSC.No.282 of 2019 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Salem (Old SSC.No.83 of 2019).

2. The gist of the case is that, on 19.06.2019, the de-facto complainant had come to All Women Police Station and lodged a complaint stating that she has got son Nithish and daughter Sanmathi who is aged about 15 years. She was studying 12th Standard in Mettur, St. Marrys Higher Secondary School. On 19.06.2019, at about 7.00 a.m., when the de-facto complainant's daughter, namely Sanmathi, was taking bath in bathroom outside her house, owned by them, the petitioner namely Satheeshkumar who was residing in Aadhi Dravidar Colony, Salem Old Suramangalam Andipatty, had seen her. Her daughter raised



an alarm. Thereafter, the petitioner was caught red handed by the de-facto complainant, her son Nithish and her brother-in-law, Dharanidaran. Hence the complaint came to be registered against the petitioner.

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3. After completion of investigation, charge sheet filed against the accused for the offences punishable under Sections 11 (2) and 12 of the Protection of Child from Sexual Offences Act, 2012 (POCSO). During the trial, PW1 to PW4 were examined. The petitioner has failed to cross examine the witnesses and thereafter, he has filed petition under Section 311 Cr.P.C., to recall the witnesses PW1 to PW4 for cross examination and the said petition came to be dismissed on 17.02.2021, against which the present petition is filed.

4. The contention of the petitioner is that PW1-Indhirani, the mother of the victim, PW2 is the victim girl, PW3-Nitish, the brother of the victim girl and PW4-Dharanidaran, the cousin brother of the victim girl, are all residing in the same locality. PW1 and PW2 have been examined in chief on 08.12.2020 and PW3 and PW4 were examined on 04.01.2021 in chief. The witnesses PW1 to PW4 were not cross examined in this case.

5. The learned counsel appearing for the petitioner submitted that the petitioner had not cross examined PW1 to PW4, since all of them belong to the same family and speak identical facts. As per Section 242 Cr.P.C, if the witnesses relate to identical facts, their cross examination can be deferred, otherwise possibility of witnesses coming up with improvised version is very much there. He further submitted that the Trial Court failed to consider these aspects and further submitted that there is clear effective motive on the side of PW1 and PW4 due to social disparity. The petitioner's sister was given in marriage to one Ramachandran on 13.06.2019 P.N.Patty Village, Suramangalam, Mariannan Kattuvalavu, near about the place where the victim and other witnesses reside, as seen from the invitation card. The petitioner belongs to the Scheduled Caste Community and the victim belongs to the Backward Class Community. There was some dispute with during marriage ceremony and there was objection by the Caste Hindu resident of the village and the de-facto complainant and others with regard to the conduct of the marriage ceremony. PW1 lodged a complaint against the petitioner/accused. The petitioner had completed his B.Com., degree in the year 2017 and he is in search for a job. The accused is the first graduate in his family. The petitioner is the first generation graduate degree holder in his family and due to false implication of the petitioner, chances of getting any Government and Public Sector employment or any



other job is blocked and his future is in jeopardy and his entire sweat and hard work in getting educated and obtaining a degree would be a waste.

6. Mr.A. Damodaran, learned Counsel for Government of Tamil Nadu (Criminal Side) appearing for the respondent contended that PW1 to PW4 belongs to the same village. The de-facto complainant is the mother of the victim girl. PW3 is the brother of the victim girl and PW4 is the cousin brother of the victim girl. All the witnesses travelled from Mettur to Salem and they had deposed before Court. The petitioner ought to have cross examined the witnesses then and there. Further, as per Sections 33(5) and 33(6) of POCSO Act, the protection is given to the family of the girl who is being necessarily harassed by the victim, cannot be called at will for the purpose of cross examination. The victim girl's valuable right has been denied. Further, he relied upon Apex Court's decision rendered in Vinothkumar v. State of Punjab, reported in [2015 (1) MLJ (Crl) 288 SC], wherein it was held that no adjournments should be granted for cross examination of the prosecution witnesses and the prosecution witnesses shall be cross examined on the date of completion of chief examination itself. Further, he submitted that the Trial Court considered these aspects and had rightly dismissed the petition filed under Section 311 CrPC., and hence, the learned counsel for the petitioner prayed that the impugned order passed by the Court below may not be disturbed.

7. Heard Mr.D.Ashokkumar, learned counsel for the petitioner and Mr.A.Damodaran, learned Counsel for Government of Tamil Nadu (Criminal Side) and perused the materials available on record.

8. Considering the submissions made and on a perusal of the materials placed on record, it is seen that the PW1 is the mother of the victim girl. PW2 is the daughter of PW1. PW3 is the brother of the victim girl and PW4 is the cousin brother of the victim girl. It is seen that the petitioner's sister was given in marriage on 13.06.2019 with one Ramachandran, Salem District, Mettur Taluk, P.N.Patty Village, Mariannan Kattuvalavu. The petitioner is admittedly a stranger who is residing in far off place at Suramangalam Salem Town. During the marriage ceremony there was some objectional fight between the petitioner's group and the villagers. Both admittedly belong to different caste and the petitioner hails from Scheduled Caste community and the victim family belong to Backward Community. In this regard, a complaint sent to National Commission for Scheduled Castes by Shri.N.Sekar on 26.08.2019. Submitting that he is falsely implicated and harassed and there was fight during the marriage, the copy of the marriage invitation card produced. The National Commission



for SC & ST forwarded the complaint to take action in this regard and further National Human Rights Commission had also been addressed. The Provisional Certificate of Degree of the petitioner produced.

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9. In this case, statutory presumption is against the petitioner. The petitioner has to put forth his case, dislodge presumptions this to be done by way of cross examination, from the marriage certificate, it is seen that the marriage of the petitioner's sister had taken place on 13.06.2019 and the complaint is dated 16.06.2019. In the complaint, the de-facto complainant/PW1 had given the name of the petitioner clearly as Satheeshkumar, S/o. N.Sekar, at his residence particulars, at Suramangalam, the occurrence is at Veerakkal Palli, Mettur Taluk, Salem District. The petitioner is a stranger to de-facto complainant. Thus, the contention of the petitioner that there is motive to implicate the petitioner sounds possible further the complaint lodged by the petitioner's father to the National Human Rights Commission and SC/ST Commission, probablise his defence, these aspects has to be necessarily put to the witnesses.

10. In view of the above facts and circumstances, this Court finds that the petitioner has to necessarily cross examination of PW1 to PW4. The evidence of the witness is complete only, testing them by cross examination. Hence, this Court is inclined to set aside the order passed by the Court below in CrI.M.P.No.02 of 2021 in New SSC.No.282 of 2019 by the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Salem (Old SSC.No.83 of 2019). The petitioner to recall and cross examine PW1 to PW4 within a period of two weeks from the date of normal functioning of the Courts commences. The petitioner to cross examine PW1 to PW4 on the day when they appear without giving any reason.

11. With the above observations and directions, the Criminal Original Petition is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msm



To

1. The Sessions Judge,
Special Court for Exclusive
Trial of Cases under POCSO Act, Salem.

2. The Inspector of Police,
AWPS - Omalur,
Salem.

3. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No. 11198 of 2021

PCH(CO)
HS(02/08/2021)