



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.6672 of 2021 and
Crl.M.P.No.4914 of 2021

P.Jeyam

... Petitioner

Vs.

1.The State Rep by,
The Inspector of Police,
E-4, Abiramipuram Police Station,
R.A. Puram,
Chennai 600 004.
(Crime No.658 of 2018).

2.S.Rajeshwari

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for record in S.C.No.132 of 2019 on the file of the Hon'ble Special Judge for Exclusive Trial of POCSO Cases, Chennai and quash the same as against the petitioner.

For Petitioner : Mr.R.Vivekananthan

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Special S.C.No.132 of 2019 on the file of the Special Judge, Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offence Act, 2012, Chennai.

2.The case of the prosecution is that at the time of occurrence, the victim girl, daughter of the 2nd respondent, was a minor girl and was studying 9th std in Avvai Home Higher Secondary School, Adyar. The 2nd respondent is working as



housemaid and she is the sole breadwinner of her family and her husband died due to health ailments. On 15.10.2018, the victim girl left her house, since her mother/2nd respondent scolded her not to go out from the house. Since the victim girl not returned back home, on 16.10.2018, a complaint was lodged by the 2nd respondent to the 1st respondent Police and a case in Crime No.658 of 2018, under 'Girl Missing'.

3. On 28.10.2018, the victim girl returned back home, informed her mother/2nd respondent that on 13.10.2018, near Narayanaswamy Garden Street when she was standing near tea shop, the petitioner attempted to approach her, but she refused it. Next day on 14.10.2021, at morning hours, the petitioner approached the victim girl on the pretext that he would marry her and would take steps to join her in cinema and asked her to come with him on 15.10.2018. Believing the same, on 15.10.2018, at about 09.30 a.m., the victim girl packed her things and accompanied the petitioner. Both of them had gone to Guduvancherry by two wheeler, where they stayed in one Shankar's house in second floor. On 16.10.2018, at about 11.00 a.m., the petitioner joined the victim girl in a dance class at Thiruvannamiyur and after dance class at about 07.00 p.m., the petitioner and the victim girl had gone to Guduvancherry and stayed in the room. During night hours, the petitioner asked the victim girl to drink alcohol, but she refused it and the petitioner insisted her to remove her dress and had physical relationship and threatened her not to disclose the same to anyone, which continued for several days. Thereafter, the petitioner and victim girl had gone to Thiruvannamiyur, where they were stayed in a room. At that time, the petitioner insisted her to have physical relationship and mashed her breast several times and she cried due to pain. On 27.10.2018, the petitioner had gone to Raja Annamalaipuram, Chennai to get money from his friends. Since, he did not return back, the victim girl had returned back home and informed the happenings to her mother/2nd respondent.

4. Immediately, the victim girl was produced before the 1st respondent Police, where she disclosed the above happenings to the Police and hence, Sections were altered to 366(A), 376(2)(i) IPC r/w Section 5(1) & 6 of the Protection of Children from Sexual Offences Act, 2012. Thereafter, the victim girl was sent to Kasthuribai Gandhi Government Hospital, Triplicane for medical examination and thereafter, the witnesses were examined and the petitioner was arrested. On collection of medical reports and documents, charge sheet came to be filed before the



learned Special Judge, Special Court for Exclusive trial of Cases under the Protection of Children from Sexual Offences Act, 2012, Chennai, listing 17 witnesses as LW1 to LW17 and other documents.

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5.The learned counsel for the petitioner submitted that there was a love affair between the petitioner and the victim girl and due to the resistance shown by the family members of the victim girl, she had eloped with the petitioner. Due to the pendency of the trial in S.C.No.132 of 2019, the family members of the victim girl and the petitioner had entered into a compromise and had amicably settled the issues between themselves without any prejudice. He further submitted that the family members of the victim girl presently agreed for the marriage of the victim girl with the petitioner after she attains the age of majority and they decided to conduct betrothal on 27.11.2022. The petitioner is willing to enter into a legal wedlock with the victim girl once she attains majority. The petitioner undertakes that he will not create any problem in future to the victim girl.

6.In order to substantiate his submissions, the learned counsel for the petitioner filed affidavit of the petitioner and his father. Now, the 2nd respondent is agreed to withdraw the complaint lodged against the petitioner in Crime No.658 of 2018. Hence, by allowing this petition, no prejudice would be caused to the victim girl and her family members.

7.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that on 14.10.2021, the petitioner approached the victim girl on the pretext that he would marry her and also take steps to join her in cinema industry. Believing the same, on 15.10.2018, at about 09.30 a.m., the victim girl had packed her things and gone with the petitioner. They went to Guduvancherry by two wheeler, where they stayed in one Shankar's house. On 16.10.2018, at about 11.00 a.m., the petitioner joined the victim girl in a dance class at Thiruvanmiyur and after dance class at about 07.00 p.m., the petitioner and the victim girl went to Guduvancherry and stayed in a room. During the night hours, the petitioner asked the victim girl to drink alcohol, but she refused it and insisted her to remove her dress and had physical relationship for several days and threatened her not to disclose the same to anyone. Thereafter, the petitioner and victim girl had gone to



Thiruvannamiyur, where they were stayed in a room and insisted to physical relationship and massaged her breast several times and she was cried unable to bear the pain. On 27.10.2018, at morning hours, the petitioner had gone to Raja Annamalaipuram, Chennai to get money from his friends, but he did not return back home. On 28.10.2018, the victim girl returned back home and informed the happenings to her mother/2nd respondent.

8. During investigation, Sections were altered to 366(A), 376(2)(i) IPC r/w Section 5(1) & 6 of the Protection of Children from Sexual Offences Act, 2012 and the victim girl was sent to Kasthuribai Gandhi Government Hospital, Triplicane for medical examination, witnesses were examined and petitioner was arrested. On collection of medical reports and documents, charge sheet came to be filed before the learned Special Judge, Special Court for Exclusive trial of Cases under the Protection of Children from Sexual Offences Act, 2012, Chennai, listing 17 witnesses as LW1 to LW17 and other documents. In this case, LW1 is the mother of the victim girl/2nd respondent; LW2 is the victim girl; LW3 to LW5 & LW8 are formal witnesses; LW6 and LW7 are the witnesses to the confession statement and mahazar witnesses; LW10 and LW11 are the witness to the Observation Mahazar; LW14 and LW15 are the Doctors who have conducted medical examination on the petitioner and the victim girl respectively and LW16 & LW17 are the Police officials who have taken part with the investigation.

9. He further submitted that during the pendency of the trial, both the family members of the victim girl and the petitioner entered into a compromise and they decided to conduct betrothal on 27.11.2022.

10. This Court considered the rival submissions and perused the materials available on record and also the affidavits filed by the 2nd respondent/mother of the victim girl, the petitioner and his father.

11. Today, the petitioner, his father, the 2nd respondent and her daughter/victim girl appeared before this Court. The victim girl and her mother/2nd respondent confirmed the compromise and settlement arrived with the petitioner's family and also confirmed that the petitioner is agreed for the marriage of the victim girl after she attains the age of majority. The 2nd respondent has informed before this Court that she is willing to give the victim girl into a legal wedlock with the petitioner



once she attains majority and decided to conduct betrothal on 27.11.2022. Hence, they are not willing to continue the prosecution against the petitioner which would affect the peaceful life of the victim girl and the petitioner. In order to substantiate the above submissions, the 2nd respondent has filed the affidavit.

12.This Court in the case of "Sabari Vs. Inspector of Police reported in 2019(2) MLJ Cr1.110", had observed that during the adolescent age, boys and girls got involved in a relationship, such relationship would be the result of mutual innocence and biological attraction, which cannot be construed as an unnatural one or alien to between relationship of opposite sexes.

13.In a similar situation, in the case of "Kumar @ Tennish Vs. The Inspector of Police, Latheri Police Station, Katpadi Taluk, Vellore and another in Cr1.O.P.No.16648 of 2018", this Court had quashed the proceedings on the compromise arrived between the accused and defacto complainant.

14.In the light of the above decisions and considering the fact that the continuation of the proceedings would affect the peaceful life of the victim girl and the petitioner, this Court is inclined to quash the proceedings against the petitioner in Special S.C.No.132 of 2019, on the file of the Special Court for Exclusive trial of cases under the Protection of Children from Sexual Offence Act, 2012, Chennai and, is quashed.

15.Accordingly, this Criminal Original Petition is allowed. The affidavits filed by the 2nd respondent, the petitioner and his father shall form part and parcel of this case. Consequently, the connected Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Special Court for Exclusive trial of cases under the Protection of
Children from Sexual Offence Act, 2012,
Chennai.



2.The Inspector of Police,
E-4, Abiramipuram Police Station,
R.A. Puram,
Chennai 600 004.

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3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Vivekananthan, Advocate Sr.61138

Cr1.O.P.No.6672 of 2021

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srg 02/12/2021