

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7428 of 2021
and Crl.M.P.No.4923 of 2021

1.Ramesh
2.A.Kannan
3.P.Ayyanar
4.A.Shanthi
5.K.Kamalakannan
6.A.Malathi

...Petitioners

Vs.

State by Inspector of Police,
Attur Police Station,
Salem District,
Crime No.588 of 2013.

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 17.02.2021 passed in Crl.M.P.No.28 of 2021 in Old SSC.No.15 of 2016 and New SSC.No.19 of 2019 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Salem and to allow the above Criminal Original Petition.

For Petitioners: Mr.R.Nalliyappan

For Respondent : Mr.M.Mohamed Riyaz,
Additional Government Pleader

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O R D E R

This Criminal Original Petition has been filed to set aside the order dated 17.02.2021 passed in Crl.M.P.No.28 of 2021 in Old SSC.No.15 of 2016 and New SSC.No.19 of 2019 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Salem and to allow the above Criminal Original Petition.

2.The petitioners/accused in Old SSC.No.15 of 2016 and New SSC.No.19 of 2019 had filed a petition under Section 311 Cr.P.C. to recall PW1, PW4, PW8 and PW11 for cross examination in

CrI.M.P.No.28 of 2021. The Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Salem by order dated 17.02.2021, had dismissed the petition. Against which the present Criminal Original Petition is filed.

3.The gist of the case is that the victim girl i.e. PW4, while she was studying in the Government Girls Higher Secondary School, Attur, the first petitioner/A1 had been following her and later they became close and love between them blossomed and regularly meeting each other. On 29.06.2013, A1 had induced the victim girl to come out of her parents house and thereafter she was taken by the first petitioner/A1 and A1 compelled her to marry him and thereafter had physical contact with her.

4.PW1 is the father of the victim girl had lodged a complaint and a case was registered in Crime No.588 of 2013 and later on completion of investigation charge sheet has been filed. During investigation, they come to light that A2 to A4 are the friends of A1, who helped A1 in taking away the victim girl from her lawful guardianship. The first petitioner/A1 had love affair with the victim girl. A5 is the elder brother of A1, A6 is the father of A1, A7 is the step-mother of A1, A8 is the brother-in-law of A1 and the husband of A9 and A9 is the sister of A1.

5.After inducing and taking away the victim girl on 29.06.2013, A1 and the victim girl proceeds in a motor cycle to Gangavalli and thereafter to Trichy and then to Delhi and in Delhi they stayed at the house of A9 and they got married and A1 forcibly had sexual intercourse with the victim girl and thereafter A1 brought back the victim girl from Delhi to Salem. At that time, the parents of A1 had given shelter to A1 and the victim girl and thereafter A1 handed over the victim girl to A5 and in turn A5 dropped the victim girl at Mailiakarai and the victim girl was secured.

6.The contention of the learned counsel appearing for the petitioners is that the petitioner and the victim girl are residing in the same area. The first petitioner and the victim girl were in love with each other, which was opposed by the victim's parents. Further they were contemplating a marriage to the victim forcibly against her wish. Hence, the victim girl compelled the first petitioner to take away from her parents house otherwise, she would have taken drastic steps. After hearing the same and in order to save the victim girl, the first petitioner and the victim girl had eloped. Thereafter, they have moved to various places and finally landed in Delhi at the residence of A8 and A9. The petitioner and the victim girl visiting Delhi without the knowledge of A8 and A9 and since, they had come there from a far of place to a new area. A8 and

A9 were compelled by the first petitioner to permit them to stay there and thereafter they informed the parents and the parents requested the victim girl and the petitioner to reach back Attur and appear before the respondent police. The petitioner Nos.2 to 9 are roped in the case, since they all are family members of A1. They had no role in any of the act of the victim girl and the first petitioner.

7. According to the first petitioner, he was compelled and forced to join the victim girl, to save the victim girl from taking any drastic steps. On coming to know about the case, they had voluntarily appeared before the respondent police. At the intervention of the elders and family members steps were taken to resolve the issues between the petitioners and the victim family members and issues to be resolved. The petitioners are charged for serious offences. Further there is a statutory presumption against them to dislodge the statutory presumption the cross examination of the witnesses have to be necessarily done. By cross examining the witnesses only they can put forth the defence. The lower court had given a reason that A2 to A4 are friends of first accused and cross examined the witnesses and these petitioners had failed to cross examine the witnesses the same cross examination will not apply to the case of petitioners.

8. Further A5 to A9 had filed a petition in CrI.M.P.No.403 of 2016 seeking discharge A5 to A9 earlier, at that time they had given instructions and now again giving instruction not necessary is not proper. Instructions for cross examination to be elaborate with details. Filing discharge petition and giving instruction are totally different in giving instruction for cross examination of witnesses. During trial the detailed instructions need to be given. There have been some developments which fact ought to be put to the witnesses in detail. Thus, the trial court dismissing the petition is not proper. The petitioners have been denied their right of cross examination, which is the fundamental right in trial. The petitioners further submit that they will not be a cause and reason for any delay, on the date when the witnesses are present they undertake to cross examine the witnesses without fail.

9. The learned Additional Public Prosecutor submitted that the lower court had given a detailed order, wherein it is seen that PW1 was examined in chief on 10.07.2018 and PW4, victim girl on 19.08.2019, PW8 was examined on 21.10.2020 and PW11 was examined on 07.11.2020. The petitioners having participated in the trial having kept quiet now filed this petition for the purpose of dragging the trial. Hence, the petition to be dismissed, confirming the lower court order.

10.Considering the submission and on perusal of the materials, the first petitioner is the lover of the victim girl, PW4. The other petitioners viz., A5 to A9 are the parents, brother, sister and brother-in-law of A1, for the occurrence proper, they have nothing to do with the act of A1. As family members their conduct is quiet natural, which has to be elicited only through cross examination. It is not in dispute that A1 and victim girl, PW4 had love affair, which was opposed by the victim's parents and later some developments taken place. Further there is a statutory presumption against the petitioners/accused which has to be discharged and defence to be proved only by way of cross examination, the cross examination is a fundamental right which cannot be denied on the above facts of the case.

11.From the above facts of the case, this Court is of the view, that the cross examination of PW1, PW4, PW8 and PW11 are imminent and which can not be denied to the petitioners and the Criminal Original Petition is allowed.

12.In view of the same the order passed by the trial court in Crl.M.P.No.28 of 2021 dated 17.02.2021 is set aside. The petitioners are permitted to recall PW1, PW4, PW8 and PW11 for the purpose of cross examination. It is made clear that the petitioners are directed to cross examine the witnesses as and when they appear, without any delay.

13.Accordingly, this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To

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

2.The Inspector of Police,
Attur Police Station,
Salem District.

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3.The Public Prosecutor,
High Court of Madras,
Madras.

Crl.O.P.No.7428 of 2021
and Crl.M.P.No.4923 of 2021

EV(CO)
CB(14/06/2021)



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