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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.10146 of 2021 and
Crl.M.P.No.6161 of 2021

U.Vaithi

... Petitioner

Versus

1.State Represented by,
The Inspector of Police,
Aladi Police Station,
Cuddalore District.
Crime No.37/2018.

2.V.Selvaraj

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the Spl. Sessions Case No.31 of 2019 pending on the file of Sessions Judge, Special Court for Exclusive Trial of Cases, under POCSO Act, Cuddalore, and to quash the same.

For Petitioner : Mr.S.Indrajith

For 1st Respondent : Mr.A.Damodaran,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Special S.C.No.31 of 2019, on the file of Sessions Judge, Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offence Act, 2012, Cuddalore.

2.The case of the prosecution is that the age of the victim girl, who is the daughter of the 2nd respondent, is 08.03.2003. On 13.04.2017, when the victim girl was studying 10th STD in Government Higher Secondary School, Irulakurichi, the petitioner used to approach the victim girl that he would marry her and asked her to come with him. On coming to know about the same, the 2nd respondent scolded the victim girl not to speak with the petitioner. On 18.04.2018, at about 04.00 a.m., the petitioner took the victim girl from her house and went to Ulunthurpet, from there they proceeded to Kerala on 20.04.2018. In Kerala,



they were stayed in the house of A3, who is the Aunt of A1. During the night hours, the petitioner had sexual intercourse with the victim girl. On coming to know about the happenings, the 2nd respondent lodged a complaint to the 1st respondent Police, which was registered in Crime No.37 of 2018, for offence under Section 366(A) and Section 5(1) r/w 6, 17 of the Protection of Children from Sexual Offence Act, 2012. After completion of investigation, charge sheet was filed before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offence Act, 2012, Cuddalore against the petitioner/A1, his friend/A2 and his Aunt/A3 and the same was taken on file as Special S.C.No.31 of 2019. The charges against A2 and A3 is that they had abetted A1 to kidnap the victim girl.

3.The learned counsel for the petitioner submitted that the petitioner and the victim girl are relatives and they were in love with each other. Despite parents of the victim girl opposed the same, the victim girl continued her relationship with the petitioner. Thereafter, the victim girl was proposed to be forcible married to another person against her wish. Hence, the victim girl compelled the petitioner to take her away, otherwise she would commit suicide. The petitioner having no other option, had to accompany the victim girl who was psychologically affected. Considering the welfare of the victim girl, the petitioner had accompanied her and both of them had gone to Coimbatore, from there they went to Kerala where the petitioner's Aunt/A3 was residing. On coming to know about the Police are in search of them, both of them appeared before the respondent Police on 28.04.2018. The petitioner was arrested and the victim girl was secured and handed over to the parents. Thereafter, the parents and family members of the victim girl harassed the victim girl and kept her in confinement. The victim girl on attaining majority, again fled from her house and joined the petitioner. On 10.03.2021, the marriage between the petitioner and the victim girl had taken place at Adhi Saktheeswarar Temple in presence of relatives, elders and family members of the petitioner. After the marriage, they are residing in Coimbatore happily as husband and wife.

4.Today, the victim girl appeared before this Court through Video Conference and this Court enquired her. The victim girl has stated that her date of birth is 08.03.2003, she completed 12th STD and her father is a farmer. She further stated that the marriage between the petitioner and the victim girl had taken place without consent of the parents of the victim girl, but with the consent of the parents of the petitioner. Now both the victim girl and the petitioner are leading a peaceful married life. The petitioner is now taking care of the victim girl.



5. Further, she stated that her parents are uneducated and rustic villagers. She did not have birth certificate, when she joined the school. Hence, the age mentioned in the school records is not correct. She is very certain that she was a major at the time of alleged occurrence and she was conscious about her act at the time of occurrence. She stated that both of them were in love with each other and she voluntarily joined the petitioner and subsequently, got married. She is living with the petitioner happily and expressed in certain terms that she will not join her parents again and shall not depose against the petitioner and others.

6. It is seen that the victim girl on her own had gone along with the petitioner. With her consent after attaining majority, the marriage had taken place. She is very certain that she had love affair with the petitioner.

7. From perusal of the charge sheet, it is seen that LW1, LW3 and LW4 are the father, mother and brother of the victim girl/LW2. LW5 and LW6 are the senior father and cousin brother of the victim girl. LW7 and LW8 are the witnesses to the Observation Mahazar. LW9 and LW10 are the witnesses for arrest and confession of A1. LW11 and LW12 are the Doctor, who conducted medical examination on the victim girl and petitioner respectively. LW13 is the Radiologist. LW14 is the Head Mistress of the School, where the victim girl studied. LW15 and LW16 are the Investigating Officers.

8. On perusal of the statement of the witnesses, the family members of the victim girl stated that the victim girl was found missing and she was taken away by the petitioner. The love affair between the petitioner and the victim girl is not denied. The Doctor/LW11 examined the victim girl on 23.05.2018 and the Doctor/LW12 examined the petitioner. LW13 is the Radiologist, who examined the victim girl and gave opinion that the victim girl's age at the time of occurrence is between 16 and 18 years. The Radiologist Report is only a tentative one, which gives two years allowance. LW14, the Head Mistress stated that there is no birth certificate available in the school records and the victim girl studied in the school. From the materials submitted, it cannot be conclusively held that the victim girl was a minor at the time of elopement. After elopement, both the victim girl and the petitioner joined together, marriage conducted as per the customs. The marriage invitation card and the marriage photograph produced before this Court. The victim girl confirmed about the marriage and also about she living happily with the petitioner.



9.As regards A2 is concerned, A2 is the friend of A1. In his bike, the petitioner and the victim girl travelled at the early hours on 18.04.2018 to Ulunthurpet Bus Stop. As regards A3 is concerned, A3 is the Aunt of A1. She is residing in Kerala, where the victim girl and the petitioner had stayed for few days. Other than that there is no other allegation against A2 and A3.

10.In view of the above, this Court is satisfied that the victim girl is happily living with the petitioner. Under such circumstances, no useful purpose will be served in keeping the case pending. If the trial is ne proceeded, on these circumstances against the accused, no real justice can be done to the victim girl, on the other hand both the petitioner and the victim girl would be put to sufferings and their livelihood would become questionable one.

11.Hence, this Criminal Original Petition is allowed and the proceedings in Special S.C.No.31 of 2019, on the file of Sessions Judge, Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offence Act, 2012, Cuddalore is hereby quashed against the petitioner/A1 and also against A2 and A3, whose acts are only corollary. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Sessions Judge

The Special Court for Exclusive Trial of Cases
under the Protection of Children from Sexual Offence Act, 2012.
Cuddalore.

2.The Inspector of Police,
Aladi Police Station,
Cuddalore District.

3.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.10146 of 2021

PCH(CO)
SP(15/07/2021)