

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.18055 of 2020
and
Crl.MP.Nos.7077 & 7078 of 2020
and Crl.MP.8180/2020

1. Lakshmanan
2. Sathish
3. Anbarasan
4. Kaliyan
5. Rathinasamy
6. Manikandan
7. Azhaguvel

... Petitioners

Vs.

1. State rep.by
Inspector of Police,
Veppur Police Station,
Cuddalore District.

2. Poomalai

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. calling for the records in Spl.SC.No.133 of 2019, on the file of the Special Court for POCSO Act at Cuddalore and to quash the same.

For Petitioners: Mr.R.Thirumoorthy

For Respondents: Mr..M.Mohamed Riyaz, R1
Addl. Public Prosecutor
Mr.S.Ambigapathi R2

ORDER

This petition has been filed to quash the proceedings in Spl.SC.No.133 of 2019, on the file of the Special Court for POCSO Act at Cuddalore, insofar as the petitioners are concerned.

2. The case of the prosecution is that on 03.10.2014, the daughter of the second respondent was alleged to have been kidnapped by A1 and thereafter, A1 is said to have had sexual intercourse with the minor girl resulting in she getting pregnant. An FIR came to be registered in Crime No.241 of

2014. After investigation, a final report came to be filed before the Special Court for POCSO Act at Cuddalore. The petitioners have been arrayed as A2 to A9 for alleged offences under Section 366A of IPC and Section 17 of the Protection of Children from Sexual Offences Act, 2012 (herein after referred to as 'POCSO Act'). The first petitioner is the father of A1 and the other petitioners are the friends and neighbours of A1. A6 is said to have died during the pendency of the proceedings.

3. The learned counsel for the petitioners submitted that the daughter of the second respondent had voluntarily gone along with A1 since both of them had a love affair and they were living independently and the petitioners had nothing to do with the alleged offences projected by the prosecution.

4. The learned counsel further submitted that the victim girl was neither examined by the respondent Police nor was her statement recorded under Section 164 of Cr.P.C. and curiously, she has not been brought to the scene throughout the investigation.

5. The learned counsel also brought to the notice of this Court, the medical examination report of the victim girl wherein she has made a statement that she had sexual intercourse for three months on her own willingness. The learned counsel submitted that none of the offences with which the petitioners have been charged, have been made out and the continuation of the criminal proceedings against the petitioners is an abuse of process of law, which requires the interference of this Court under Section 482 of Cr.P.C.

6. The learned Additional Public Prosecutor appearing on behalf of respondent submitted that Section 161 Cr.P.C. statement recorded from the witnesses sufficiently makes out the alleged offence against the petitioners and the petitioners will have to necessarily face trial before the Court below and prove their innocence.

7. The learned counsel appearing on behalf of second respondent supported the case of the prosecution and adopted the submissions made by the learned Additional Public Prosecutor.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. It is clear from the records that there was an affair between A1 and the daughter of the defacto complainant. The daughter of the defacto complainant was a minor at the time of the incident. In the present case, for reasons best known to the prosecution, the statement of the victim girl was not recorded under Section 164 of Cr.P.C. inspite of a mandate

which makes it compulsory under Section 164 (5A) of Cr.P.C. Surprisingly, her statement has not even been recorded by the Police in the course of investigation under Section 161 of Cr.P.C. Only step that was taken on the side of the prosecution insofar as the victim girl is concerned, is only to make her undergo a medical examination before the Government Head Quarters Hospital, Cuddalore. When she was examined by the concerned Medical Officer, she has made a statement that she had sexual intercourse for nearly three months with A1 on her own willingness. The medical report also shows that the victim girl was pregnant at the time when she was examined.

10. The second respondent, who is the father of the victim girl, has given his statement under Section 161 of Cr.P.C. as LW1. Insofar as the petitioners are concerned, the only allegation that was made is that he came to know that the petitioners have aided and abetted A1 to commit the offence. LW2 is the grandmother of the victim girl and her statement is more in the nature of a hearsay witness and she has also not made any specific allegations against the petitioners. LW3, who is the mother of the victim girl must also be placed in the same footing.

11. The petitioners have been charged for an offence under Section 366 A of IPC. To constitute an offence under this provision, the following ingredients must be satisfied:-

- a. The accused must have induced a minor girl under 18 years;
- b. The accused must have induced a victim girl knowing that it is likely that she will be forced or seduced to an illicit sexual intercourse;
- c. That such intercourse must be with a person other than the accused; and
- d. Such an inducement caused the victim girl to go to the place she was called or to do any act.

12. In the present case, there are absolutely no materials against the petitioners to constitute an offence under Section 366 A of IPC. The admitted case of the prosecution is that the victim girl went along with A1 and both of them had sexual intercourse for a prolonged period. The statement made by the victim girl before the Doctor shows that she went on her own with A1 and she was not subjected to seduction and therefore, the fundamental ingredients under Section 366 A of IPC have not been made out.

13. Insofar as the charge under Section 17 of POCSO Act is concerned, it deals with punishment for abatement of any offence under the Act. There are no materials to show that A1 committed the offences under Section 6 & 7 of POCSO Act on the investigation of the petitioners. Except for a vague allegation by LW1 to LW3 that they came to know that the

petitioners were aiding and abetting A1, there are absolutely no materials available against the petitioners.

14. In view of the above discussion, this Court is of the opinion that the continuation of the criminal proceedings against the petitioners will amount to an abuse of process of Court and the same requires the interference of this Court under Section 482 of Cr.P.C.

15. In the result, the proceedings in Spl.SC.No.133 of 2019, on the file of the Special Court for POCSO Act at Cuddalore, is hereby quashed insofar as the petitioners are concerned and this Criminal Original Petition is allowed accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Court for POCSO Act,
Cuddalore.

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

3.The Hon'ble POCSO Committee,
High Court, Madras-104.

4.The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.

+1cc to Mr.R.Thirumoorthy, Advocate SR.2064

Cr1.O.P.No.18055 of 2020

and

Cr1.MP.Nos.7077 & 7078 of 2020 and 8180/2020

RR(CO)

CB(11/02/2021)