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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.16566 of 2021

and

Crl.M.P.No.9045 of 2021

N.Moorthi

....Petitioner

Versus

State by

The Inspector of Police

Karumalaikoodal, Salem.

Crime No.351 of 2020

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct respondent or any other investigating agency to conduct further investigation in the above case in Spl.S.C.No.80 of 2020 pending on the file of the learned Special Sessions Judge (Special Court for Exclusive Trial of POCSO Act Cases), Salem.

For Petitioner : Mr.B.Mohan

For Respondent : Mr.R.VinothRaja
Government Advocate (Crl.Side)

ORDER

This petition has been filed to direct the respondent or any other investigating agency to conduct further investigation in the above case in Spl.S.C.No.80 of 2020 pending on the file of the learned Special Sessions Judge (Special Court for Exclusive Trial of POCSO Act Cases), Salem.

2. The petitioner/accused who is facing trial in Crime No.351 of 2020 for the offence under Section 5(1), 6 of the Protection of Child from Sexual Offences Act, 2012 and 506 (i) of IPC has filed this petition. Later, on completion of investigation, charge sheet filed in Spl.S.C.No.80 of 2020.

3. The contention of the petitioner is that the petitioner's case in the above said crime has been registered and thereafter, on conclusion of investigation, charge sheet filed against the petitioner in Spl.S.C.No.80 of 2020. According to the petitioner, the victim girl's Date of Birth as registered in Jawahar Primary School as 15.07.2006 is not correct. Her correct date of birth is 23.03.1996 and she is no



more minor and hence, the petitioner is falsely proceeded against under POCSO Act. He further submitted that the respondent police have deliberately suppressed the Aadhar Card of the Victim Girl and even before the trial Court, now PW1 and PW2 have examined and as the evidence of PW2 has already been recorded, there is no scope of tampering with the evidence already brought on record. In view of the same, he filed the above petition seeking further investigation in Spl.S.C.No.80 of 2020.

4. The learned Government Advocate (Crl.Side) has submitted that in this case, the age of the victim girl as recorded in the School certificate is 15.07.2006. The Head Master of the Jawahar Primary School had furnished the certificate and also given the statement confirming the age of the victim and on the date of occurrence, the victim girl was minor, and hence, it is proved. If at all the petitioner had any grievance, he ought to have made any objection at the initial stage and not belatedly. He further submitted that this petition has been taken by the petitioner to protract and prolong the trial. The petitioner is 37 years old and he had asked the victim to come to his brick kiln, and he has taken advantage of the minor girl and he had exploited her. Hence, he strongly opposed the petition.

5. At this stage, the learned counsel for the petitioner has submitted that the Government Primary School Head Master is stating victim is minor, on the other hand the Medical Officer has opined that the victim girl is of 19 years and the case of the prosecution is 14 years, and there cannot be such a wide difference.

6. Considered the submissions and perused the materials.

7. As per Section 34(2), it is clear that when there arises any dispute with regard to the age of the victim, it is for the Special Court to determine and also to record the reason for the same.

8. In view of the same, the contention of the petitioner with regard to the age of the victim girl has to be decided by the trial Court, and it is for the trial Court to determine the age and thereafter to pass appropriate orders in this regard. However, the petitioner's specific contention is that he was able to gain access to the Aadhar Card recently. Hence he had filed the petition now. In view of the same, the trial Court to entertain the objection of the petitioner, conduct enquiry and determine the age with an authoritative pronouncement. In any event the exercise of determination of age by the trial Court, is to be completed at the earliest within three weeks from the date of receipt of a copy of the order.



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9. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

dna

To

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

2.The Inspector of Police
Karumalaikoodal, Salem.
Crime No.351 of 2020

3.The Public Prosecutor
High Court, Madras.

+1cc to Mr.B.Mohan, Advocate SR.No.48911

CRL.O.P.No.16566 of 2021
and
Crl.M.P.No.9045 of 2021

SR-II (CO)
GMY (24/09/2021)