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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.17656 of 2021

Ranjith

...Petitioner

Vs.

1.State, rep. by,
The Inspector of Police,
All Women Police Station,
Dharmapuri District.
(Crime No.5 of 2019).

2.Keerthiga

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the compliant in Spl.S.C.No.16 of 2019 on the file of the Fast Track Mahila Court, Dharmapuri and quash the same as far as the petitioner are concerned.

For Petitioner : Mr.V.Sakkarapani

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

For R2 : Mrs.Keerthiga,
Party-in-Person

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Special S.C.No.16 of 2019 on the file of the Fast Track Mahila Court, Dharmapuri.

2.The petitioner is A2 in Special S.C.No.16 of 2019 and, is facing trial for offence under Sections 3, 4, 5(1), 5(n), 6, 9 (n), 10 of the Protection of Children from Sexual Offence Act, 2012 and Section 9 of the Prohibition of Child Marriage Act, 2006.

3.The learned counsel for the petitioner submitted that the petitioner/A2 and the victim girl are now married and they have a female child viz., R.Kireshika born to them on 31.03.2020 in



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the Government Dharmapuri Medical College and Hospital, Dharmapuri. The birth certificate of the child is produced, wherein the petitioner is shown as father and the victim girl as mother. On an information that a marriage proposal was made between the petitioner and the victim girl, who not attained majority, the victim girl was produced before the Child Welfare Committee, Dharmapuri and she was kept in home. During that period, a statement has been recorded from the victim girl on 01.04.2019. Later, she was produced before the Doctor for medical examination and before the learned Magistrate for recording the statement under Section 164 Cr.P.C. On 02.04.2019, the victim girl in her statement recorded under Section 164 Cr.P.C., stated about the petitioner's relationship with her. The Doctor, Government Dharmapuri Medical College in the Accident Register made a reference about the petitioner. On this score, the petitioner has been arrayed as 2nd accused.

4.The learned counsel further submitted that in the statement recorded under Section 164 Cr.P.C., she primarily stated about A1 and how she was subjected to penetrative sexual assault. As far as the petitioner is concerned, the victim girl is very categorical that only marriage proposal was made by both their parents and the marriage to be performed after she attains majority. Now, they are married and living as family with one child in arm and other in womb. Hence, he prayed for quashing of the proceedings against the petitioner.

5.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that based on the complaint of the victim girl, a case was registered by the 1st respondent Police in Crime No.5 of 2019, for offence under Sections 11, 12 of the Protection of Children from Sexual Offence Act, 2012 against A1. During investigation, on the materials collected, an alteration report including the petitioner as A2. During the course of investigation, the 1st respondent Police examined the victim girl and other witnesses and recorded their statements. On 26.03.2019, A1 was arrested, produced before learned Sessions Judge, Mahila Court, Dharmapuri and remanded to judicial custody. A2 obtained Anticipatory Bail before this Court in CrI.O.P.No.13727 of 2019. The petitioner and the victim girl were produced before the Doctor, Government Medical College Hospital, Dharmapuri for medical examination. After completion of investigation, based on the statement of the witnesses and materials collected, the 1st respondent Police altered Sections into Section 3, 4, 5(1), 5(n) r/w 6 of the Protection of Children from Sexual Offence Act, 2012 and Section 9 of the Prohibition of Child Marriage Act, 2006 and filed the charge sheet before the Mahila Sessions Court, Dharmapuri against the accused on 10.09.2019 and the same was taken on file as Special S.C.No.16 of 2019. During the trial, the petitioner was charged



under Sections 3, 4 of the Protection of Children from Sexual Offence Act, 2012 and Section 9 of the Child Marriage Act, 2006. He further submitted that the victim girl and the petitioner got married and having one child and the victim girl is now pregnant with the 2nd child. The learned Additional Public Prosecutor confirmed that the petitioner and the victim girl are living happily with their children.

6.This Court considered the rival submissions and perused the Case Diary in Crime No.5 of 2019 and other materials available on record.

7.Today (07.10.2021), the victim girl and the petitioner appeared before this Court. The victim girl has stated that now she is 7½ months pregnant. Initially, she lodged a complaint only against one Gopalakrishnan/A1 in this case and not against her husband/petitioner/A2. The said Gopalakrishnan, who is her cousin brother, was taking tuition to her, at that time, he committed certain sexual acts on her, for which, she lodged a complaint to the 1st respondent Police. She further stated that with the blessings of the family members, the marriage proposal of the petitioner with the victim girl was agreed. Earlier, the petitioner used to visit her and have chat with her. One of those days, when the petitioner was sitting inside and chatting with the victim girl and her family, his motorbike was set fire by the said Gopalakrishnan/A1, who objected for the marriage. Thereafter, the victim girl lodged a complaint against Gopalakrishnan/A1 to the 1st respondent Police. During enquiry, it was construed that the petitioner had married the victim girl, who was under 18 years of age, a case was registered under the provisions of the Prohibition of Child Marriage Act and the Protection of Children from Sexual Offence Act, 2012 against the petitioner. She further categorically stated that to safeguard herself from the aggressive approach of Gopalakrishnan/A1, yellow thread was tied around her neck which is symbolic, nothing more. When she was questioned specifically referring to the words against the petitioner against the petitioner "என் கூட தவறா நடந்துக்கிட்டாரு" she stated that the petitioner moved closely and hugged her. This was what she meant. She further stated that her parents are uneducated coolies and they were not properly enquired by the 1st respondent Police and explanation given by them was not considered by the Child Welfare Committee, Child Protection Officer and the 1st respondent Police.

8.In the statement recorded under Section 164 Cr.P.C., the victim girl stated about the offence committed by Gopalakrishnan/A1 and as far as the petitioner is concerned, she admitted that the petitioner tied only yellow thread on her neck, a symbolic gesture and nothing more and no marriage ritual conducted. It is found that according to the prosecution, on



17.03.2019 the marriage had taken place between the petitioner and the victim girl and no materials available to prove the same. There is nothing against the petitioner in the statement of the victim girl recorded under Section 164 Cr.P.C.

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9. Since A1 continued the harassment taking advantage of absence of victim girl's father and no male person is available, the petitioner was called for help. The petitioner rushed to the house of the victim girl, searched A1 and when the petitioner was inside the house enquiring the victim girl and her family about the harassment, the bike of the petitioner parked outside was set fire by A1. Unable to bear any further harassment and threat, the victim girl lodged a complaint to the 1st respondent Police.

10. It is seen from the statement of the victim girl recorded under Section 164 Cr.P.C., that the petitioner is said to have tied yellow thread symbolically and he seems to have moved in close quarters, informed the victim girl that hereafter whatever they do, nothing is wrong. In this case, the petitioner now arrayed as A2 facing prosecution on the statement made by the victim girl that "அதனால் ரசித்தும் எங்கூட தவறா நடந்துவிட்டாரு அவ்வளவு தான்". When the victim girl was questioned referring to this statement, she reconfirmed that the petitioner moved closely, hugged her and that was what she meant and nothing more. She had given birth to a child and now she is 7 ½ months pregnant with the second child. The birth certificate of the first child produced. From the birth certificate, it is seen that the petitioner is shown as father and the victim girl as mother. She also produced the photographs of her family along with the child.

11. From the copy of Maternal Health Care Card issued by the Department of Health and Family Welfare, it is proved that the victim girl is 7½ months pregnant and taking regular treatment in the Government Dharmapuri Medical Hospital. From the school certificate issued by the Head Master, Government Higher Secondary School, Krishnapuram, it is seen that the victim's date of birth is 30.12.2001 and she was few months short of attaining majority. The victim girl lodged a complaint only against A1 and the petitioner has been arrayed as accused based on the statement given before the Child Welfare Committee, Dharmapuri and the Accident Register recordings.

12. In this case, there are totally 18 witnesses examined during investigation. LW1 is the victim, LW2 and LW3 are her mother and sister. They have spoken about the specific overtact of A1. LW4 and LW5 are the relatives of the victim girl and witnesses to the Observation Mahazar and Rough Sketch. LW6 and LW7 are the witnesses for the arrest and confession of A1. LW8



is the Head Master of the Government Higher Secondary School, Krishnapuram. LW9, LW10, LW11, LW12 and LW16 are the Police personnels, who aided the investigation. LW13 is the Assistant of the Child Welfare Committee, Dharmapuri. LW14 is the Deputy Director, Government Regional Science Laboratory, Dharmapuri. LW15 is the Doctor who examined the victim girl. LW17 is the Doctor, who examined the accused and issued Potency Certificate. LW18 is the Judicial Magistrate No.I, Dharmapuri, who recorded the statement under Section 164 Cr.P.C. LW19 is the Investigating Officer. From the statement of these witnesses, no tangible material is found against the petitioner. It could be seen that from the Child Welfare Committee, Dharmapuri, only an Assistant was examined. Now the victim girl appeared before this Court, clarified what she meant in her statement about the petitioner.

13. In view of the above clarification and admission of the victim girl, it is clear that the petitioner did not force her for any physical relationship and did not commit any offence. Now, the petitioner and the victim girl are happily living together and having one child in arm and another one in womb. In such circumstances, the continuation of the trial against the petitioner would only cause embarrassment, harassment and disturb the peaceful equilibrium of the family life of the petitioner and the victim girl. The trauma of the petitioner and the victim girl is understandable. The victim girl in certain terms informed before this Court that the petitioner and the victim girl are living as husband and wife and the petitioner is the father of her children.

14. This Court in similar circumstances in Crl.O.P.No.16648 of 2018, dated 28.06.2018 recording the compromise arrived therein, had quashed the proceedings. Now, the petitioner and the victim girl are in the similar circumstances.

15. Taking into consideration of the above facts and circumstances of the case and considering the family life of the petitioner, victim girl and their children, this Court is inclined to quash the proceedings against the petitioner/A2 alone. Hence, the proceedings in Special S.C.No.16 of 2019 on the file of the Fast Track Mahila Court, Dharmapuri is hereby quashed. This Criminal Original Petition is, accordingly, allowed.

16. It is made clear that the trial Court to proceed with the trial against the other accused on its own merits, uninfluenced by this order. The observations made herein is for the limited purpose to decide the case of the petitioner/A2 alone.



17. The copy of the family photo of the petitioner and the victim girl and the Copy of the Maternal Health Care Card issued by the Department of Health and Family Welfare are made part and parcel of the record.

s/d-
Assistant Registrar (CS IV)

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Sub-Assistant Registrar

vv2

To

1. The Fast Track Mahila Court,
Dharmapuri

2. The Inspector of Police,
All Women Police Station,
Dharmapuri District.

3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr. V. Sakkarapani, Advocate sr 52651.

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SR II (CO)
SP (09/11/2021)