



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.18760 of 2021 and
Crl.M.P.No.10322 of 2021

Thayanethi

... Petitioner/Accused

Versus

1.The State Represented by,
The Inspector of Police,
Annamalainagar,
Cuddalore District.
(Crime No.132/2019).

...1st Respondent/Complainant

2.Thulasi

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the entire criminal proceedings in Spl.Sessions Case No.92 of 2019 on the file of the learned Sessions Judge, Special Court for Exclusive Trial Cases Under POCSO Act, Cuddalore, as per for in the above Criminal O.P.

For Petitioner : Mr.N.U.Pressanna

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

For R2 : Mrs.Thulasi
Party-in-Person

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Special S.C.No.92 of 2019, on the file of the Sessions Judge, Special Court for Exclusive trial of cases under the Protection of Children from Sexual Offence Act, 2012, Cuddalore.

2.On the complaint of the 2nd respondent, a case in Crime No.132 of 2019 was registered against the petitioner for offence under Sections 5(1), 6 & 9 of the Protection of Children from Sexual Offence Act, 2012 and Section 366 IPC.

3.The learned counsel for the petitioner submitted that the petitioner and the victim girl were in love with each



other which was opposed by the 2nd respondent, the mother of the victim girl. The victim girl was born in the year 2000 and she was a major at the time of occurrence. Since the 2nd respondent was making arrangement for marriage to the victim girl against her wish, the victim girl forced the petitioner to take her away. Otherwise, she would end her life and she was emotional and adamant. Having no other option, the petitioner and the victim girl left their parents and were together for some period. On coming to know about the registration of the case, the victim girl and the petitioner appeared before the 1st respondent Police, the victim girl informed that she was a major at the time of occurrence and she voluntarily forced the petitioner to take her. This explanation was not considered by the 1st respondent Police, since the 2nd respondent was in emotion and her relatives pressurized the 1st respondent Police to register a case.

4.He further submitted that now the victim girl got married with one Chandrasekar and she is living happily with her family and she intends not to further pursue the case. She had voluntarily come forward and filed an affidavit to that effect. The parents of the victim girl have also agreed for compromise. Hence, he prayed to quash the proceedings against the petitioner.

5.The learned Additional Public Prosecutor appearing on behalf of the 1st respondent Police submitted that the 2nd respondent, the mother of the victim girl lodged a complaint that from 25.05.2019 her daughter was found missing, she completed 12th STD in the Government Higher Secondary, School, Valladhurai and she was 17 years old. During her school days, she had three good friends in school. One of the classmate's cousin/petitioner got acquainted with his daughter and they were in love with each other. The petitioner and the victim girl were found alone which was noticed by the 2nd respondent. They were warned and she was restrained to have any relationship with the petitioner. From 25.05.2019, at about 11.30 p.m., she was found missing, she was searched and not traceable and thereafter, the complaint was lodged. On receipt of the complaint, the 1st respondent Police registered the case. During the investigation, the victim girl was secured and the petitioner was arrested on 05.06.2019. It was found that the petitioner and the victim girl got married and were living together as husband and wife. During investigation, LW1 to LW27 examined, their statements recorded and documents collected. The relationship between the petitioner and the victim girl has spoken by the witnesses. The Doctor examined the petitioner as well as the victim girl and gave medical reports. The victim girl was produced before the learned Judicial Magistrate for recording the statement under Section 164 Cr.P.C. On conclusion of investigation, charge sheet filed and the trial commenced. At this stage, entertaining the above quash petition is not proper.



6. The 2nd respondent along with her daughter/victim girl appeared before this Court, filed affidavit, reiterated the compromise arrived with the petitioner. She further submitted that the victim girl was born in a remote village in the year 2000 and she was a major at the time of occurrence. She joined the school at a later age and the age recorded by the school authorities is on their own and there was no birth certificate for her. The victim girl got married to one Chandrasekar in the middle of March 2020 and now, they are living happily with a male child born on 03.01.2021. From the affidavit and the submission of the victim girl and her mother, it is seen that it is the victim girl who forced the petitioner to take her away, since her mother was making arrangement for the marriage of the victim against her wish. Prior to the occurrence, they were together for some period and later, came back and joined with her parents. Now, she is married and having six months old child. The elopement and the happenings thereafter is on the compulsion of the victim girl and the petitioner not to be blamed. Hence, the 2nd respondent and the victim girl submitted that they are not inclined to proceed with the case against the petitioner.

7. This Court considering the rival submissions and on perusing the affidavits filed by the 2nd respondent and the victim girl and also the materials available on record, it is seen that the victim girl and the petitioner were in love with each other and the same was opposed by the victim girl's mother/2nd respondent. The victim girl was born in a remote village and her Date of Birth was not recorded by her mother. The age recorded in her school record was recorded by the school authorities on their own. The certificate to prove her age has not been produced in this case and also none from the school, where the victim girl studied had been examined as witness in this case. On the other hand, PW7, Government Doctor, who examined the victim girl on 29.06.2019, had given a report that the victim girl on examination and also from the X-ray report and other medical records, found that she should have completed 20 years of age.

8. PW1, mother of the victim and PW2, victim girl in their evidence have stated that the victim girl was born in the year 2000 and she was a major. Thus, on the date of occurrence, the victim was a major, there is no contra evidence except Ex.P3, Transfer Certificate, which is marked through PW2, wherein the victim's Date of Birth is recorded as 05.06.2002. This document (Ex.P3) is not proved as per the Evidence Act and hence, it is not a conclusive proof. PW1/mother of the victim girl, PW2/victim girl categorically stated that the victim was born in a village at their residence and her birth was not recorded and she has no birth certificate. Coupled with the fact that PW7, Government Doctor attached to the Government Hospital, Cuddalore on physical examination as well as on the basis of the medical records gave a report that the age of the victim girl is 20 years, as on 29.06.2019. Thus,



on the date of elopement i.e. on 25.05.2019, it cannot be conclusively held that the victim girl was a minor at the time of occurrence.

9. Further from the evidence of PW1 and PW2, it is proved that the victim girl and the petitioner were in love with each other. PW2, victim girl had that her mother/PW1 would force her for a marriage against her wish and hence, she compelled the petitioner to take her away, otherwise she would take extreme step. PW1 confirms the same and also states that the victim girl was in the habit of going to her relatives house and stayed with them, whenever they had a small fight. PW3, PW4 and PW5 are the relatives of PW1, who stated about the victim girl found missing from 25.05.2019 and with regard to the elopement. Their evidence are in the nature of hear say. PW6 is the witness to the observation mahazar. PW7 is the Doctor, who certifies that the victim girls is aged about 20 years. PW8 is the Doctor, who examined the petitioner. PW9 is the Sub Inspector of Police, who registered the complaint. PW10, PW11 & PW12 are the women police constables, who are the part of the investigation team and accompanied the petitioner and the victim for medical examination. PW13 is the woman Head Constable, who took the victim girl to the Court for recording statement under Section 164(5) Cr.P.C. PW14 and PW15 are the Investigating Officers in this case.

10. From the medical records and from the statements of the victim girl and her mother, it is asserted that the victim is a major. The victim girl forced the petitioner to accompany. After the elopement, they were together for some period and later came back home. Now, the victim girl is married with one Chandrasekar and out of their marriage she has got a baby of six months old. Now, both the petitioner and the victim girl had chosen their own independent part of life and living separately. The petitioner and the victim girl on certain terms confirmed their relationship and the victim girl not inclined to proceed with the case. In view of the same compromise entered between them, the 2nd respondent/defacto complainant/PW1 and the victim girl/PW2 had filed the affidavits.

11. This Court in the case of "Sabari Vs. Inspector of Police reported in 2019(2) MLJ CrL.110", had observed that during the adolescent age, boys and girls got involved in a relationship, such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes.

12. In a similar situation in the case of "Kumar @ Tennish Vs. The Inspector of Police, Latheri Police Station, Katpadi Taluk, Vellore and another in CrL.O.p.No.16648 of 2018", this Court had quashed the proceedings on the compromise arrived



between the petitioner and the victim.

13. In view of the same, this Court finds no reason to disbelieve the statements of the petitioner and the victim and also the compromise arrived between them. Hence, this Court finds that continuation of the proceedings will serve no purpose and it is only be an abuse of process of law.

14. Accordingly, this Criminal Original Petition stands allowed and as a sequel, the proceedings in Sessions Case No.92 of 2019, on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Cuddalore, is hereby quashed and the affidavits filed by the victim girl and the 2nd respondent shall form part and parcel of this case. Consequently, the connected Miscellaneous Petition is closed.

*copy of the Affidavit of Deepa (Victim Girl and 2nd Respondent

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

vv2/ah

To

1. The Sessions Judge,
Special Court for Exclusive trial of cases
under the Protection of Children from Sexual Offence
Act, 2012,
Cuddalore.

2. The Inspector of Police,
Annamalainagar,
Cuddalore District.

3. The Judicial Magistrate No.I,
Chidambaram.

4. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.18760 of 2021

CA (CO)
GMY (08/12/2021)