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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.20313 of 2021

and

Cr1.M.P.No.11059 of 2021

1.Thirumurugan
2.Chitra

...Petitioners

Vs.

1. The state Represented by,
The Inspector of Police,
AWPS-Sethuyathope Police Station,
Cuddalore District.
(Crime No.10/2019).

2. Bala Abinaya

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records in Special Sessions Case No.117 of 2019 on the file of the Sessions Judge, Special Court for Exclusive Trial Cases, Under POCSO Act, Cuddalore and to quash the same.

For Petitioners : Mr.N.U.Pressanna

For R1 : Mr.R.Vinothkumar,
Government Advocate(Cr1. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Special S.C.No.117 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.The gist of the case is that at the time of alleged occurrence, the 2nd respondent/victim girl was studying 12th std in the Government Higher School, Srimushnam and her date of birth is 04.01.2002. On 27.11.2016, her father died due to health issues and her mother/2nd petitioner was working in the Noon Meal Centre at Srimushnam Panchayat Union. Three years prior to the



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occurrence, when the father of the 2nd respondent was suffering from health ailments, the 1st petitioner used to accompany him for hospital and he was helping the 2nd respondent's family financially. Two years prior to the occurrence, the 1st petitioner was buying household articles for the 2nd respondent's family and the 2nd respondent was well acquainted with him. Thereafter, the 1st petitioner proposed his love to the 2nd respondent and insisted her to marry him, but she refused it and informed him that after studies, she would marry him. The 1st petitioner replied that he would help for her studies and if she did not love him, he would commit suicide. Sensing fear, the 2nd respondent accepted his proposal and they started to have relationship.

3. On 18.03.2019, at about 05.00 a.m., the 1st petitioner asked the 2nd respondent to come to Velankanni, but she refused it. The 1st petitioner kidnapped the victim girl/2nd respondent to Velankanni without her consent. Thereafter, the 2nd petitioner, mother of the victim girl called her daughter/2nd respondent and enquired her whereabouts, the victim girl informed that she is in Velankanni with the 1st petitioner. The 1st petitioner and the 2nd respondent arranged a room in lodge, at about 08.00 p.m., the 1st petitioner had physical relationship with her without her consent and it continued for two days. The 1st petitioner threatened her not to disclose the same to anyone, otherwise he would commit suicide. Sensing fear, the 2nd respondent did not reveal the happenings to anyone. Few months after, the 2nd respondent started vomiting and when her mother/1st petitioner enquired, the 2nd respondent informed the happenings happened in Velankanni. Immediately, the 2nd respondent and her mother/1st petitioner had gone to Theivam Private Hospital, Virudhachalam, where the Doctor tested her and confirmed her pregnancy. Immediately, the marriage was solemnized between the 1st petitioner and the 2nd respondent at the instance of the 2nd petitioner on 11.07.2019 in temple.

4. Thereafter, the 2nd respondent lodged a complaint to the 1st respondent Police on 04.08.2019, at about 12.00 p.m., and a case in Crime No.10 of 2019 was registered, for offence under Sections 366(A) IPC and Section 5(1) & 6 of the Protection of Children from Sexual Offence Act, 2012 and Section 9 of the Prohibition of Child Marriage Act, 2006 against the petitioners. After completion of investigation, charge sheet filed before the learned Sessions Judge, Special Court for Exclusive trial of cases under the Protection of Children from Sexual Offence Act, 2012, Cuddalore and the same was taken on file as Special S.C.No.117 of 2019, for offence under Section 366 IPC and Sections 5(1), 6, 9 & 10 of the Protection of Children from Sexual Offence Act, 2012 and Sections 9 & 10 of the Prohibition



of Child Marriage Act, 2006, listing 22 witnesses as LW1 to LW22 and documents.

5. The learned counsel for the petitioners submitted that the 1st petitioner and the 2nd respondent are close relatives and the 2nd petitioner is the mother of the 2nd respondent. The 1st petitioner and the 2nd respondent were fell in love with each other and got married on 11.07.2019 at temple with the consent and blessings of their respective parents. Out of their wedlock, they gave birth to a male child who is now one year old. The learned counsel further submitted that the married life between the 1st petitioner and the 2nd respondent is filled with happiness. Due to some wrong information given to the 1st respondent Police by some unknown person as though the 2nd respondent was a minor at the time of occurrence, the 1st respondent Police arrested the petitioners and forced the 2nd respondent to lodge a complaint against them. The 2nd respondent left with no other option, but with a view to keep the petitioners out of any trouble, lodged a complaint against them.

6. The learned counsel for the petitioner further submitted that original date of birth of the victim girl/2nd respondent is 04.01.2000 and not 04.01.2002. While deposing before the trial Court, the victim girl/2nd respondent stated that a letter was received by the 1st respondent as though the 1st petitioner got married the minor girl/2nd respondent. The 1st respondent called the 2nd respondent and her mother/2nd petitioner to the Police Station, where they were enquired and the 1st respondent Police insisted the 2nd respondent to lodge a complaint against the 1st petitioner. Further, the 2nd respondent has filed affidavit to that effect. Hence, he prayed for quashing the proceedings against the petitioners.

7. In support of his submissions, the learned counsel for the petitioners filed Additional Typed Set annexing Marriage Registration Certificate of the 1st petitioner and the victim girl/2nd respondent, AADHAR Card of the 2nd respondent, Birth Certificate of the child born to 1st petitioner and the 2nd respondent and photocopy of the 1st petitioner and the 2nd respondent along with their child.

8. The learned Additional Public Prosecutor appearing for the 1st respondent submitted that at the time of occurrence, the 2nd respondent/victim girl was studying 12th std in the Government Higher School, Srimushnam and her date of birth is 04.01.2002. The 1st petitioner, who is the relative of the 2nd respondent's family, proposed his love to the 2nd respondent and insisted her to marry him, but she refused it and informed him that after studies, she would marry him. The 1st petitioner threatened her that if she did not love him, he would commit suicide. Sensing



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fear, the 2nd respondent accepted his proposal and they started to have relationship. On 18.03.2019, at about 05.00 a.m., the 1st petitioner kidnapped the victim girl/2nd respondent without her consent to Velankanni and had physical relationship with her for two days and threatened her not to disclose the same to anyone, otherwise he would commit suicide. Sensing fear, the 2nd respondent did not reveal the happenings to anyone. Few months after, the 2nd respondent started vomiting and when her mother/1st petitioner questioned the same, the 2nd respondent informed the happenings held in Velankanni. Immediately, the 2nd respondent and her mother/1st petitioner had gone to Theivam Private Hospital, Virudhachalam, where the Doctor confirmed her pregnancy. The 2nd petitioner immediately conducted marriage between the 1st petitioner and the 2nd respondent on 11.07.2019 at about 07.30 a.m. in a temple.

9. On receipt of anonymous information, the 1st respondent secured the victim girl, arrested the accused and registered a case in Crime No.10 of 2019 was registered, for offence under Sections 366(A) IPC and Section 5(1) & 6 of the Protection of Children from Sexual Offence Act, 2012 and Section 9 of the Child Marriage Act, 2006 against the petitioners. After completion of investigation, charge sheet filed before the learned Sessions Judge, Special Court for Exclusive trial of cases under the Protection of Children from Sexual Offence Act, 2012, Cuddalore and the same was taken on file as Special S.C.No.117 of 2019 listing 22 witnesses as LW1 to LW22 and documents. LW1 is the victim girl/2nd respondent, LW2 and LW3 are hearsay witnesses; LW4, LW5, LW9 to LW12 are the witnesses to the Observation Mahazar; LW6 and LW7 are the witnesses to the confession statement of the accused; LW14 is the Head Master of the school, where the victim girl studied; LW18 and LW19 are the Doctors, who treated the victim girl and the 1st petitioner respectively; LW20 is the Judicial Magistrate No.I, Chidambaram, who recorded the statement of the victim girl under Section 161 Cr.P.C., and LW22 is the Investigating Officer.

10. The learned Additional Public Prosecutor further submitted that at the time of occurrence, the victim girl/2nd respondent is a major is absolutely false. The 1st petitioner married the victim girl/2nd respondent even before she attained majority at the instance of the 2nd petitioner. The victim girl in her statement recorded under Section 161(3) Cr.P.C., clearly stated that the 1st petitioner kidnapped the victim girl to Velankanni and had physical relationship for two days and later, she got pregnant. The allegation that at the instructions of the 1st respondent Police, the 2nd respondent lodged a complaint against the petitioner is not true. Hence, he opposed this Quash Petition.



11. This Court considered the rival submissions and perused the materials available on record and also the affidavit filed by the 2nd respondent/victim girl and the additional typed set filed by the learned counsel for the petitioners.

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12. Today, the petitioners, 2nd respondent/victim girl appeared before this Court. The victim girl/2nd respondent confirmed the relationship with the 1st petitioner and her commitment to get married. Further, she stated that she is staying with the 1st petitioner's family with the concurrence and approval of her family. The relationship and the love affair between the 1st petitioner and the victim girl/2nd respondent is not denied. Out of their wedlock, they have a male child with one year old. The petitioners and the victim girl/2nd respondent on certain terms confirmed their relationship and the victim girl/2nd respondent is not inclined to proceed with the case further. In view of the same, the victim girl/2nd respondent had filed affidavit before this Court.

13. In the affidavit, the victim girl/2nd respondent has stated as follows:-

"2. I sincerely state that the 1st Petitioner/Accused No. 1 is my husband and the 2nd petitioner/Accused No. 2 is my mother. Myself and the 1st petitioner were in love with each other and got married on 11.07.2019 with the blessings of our parents. Due to which I gave birth to a male child who is now one year old and now under the care and protection of my husband and his family.

3. I respectfully submit that while I am enjoying the fruit of my married life with 1st petitioner, I was shocked by the action initiated by the 1st respondent/Police, since then we were forced to taste the bitterness in our married life.

4. I respectfully submit that based on some wrong information received by the 1st respondent in regard to my personal life, arrested my husband viz., 1st petitioner herein. Thereafter insisted me to lodge a complaint to their dictation against the petitioners herein and I was left with no other option except to do what I was instructed by the 1st respondent. Accordingly, the above complaint was lodged. However, I was not a minor as alleged in the complaint on the date of my marriage. As a matter of fact, I was born on 04.01.2000 in my home itself. I have stated the same in the course of Trial also.



17. In a similar situation, in the case of "Kumar @ Tennish Vs. The Inspector of Police, Latheri Police Station, Katpadi Taluk, Vellore and another in CrI.O.P.No.16648 of 2018", this Court had quashed the proceedings on the compromise arrived between the accused and defacto complainant.



18. In the light of the above decisions and considering the fact that the continuation of the proceedings would affect the peaceful marital life of the 2nd respondent/victim girl and the 1st petitioner, this Court is inclined to quash the proceedings against the petitioners in Special S.C.No.117 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 and, is quashed.

19. Accordingly, this Criminal Original Petition is allowed. The affidavit filed by the victim girl/2nd respondent shall form part and parcel of this case. Consequently, the connected Miscellaneous Petition is closed.

(*) Herein enclosed the xerox copy of the compromise

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Special Court for Exclusive trial
of cases under the Protection of
Children from Sexual Offence Act, 2012,
Cuddalore.
2. The Inspector of Police,
AWPS-Sethuyathope Police Station,
Cuddalore District.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.20313 of 2021

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NSK 08/12/2021