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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.20211 of 2021 and
Crl.M.P.Nos.11012 & 11013 of 2021

K.Sarath Kumar

... Petitioner

Vs.

1.The Inspector of Police,
Bayagam Police Station,
Vellore District.

2.Tamilselvi

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in pursuant to the Spl.S.C.No.92 of 2018 on the file of the Special Court for Exclusive Trial of cases under POCSO Act, 2012, Vellore, Vellore District and quash the same.

For Petitioner : Mr.M.Sathish Kumar

For R1 : Mr.R.Vinothraja,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Special S.C.No.92 of 2018 on the file of the Special Court for Exclusive Trial of cases under the Protection of Children from Sexual Offence Act, 2012, Vellore.

2.The case of the prosecution is that the 2nd respondent was residing at No.92, Balamathy Road, Sasthiri Nagar, Vellore and her husband Pazhanivelan is running tea shop in that area and they have six daughters and one son. The 2nd respondent's 4th daughter/victim girl studied upto 9th std in E.V.R Nagammai Higher Secondary School, Kosapettai, Vellore and thereafter, she did not continue her studies. Her date of birth is 14.08.2003 and she was 14 years old at the time of occurrence. On 21.04.2018, at about 07.30 p.m., the victim girl was found missing. Despite search was made in neighbours and relatives house, unable to secure her. Suspecting the petitioner, the 2nd respondent lodged a complaint against him on 22.04.2018 and a case was registered in Crime No.151 of 2018 under 'Girl Missing'.



3. At the time of occurrence, the petitioner was residing at No.12/6A, Meenambal, North Street, Shenpakkam, Vellore. The native of the 2nd respondent is Shenpakkam. Since the petitioner was constantly followed the victim girl and proposed her, the parents of the victim girl shifted their family from Shenpakkam to said address. On 21.04.2018, at about 07.30 p.m., the petitioner kidnapped the victim girl without her consent and married her in Murugan Temple at Alangayam, Vellore before she attains majority and had physical relationship in an unidentified lodge at Ambur. On 27.04.2018, the petitioner left the victim girl in Ambur bus stand and escaped. Thereafter, the victim girl called her mother/2nd respondent and later, the 1st respondent Police secured the victim girl and later, arrested the petitioner and altered the Sections to 363, 366 IPC and Section 5(1) r/w 6 of the Protection of Children from Sexual Offence, Act, 2012 as per alteration report, dated 26.07.2018.

4. On examination of witnesses and collecting the medical reports of the petitioner and the victim girl, birth certificate of the victim girl and other documents, charge sheet filed before the learned Special Judge, Special Court for exclusive Trial of Cases under the Protection of Children from Sexual Offence Act, 2012, Vellore and the same was taken on file as Special S.C.No.92 of 2021.

5. The learned counsel for the petitioner submitted that the petitioner and the victim girl, daughter of the 2nd respondent were in love affair with each other prior to the occurrence. Due to the victim girl and the petitioner belong to different community, the parents of the victim girl not consented for the marriage and the 2nd respondent's family shifted from their native village Shenpakkam to No.92, Balamathy Road, Sasthiri Nagar, Vellore. The victim girl sensing fear that she would be given in marriage with someone, forced the petitioner to take her away. Having no other option, the petitioner accompanied the victim girl and they got married on 21.04.2018 in Murugan Temple near Alangayam, Vellore and they have been living as husband and wife for the past 3 ½ years without any dispute. The learned counsel further submitted that after registration of the case, a mediation was held between both the families to resolve the issues, the 2nd respondent and her family accepted the marriage of her daughter with the petitioner held on 21.04.2018 and conducted formal reception on 20.07.2018 at the residence of the petitioner in presence of the family members of both the families. Thereafter, the 2nd respondent sent a representation to the 1st respondent Police to withdraw the complaint and requested not to proceed with the case further in Crime No.151 of 2018. Without taking into consideration, charge sheet came to be filed before the trial Court by the 1st respondent Police.



6.The learned counsel further submitted that the victim girl in her statement recorded under Section 161 Cr.P.C., has stated that the victim girl had eloped with the petitioner on her own wish for the reason that she would be given in marriage with some and the petitioner did not compel for elopement. The petitioner is carrying on the profession of painting works on contract basis. The petitioner and the victim girl are living as husband and wife in their matrimonial home and the entire medical expense of the victim girl are met by the petitioner. Hence, the continuation of the trial against the petitioner would affect the peaceful matrimonial life of the petitioner and the victim girl and he prayed for quashing of the proceedings.

7.The learned Government Advocate (Crl. Side) appearing for the respondent submitted that at the time of occurrence, the petitioner was residing at No.12/6A, Meenambal, North Street, Shenpakkam, Vellore. The native of the 2nd respondent is Shenpakkam. Since the petitioner was constantly followed the victim girl and proposed her, the parents of the victim girl shifted their family from Shenpakkam to said address. On 21.04.2018, at about 07.30 p.m., the petitioner kidnapped the victim girl without her consent and married her in Murugal Temple at Alangayam, Vellore before she attains majority and had physical relationship in an unidentified lodge at Ambur. On 27.04.2018, the petitioner left the victim girl in Ambur bus stand and escaped. Thereafter, the victim girl called her mother/2nd respondent and later, the 1st respondent Police secured the victim girl and arrested the petitioner and altered the Sections to 363, 366 IPC and Section 5(1) r/w 6 of the Protection of Children from Sexual Offence, Act, 2012. On examination of witnesses and collecting the medical reports of the petitioner and the victim girl, birth certificate of the victim girl and other documents, charge sheet filed before the learned Special Judge, Special Court for exclusive Trial of Cases under the Protection of Children from Sexual Offence Act, 2012, Vellore and the same was taken on file as Special S.C.No.92 of 2021.

8.He further submitted that the victim girl and the petitioner got married on 21.04.2018 and a formal reception held on 20.07.2018 with the consent of both the families. He confirmed that the petitioner and the victim girl are living happily without any issues.

9.This Court considered the rival submissions and perused the materials available on record and the affidavit filed by the 2nd respondent.

10.Today, the petitioner, 2nd respondents and her daughter/victim girl are appeared before this Court. The victim girl confirmed the relationship with the petitioner and her commitment to get married. Further, she stated that she is staying with the petitioner's family with the concurrence



and approval of the 2nd respondent/her mother. The relationship and the love affair between the petitioner and the victim girl is not denied. Since both the families accepted the love affair and marriage of the petitioner and victim girl, a formal reception was held on 20.07.2018 at the residence of the petitioner in presence of the family members of both the families.

11.It is seen that the victim girl forced the petitioner to take her away, since she got fear that she would be given in marriage with someone. Having no option, the petitioner accompanied the victim girl and thereafter, they were secured by the 1st respondent Police and a case in Crime No.151 of 2018, under 'Girl Missing' was registered. The mother of the victim girl/2nd respondent received a phone call from his daughter that she was standing in Ambur bus stand. The 1st respondent Police secured the victim girl and later, the petitioner was arrested. On enquiry, it came to light that the victim girl was kidnapped by the petitioner and married her on 21.04.2018 in Murugan Temple, Alangayam, Vellore before she attains majority and had physical relationship in an unidentified lodge at Ambur. Hence, Sections altered from 'Girl Missing' to 363, 366 IPC and Section 6 r/w 5(1) r/2 6 of the Protection of Children from Sexual Offence Act, 2012 as per alteration report, dated 26.07.2018. On completion of investigation, charge sheet filed before the learned Special Judge, Special Court for exclusive Trial of Cases under the Protection of Children from Sexual Offence Act, 2012, Vellore and the same was taken on file as Special S.C.No.92 of 2021 listing 10 witnesses as LW1 to LW14. LW1 is the mother of the victim girl/2nd respondent; LW2 is the victim girl; LW3 to LW6 are the hearsay witnesses; LW7 and LW8 are confession statements; LW9 is the Head Master of the school, where the victim girl studied; LW10 & LW11 are the Doctors who treated the victim girl and the petitioner respectively and LW12 to LW14 are the Police officials who have taken part in the investigation.

12.The victim girl in her statement recorded under Section 161 Cr.P.C., has stated that she had voluntarily gone with the petitioner on her own wish, since got fear that she would be given in marriage with someone. After registration of the case in Crime No.151 of 2018, both the families resolved their issues and hence, the 2nd respondent sent a representation to the 1st respondent Police to withdraw the complaint and requested not to proceed with the case further in Crime No.151 of 2018. Without considering the same, charge sheet came to be filed before the trial Court by the 1st respondent Police. Now, the 2nd respondent filed her affidavit stating that she is not interested to further proceed with the case in Special S.C.No.92 of 2021.

13.In this case, the elopement is on the compulsion of the victim girl. While being so, the 1st petitioner is not to



be blamed.

14.This Court in the case of "Sabari Vs. Inspector of Police reported in 2019(2) MLJ Cr1.110", 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, which cannot be construed as an unnatural one or alien to between relationship of opposite sexes.

15.In a similar situation in the case of "Kumar @ Tennish Vs. The Inspector of Police, Latheri Police Station, Katpadi Taluk, Vellore and another in Cr1.O.p.No.16648 of 2018", this Court had quashed the proceedings on the compromise arrived between the accused and defacto complainant.

16.In view of the above and the compromise arrived between the parties, this Court finds that continuation of the proceedings will serve no purpose and it is only be an abuse of process of law.

17.Accordingly, this Criminal Original Petition stands allowed and as a sequel, the case in Special S.C.No.92 of of 2018, on the file of the Special Court for Exclusive trial of cases under the Protection of Children from Sexual Offence Act, Vellore is hereby quashed against the petitioner and the affidavit filed by the victim girl shall form part and parcel of this case. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//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,
Vellore.

2.The Inspector of Police,
Bayagam Police Station,
Vellore District.

3.The Public Prosecutor, High Court, Madras.

+2ccs to Mr.M.Sathish Kumar, Advocate SR.No.56444

Cr1.O.P.No.20211 of 2021