



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 25.08.2021

ORDER PRONOUNCED : 28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.O.P.(MD)Nos.8801 and 8802 of 2021

WEB COPY

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... Petitioner in both Crl.O.Ps.,/Victim

Vs.

1.The Inspector of Police,
Karimedu Police Station,
Madurai City,
Crime No.376 of 2021

... Respondent/Complainant
in both Crl.O.P's

2.Jeyachandran

... Respondent/Defacto Complainant
in both Crl.O.P's

3.P.Vijay

... Respondent/Accused in both Crl.O.Ps.,

PRAYER in Crl.O.P.(MD) No.8801 of 2021:

Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the 1st respondent to proceed against the 2nd respondent/Defacto Complainant under Section 22 of the Protection of Child from Sexual Offences Act, 2012, in the light of the order passed by the Hon'ble Court in N.Chandra Mohan Vs. State reported in 2019 (3) MWN (Crl) 588, within the time stipulated by this Court.

PRAYER in Crl.O.P.(MD) No.8802 of 2021:

Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the 1st respondent to file the final report, based on the statement of the petitioner dated 29.05.2021 in connection with Crime No.376 of 2021 dated 23.04.2021 on the file of the 1st respondent within the time stipulated by this Court.

For petitioner

in both Crl.O.Ps.,

: Mr.R.Anand for
Mr.I.Pinaygash

For R1

in both Crl.O.Ps.,

: Mr.Hasun Mohammed Jinnah
State Public Prosecutor for
Mr.R.M.Anbunithi
Additional Public Prosecutor

For R2

in both Crl.O.Ps.,

: Mr.P.Sepana @ Sree

COMMON ORDER

Crl.O.P.(MD) No.8801 of 2021 is filed seeking direction to the 1st respondent to proceed the case against the 2nd respondent under



Section 22 of the Protection of Child from Sexual Offences Act, 2012, on the basis of the representation dated 29.05.2021, within the time stipulated by this Court.

2.Crl.O.P.(MD) No.8802 of 2021 is filed seeking direction to the 1st respondent to file the final report, based upon the statement given by this petitioner dated 29.05.2021 in connection with Crime No.376 of 2021 dated 23.04.2021 on the file of the 1st respondent within the time stipulated by this Court.

3.The facts in brief are as follows:-

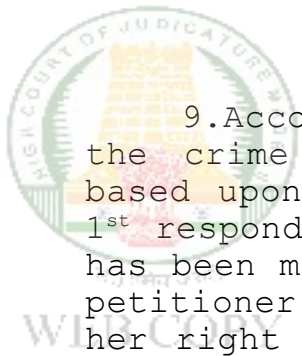
4.The petitioner, who is aged about 18 years and 2 months, is alleged to be the victim of the crime in Crime No.376 of 2021, which was registered, on the basis of the complaint given by the 2nd respondent herein for the offences punishable under Sections 8, 11(1), 12, 17 and 21(2) of the Protection of Child from Sexual Offences Act, 2012.

5.When the petitioner was doing her online classes, she was talking with her friends in a friendly manner. That was misunderstood by her father. However, he gave a complaint on wrong impression to the Correspondent of the School, in which, the petitioner was studying. The 3rd respondent was working as a Teacher in the aforesaid school. After realizing the same, the father of the petitioner withdrew the complaint. He also attended the enquiry conducted by the Child Welfare Committee and informed the subsequent development. However, the 2nd respondent, who has filed the complaint, is in noway connected with the aforesaid incident, based upon which, the aforesaid case has been registered.

6.During the course of statement under Section 164 of Cr.P.C., before the learned Judicial Magistrate-cum-Additional Mahila Judge, the petitioner stated about the true facts and informed the Court that there was no such occurrence and the offence as alleged in the FIR. Since false case has been launched by the 2nd respondent, this petition, namely Crl.O.P.(MD) No.8802 of 2021, came to be filed seeking direction to the 1st respondent to file the final report on the basis of the statement of the petitioner, dated 29.05.2021, which is a representation sent by the petitioner.

7.Crl.O.P.(MD) No.8801 of 2021 is filed seeking the aforesaid relief on the basis of the judgment reported in **2019 (3) MWN (Crl) 588 (N.Chandra Mohan Vs. State)**, since a false information has been given by the 2nd respondent to the 1st respondent, based upon which, the FIR has been registered.

8.Heard both sides.



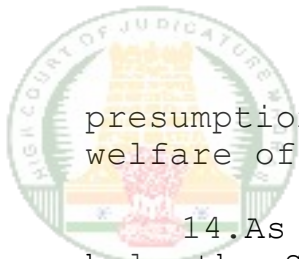
9. According to the petitioner, she is an unfortunate victim of the crime that has been registered against the 3rd respondent, based upon the false complaint given by the 2nd respondent to the 1st respondent. It is not necessary to go into the allegation that has been made by the father of the petitioner in detail, since the petitioner had expressed genuine grievance not only with regard to her right to privacy, but also keeping in mind her future. It is suffice to say that based upon the complaint given by the father of the petitioner, enquiry was undertaken against the 3rd respondent about his involvement as well as the alleged offences.

10. The petitioner would state that based upon the misconception of facts only the father of the petitioner gave a complaint and after realizing the fact that there is no truth in it, he withdrew the same. However, the 3rd respondent, who claims to be the Correspondent in a weekly Magazine, has launched the complaint, based upon which, the case has been registered.

11. Many things happened and many developments took place, subsequent to the complaint given by the father of the petitioner and when the matter is taken up for hearing, at the time of admission itself, this Court fumed at the petitioner's counsel as to what is the intention to file the petition or what prompted him to screen offender, who alleged to have involved in the sexual abuses of the school children. But the learned counsel for the petitioner strenuously submitted before this Court to the effect that the petitioner is not interested in the later development with regard to the allegation that has been made against the 3rd respondent, but she wants to keep her privacy absolute and does not want to undergo the ordeal of harassment during the course of investigation and trial, keeping in mind the future life. _

12. As like any other normal father in the ordinary life, the father of the petitioner also seems to be interested in protecting the welfare of the child, but at the same time, it must also be noted that it is the duty of the father of the petitioner to help the State to bring the culprit to undergo trial. The learned counsel for the petitioner would submit that absolutely the complaint given by the father of the petitioner to the school authority was later found to be false and after realizing the same only, he withdrew the complaint.

13. The learned Public Prosecutor appearing for the State would submit that the statements of the father of the petitioner and the petitioner herself are in the sealed cover. Since it is a sealed confidential communication that has been made by the learned Public Prosecutor, the same could not be discussed in this order. At the same time, it may not be proper on the part of this Court to decide this matter on the basis of the secret information furnished, without giving an opportunity to the petitioner to explain or go



presumption that the petitioner father wanted to protect the welfare of this petitioner.

14.As I mentioned earlier, it is the duty of every citizen to help the State to bring the guilt of the culprit. The position of the witnesses in a criminal or civil prosecution has been more elaborately and repeatedly discussed in various judgments, more particularly, in the judgment of the Hon'ble Supreme Court in the case of ***Mahender Chawla and another vs Union Of India Ministry of Home and others dated 05.12.2018***. Paragraph No.3 of the aforesaid judgment reads as under:-

"3) The importance of the witness, particularly in a criminal trial is highlighted in a book in the following manner:

"In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion.

xxx xxx xxx The value of witnesses can't be denied, keeping in view the dependency of the criminal proceedings on the testimonies and cooperation of witnesses in all the stages of the proceedings, especially in those cases where the prosecution has to establish the guilt with absolute certainty via oral cross-examination of witnesses in hearings open to the world at large. In such cases, the testimony of a witness, even if not as an eye witness, may prove to be crucial in determining the circumstances in which the crime might have been committed..."

2 Notwithstanding the same, the conditions of witnesses in Indian Legal System can be termed as 'pathetic'. There are many threats faced by the witnesses at various stages of an investigation and then during the trial of a case. Apart from facing 1 Whittaker Chambers, WITNESS QUOTES (January 7, 2014, 10.30 am)"

15.In pursuance of the aforesaid judgment, various State Governments formulated Witness Protection Scheme and inspite of that, still the witnesses do not feel secure in the present day situation. The Media has become a trouble maker now. Now, nothing can be kept secret. In the present day situation, the privacy has become meaningless and the movement of the each and every person is now under clear scanning. It is just like walk on the public street. So, whatever the effort that can be put to protect the interest and identity of the victim or witness will become



meaningless, if it is allowed to be exploited.

16.The another grievance that has been expressed by the petitioner is that the 3rd respondent, who is a stranger, has stepped into the issue and lodged the complaint. However, it is seen that the criminal law can be set in motion by any one. On that ground, the competency of the 3rd respondent cannot now be called in question. The only point that can be answered in this petition is that whether this petitioner can request herself to discharge from the criminal investigation process and trial or whether this Court is competent to discharge this petitioner from further investigation process and trial.

17.When this specific question was put to the learned counsel for the petitioner, he answered that the complaint that has been given against the 3rd respondent by the other students may be proceeded and the petitioner is in noway interested in it. But what she wanted is that at least in the interest of protecting her future, she must be discharged.

18.However, I am unable to agree with this line of arguments. No doubt that the petitioner's future will be in trouble, if she is directed to participate in the investigation process or trial. Even though safety and protection of identity are mandate under the Law, the trauma that the victim of crime undergo in every day life is well known and that cannot be brushed aside as meaningless or baseless. But, at the same time when it is a conflict between the protection of welfare of the child under the guise of protecting identity, privacy and interest of the Society and the State in protecting the children from the sexual abuses that cannot and should not outweigh.

19.As a citizen, the petitioner is duty bound to cooperate with the State to complete the investigation and participate in the trial proceedings. Once the identity is disclosed, then her future life will become problem. That also cannot be ruled out completely. But at the same time, her duty to the Society and the State is also equally important. So, both the rights must be evenly balanced. One should not encroach upon the other. If such sort of plea is entertained or accepted, then the administration of justice will become a futile exercise, apart from being become a farce.

20.During the course of arguments, disturbing was also brought to my notice. When the argument was going before this Court through online, a complaint was made by the learned counsel for the petitioner to the effect that large number of police officials have been deployed in the residence of the petitioner. So, according to him, this will indicate how much trauma is undergone by the petitioner, because of the investigation. Immediately, the respondent police was directed to remove and withdraw all the



also properly responded immediately. So, the over reaction by the police persons also creates problem to the victim of crime and the witnesses. This must also be properly attended by the Senior Police Officers.

21. In spite of a specific direction issued by the Hon'ble Supreme Court in the aforesaid judgment to formulate a child police force, it appears that in Tamilnadu, it has not been implemented so far. A child friendly approach by the police is the utmost importance, while they are dealing with the POCSO matters. Every police man must act, behave, while dealing the child, as if he or she is the child's parent. Unless such an approach is made, the incidents of this nature, namely, the victim or child abuse coming to the Courts frequently seeking their discharge from the investigation will become more. This should not be entertained.

22. I am of the considered view that this petitions are devoid of merits. Moreover, the petitioner cannot direct or dictate the Investigation Officer to file the final report in a particular manner on the basis of the representation. The Initiator of the FIR has no role to play during the course of investigation by dictating the terms upon the Investigation Officer. Once cognizance of the offence is reported, it is the duty of the Investigation Officer to investigate the matter uninfluenced by any of the influences that can be made by the complainant, witness and the accused persons. So, neither of them can make out themselves upon the Investigation Officer. He is a man of free in his own field. At times, it also recognized by the Hon'ble Supreme Court to the effect that even though the Court cannot dictate terms upon the Investigation Officer to do a particular thing, in a particular manner, it is espoused within the domain of the Investigation Officer, keeping in mind the fair process of investigation requires a fair and free approach into the investigation, unless it is secured, fair investigation is not at all possible. That is why provisions have been made to explore the grievances of the witnesses, accused and the complainant, which was available after filing the final report.

23. However, the learned Public Prosecutor would fairly submit during the course of argument that the respondent police is ready to take into account the statement given by the father of the petitioner, representation made by this petitioner and the subsequent developments and will file the final report by taking into account all those facts. According to him, this is a very premature stage either to discharge this petitioner or to direct the 1st respondent to file the final report in a particular manner.

24. This argument on the side of the learned Public Prosecutor seems to be reasonable and legal. Similarly, the request made by this petitioner to take action against the 2nd respondent under Section 22 of the POCSO Act is also out of place. As I mentioned



respondent is that he misbehaved with the petitioner but other children are also similarly affected.

25.The judgment rendered by this Court in the case of **Chandramohan Vs. State** reported in **2019 (3) MWN (Cr1.) 588** is entirely different and strange rare factual matrix. That cannot be equated with this occurrence. So, this request on the part of this petitioner is liable to be rejected. This petitioner also relied upon number of judgments to sustain this prayer. I have gone through all the judgments that has been cited by this petitioner. It appears that over enthusiasm has been tried to be played by the petitioner under the guise of protecting her privacy and future life. I have also gone through the CD file that has been produced before this Court by the learned Public Prosecutor.

26.For the reasons stated above, I am not discussing in detail about the factual aspects that has been dealt through CD file. It is suffice to say that these petitions are not maintainable for the reasons stated above. But at the same time, because of the recent development also, there shall be a direction to the 1st respondent herein to investigate the matter strictly in accordance with law that has been prescribed under Cr.P.C, POCSO Act and the Rules framed thereunder, keeping in mind that the identity and future of the petitioner should not be affected because of the investigation process. At no point of time, the identity of the petitioner must be disclosed by any one. How, the identity was disclosed to the 3rd respondent is also not known. This is a very unfortunate thing, even though he was very careful in the complaint to hide the name of the victim.

27.I find that these two petitions are liable to be dismissed and accordingly, the same stand dismissed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Inspector of Police,
Karimedu Police Station,
Madurai City.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.SEPANA @ SREE, Advocate (SR-33320[F] dated
29/10/2021)

**common order made in
Crl.O.P. (MD) Nos.8801 and 8802 of 2021
28.10.2021**

**KS(CO)
RS/JGB (17.11.2021) 8P 4C**