



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.509 of 2022

Gugan

... Petitioner

Versus

1. State, represented by
The Inspector of Police,
All Women Police Station,
Chengalpet, Kanchipuram District.
(Crime No.1/2017).

2. Viijiya

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the Spl.S.C.No.138 of 2019, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpet, Kancheepuram and to quash the same.

For Petitioner : Mr.C.Prabakaran

For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

O R D E R

This petition has been filed to call for the record in Spl.S.C.No.138 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpet, Kancheepuram and quash the same.

2. The gist of the case is that the petitioner is the family friend of defacto complainant and the petitioner and the defacto complainant's daughter were in love with each other which was warned by the defacto complainant. On 03.01.2017, the second respondent along with her daughter namely Divya, went to hospital since Divya was suffering from stomach pain. After

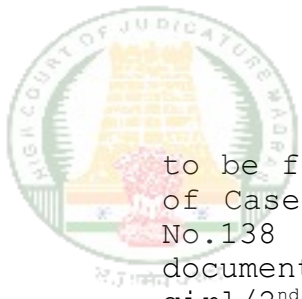


examination, the Doctor confirmed that the said Divya was pregnant. On enquiring the said Divya with regard to her pregnancy, she revealed that the petitioner had sexual relationship with her on many occasions in the pretext of marrying her. Hence, the defacto complainant lodged a complaint before the first respondent and a case was registered in Crime No.1 of 2017 for the alleged offences punishable under Section 5 (L) r/w. 6 of POCSO Act. Thereafter, charge sheet was laid on the petitioner by altering sections under 5(1), 6, 5(j)(ii) of POCSO Act and Sections 376(2) (n) of IPC. The charge sheet has been culminated into Special Case in Special Case No.94 of 2018 on the file of Sessions Judge, Mahila Court, Chengalpet and later the case has been transferred to the Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpet, Kancheepuram in Spl. S.C. No.138 of 2019.

3. Learned counsel for the petitioner submitted that subsequent to the complaint lodged by the second respondent, the petitioner married the said Divya after attaining majority and they are living peacefully. On 30.04.2017, they have been blessed with a boy baby namely Nithish and on 25.09.2020, they have blessed with girl baby namely Sanjana. The petitioner states that they are living peacefully and at this juncture, the trial is unnecessary. Learned counsel further submitted that since it is a non-compoundable offence, the petitioner and the second respondent are unable to compound the offence before the trial Court. Hence, the petitioner and the second respondent are constrained to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C., seeking to quash the trial proceedings.

4. The second respondent / defacto complainant has filed an affidavit stating that the said Divya and the petitioner are living peacefully in their home hence, the above criminal trial is unnecessary. Hence, she decided to not to proceed the case further.

5. Learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioner and the defacto complainant's daughter Divya loved each other. On the pretext that the petitioner would marry her, he had physical relationship with her and got pregnant. Hence, the defacto complainant lodged a complaint against the petitioner and a case was registered in Cr. No. 1 of 2017 for the offences punishable under Sections 5(1), 6, 5(j)(ii) of POCSO Act and Sections 376 (2) (n) of IPC. During investigation, Sections were altered to Sections 5(1), 6, 5(j)(ii) of POCSO Act and Sections 376(2) (n) of IPC and the victim girl was sent for medical examination, witnesses were examined and petitioner was arrested. On collection of medical reports and documents, charge sheet came



to be filed before the learned Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpet, Kancheepuram in Spl. S.C. No.138 of 2019, listing 20 witnesses as LW1 to LW20 and other documents. In this case, LW1 is the mother of the victim girl/2nd respondent; LW2 is the victim girl; LW3, LW8 to LW11 are formal witnesses; LW6 and LW7 are the witnesses to the confession statement; LW4 and LW5 are the witness to the Observation Mahazar; LW12 to LW18 are the expert witness and LW19 & LW20 are the Police officials who have taken part with the investigation.

6. He further submitted that the second respondent / defacto complainant has filed an affidavit to quash the proceedings in Spl. S.C. No.138 of 2019. He further submitted that parties have entered into compromise before the first respondent police and they amicably settled the issue.

7.This Court considered the rival submissions and perused the materials available on record and also the affidavit filed by the 2nd respondent/mother of the victim girl.

8. On 11.01.2020, this Court directed the petitioner and the defacto complainant to appear before the first respondent police with all necessary documents and the first respondent to verify the documents produced by the petitioner and shall report before this Court on 20.01.2022. Today, the learned Additional Public Prosecutor reported that the parties have entered into compromise before the first respondent police and they amicably settled the issues. The 2nd respondent has informed before this Court that she is not willing to continue the prosecution against the petitioner which would affect the peaceful life of the victim girl and the petitioner. In order to substantiate the above submissions, the 2nd respondent has filed the affidavit.

9.This Court in the case of "Sabari Vs. Inspector of Police reported in 2019(2) MLJ CrI.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.

10.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.

11.In the light of the above decisions and considering the fact that the continuation of the proceedings would affect the



peaceful life of the victim girl and the petitioner, this Court is inclined to quash the proceedings against the petitioner in Special S.C.No.138 of 2019, on the file of the Special Court for Exclusive trial of cases under the Protection of Children from Sexual Offence Act, 2012, Chengalpattu and, is quashed.

12. Accordingly, this Criminal Original Petition is allowed. The affidavits filed by the 2nd respondent shall form part and parcel of this case. Consequently, the connected Miscellaneous Petition is closed.

(*) Xerox copy of Affidavit filed by the 2nd Respondent is enclosed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jas/bkn

To

1. The Special Court for Exclusive Trial of Cases
under POCSO Act,
Chengalpet, Kancheepuram.
2. The Inspector of Police,
All Women Police Station,
Chengalpet, Kanchipuram District.
(Crime No.1/2017).
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.4163

CRL.O.P.No.509 of 2022

MT[co]
NSK 07/03/2022