



Crl.O.P.No.3625 of 2021 and
Crl.M.P.Nos.2143 & 2145 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.10.2022
Pronounced on	09.11.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.3625 of 2021 and
Crl.M.P.Nos.2143 & 2145 of 2021

R.Dakshina Murthy

... Petitioner

Vs.

1.State Rep. by,
The Station House Officer,
D-1, Lawspet Police Station,
Puducherry.
(Crime No.158/2016)

2.P.Lalithambigai

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Spl.S.C.No.20 of 2020, on the file of the learned Special Judge (POCSO Cases) at Puducherry.

(prayer amended as per order in Crl.M.P.No.11362 of 2021 in
Crl.O.P.No.3625 of 2021 dated 12.11.2021)

For Petitioner : Mr.R.Vivekananthan

For Respondents : Mr.P.Balamurugane,PP (Puducherry) for R1
: Mr.R.Asokan for R2



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ORDER

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This Criminal Original Petition has been preferred to call for the records in Spl.S.C.No.20 of 2020, on the file of the learned Special Judge (POCSO Cases) at Puducherry.

2. Heard Mr.R.Vivekananthan, learned counsel for the petitioner and Mr.P.Balamurugane, learned Public Prosecutor (Puducherry) for the first respondent and Mr.R.Ashokan, learned counsel for the second respondent and perused the materials available on record.

3. The case in Spl.S.C.No.20 of 2020 has arisen out of the FIR registered in Crime No.158 of 2016 on the complaint given by the second respondent / defacto complainant. The defacto complainant and the accused Logashanmuga Perumal in Crime No.158 of 2016 are relatives and shared the same household building by residing in separate portions. The allegation is that on 27.10.2016 at about 21.30 hours, the accused Logashanmuga Perumal and Sumathi had assaulted the daughter of the defacto complainant on chest, stomach and private parts and thereby caused bleeding injuries on her and they also assaulted the other daughter of the defacto complainant. When the



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case was pending for investigation, the present petitioner has also been implicated as one of the accused on the allegations made by the minor daughters of the defacto complainant about the sexual assault caused on them.

4. The learned counsel for the petitioner submitted that the husband of the defacto complainant and Logashanmuga Perumal / second accused are brothers and the third accused Sumathi is the wife of the second accused; the parents of the second accused, the family of the second accused and the family of the defacto complainant are living separately in three portions of a same building; though the complaint dated 29.10.2016 stated about the occurrence that had taken place on 27.10.2016, no allegation has been made against the petitioner; since the petitioner in his capacity as an advocate, has filed a petition to quash the FIR against the second and third accused; he has been falsely implicated in this case; even though there is no allegation of sexual assault made in the complaint, the defacto complainant developed these allegations subsequently; 164 Statement obtained from the daughters of the defacto complainant on 21.01.2020 and in view of that, the petitioner has been implicated as an accused; so the allegations are made just to implicate the



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petitioner in this case.

5. On perusal of the complaint dated 29.10.2016, it is seen that the defacto complainant has not stated anything alleging sexual assault on her children. The complaint dated 29.10.2016 speaks only about the occurrence that happened on 27.10.2016. It is to be noted that on the same day (i.e.) on 29.10.2016, the third accused Sumathi has given a counter case against the defacto complainant and others and on which, a case has been registered in Crime No.160 of 2016 for the offence under Sections 294(b), 323, 506(i) r/w. 34 of IPC. After the investigation was completed, charge sheets were filed in both the cases. The charge sheet filed for the Crime No.158 of 2016 was taken on file in C.C.No.210 of 2019 and the charge sheet filed in Crime No.160 of 2016 was taken on file in STC No.101 of 2019.

6. The defacto complainant and others have filed a petition in Crl.O.P.No.8600 of 2019 to quash the case in STC No.101 of 2019 and the same was disposed by an order of this Court dated 26.06.2019 by directing the learned Judicial Magistrate - I, Puducherry to complete the proceedings in both the cases in C.C.No.210 of 2019 and STC No.101 of 2019 within a specific



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time frame. In the said criminal original proceedings, the petitioner herein has appeared as an advocate for the defacto complainant Sumathi who was the second respondent therein.

7. The defacto complainant gave a complaint to Child Welfare Committee (CWC) on 18.11.2016 which is subsequent to her police complaint dated 29.10.2016. The records would show that subsequent to the filing of the case, the first respondent police has sought permission from the Court for conducting further investigation by alleging that the motive for the occurrence that had occurred on 27.10.2016 is because of the sexual abuse caused by the first and second accused and related events. The defacto complainant and her daughters have stated that they did not say these facts while giving the complaint dated 29.10.2016, because they were scared of the accused. During the course of the trial, the witnesses have stated about the sexual assault caused by the first and second accused against the daughters of the defacto complainant.

8. On perusal of the records, it is seen that the children have also given 164 statement at a belated stage by stating that even though the sexual assault



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were committed on them when they were very young, they could understand about the same only at a later point of time and hence they told about these matters while deposing evidence. The allegations of sexual assault has been stated by the defacto complainant and her children only after four years. But the fact remains that the petitioner is not only related to the second and third accused in his capacity as their advocate but he is the brother of the third accused Sumathi. The defacto complainant has stated that since the petitioner / first accused had the occasion to come to the house of the second accused, they had access to the children and abused them sexually. It is alleged that even during the occurrence dated 27.10.2016, the children were beaten up on their sexual parts. The defacto complainant has stated that the nail marks and the aberrations were seen to be present on the bodies of the children when they were subjected to medical examination.

9. Since the allegations are serious in nature and the accused are relatives to the defacto complainant and her daughters, the allegations cannot be taken lightly. Since the first petitioner is the brother of the third accused, he had the occasion to come to her house where the children were also living in another portion. No doubt there is a delay in making allegations about sexual abuse. But the delay alone cannot be the only reason to quash the proceedings.



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Only if the witnesses are allowed to be examined and cross-examined, the real facts can be proved before the Court.

10. It is seen that the first respondent police had conducted further investigation by seeking permission from the Court after seeing the depositions of P.W.1 to 5. Since many of the witnesses have already been examined, there is a possibility for completing the trial shortly. Hence I feel it is appropriate to allow the parties to participate in the trial.

11. With the above observations, this Criminal Original Petition is dismissed and the petitioner is at liberty to take up all those points now placed in this petition as his defence during the investigation. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No
Speaking / Non Speaking Order
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R.N.MANJULA, J.

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To

- 1.The Special Judge (POCSO Cases),
Puducherry.
- 2.The Station House Officer,
D-1, Lawspet Police Station,
Puducherry.
- 3.The Public Prosecutor,
High Court, Madras.

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