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CRL.A.No.307 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.A.No.307 of 2018

K.Sundarapandian

... Petitioner

Vs.

State by
The Inspector of Police,
All Women Police Station,
Attur, Salem District.
(Crime No.11 of 2014)

... Respondent

Prayer: The Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the sentence and order passed in Spl.S.C.No.23 of 2016 dated 04.05.2018 on the file of the learned Mahila Court, Salem, Salem District.

For Petitioner : Mr.R.Thamaraiselvan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This criminal appeal is directed as against the judgment passed in Spl.S.C.No.23 of 2016 dated 04.05.2018 on the file of the learned Mahila Court, Salem, Salem District, thereby convicted the appellant for the offence under



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Sections 363 and 366 IPC and Section 9 of Child Marriage Act, and Section 4 r/w 3 of POCSO Act.

2. The case of the prosecution is that the appellant kidnapped the victim minor girl to Tiruvannamalai and tied Thali. Thereafter, they went to Chennai and had physical relationship. Hence the parents of the victim girl lodged a complaint. Based on the complaint, the respondent registered FIR in Crime No.11 of 2014 for the offence under Sections 363 and 366 IPC, Section 9 of Child Marriage Act and Section 4 r/w 3 of POCSO Act. Thereafter, the respondent filed final report, the same has been taken cognizance by the trial Court in Sp.S.C.No.23 of 2016 for the offence under Sections 363 and 366 IPC and Section 9 of Child Marriage Act, and Section 4 r/w 3 of POCSO Act.

3. On the side of the prosecution, Pws1 to 13 were examined and Exs.P1 to 19 were marked and on the side of the appellant no one was examined and do document was marked.

4. On perusal of oral and documentary evidence, the trial Court found the appellant guilty for the offence under Section 363 IPC and sentenced him to



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undergo three years rigorous imprisonment with fine of Rs.5000/- in default, to undergo three months simple imprisonment. Aggrieved by the same the appellant filed this appeal.

5. Pending this appeal, the appellant got married the victim girl and now they are living happily. They also registered their marriage on 05.10.2018 and the registration of marriage certificate also produced before this Court. The respondent also verified the same and submitted that the appellant and the victim girl are living happily. That apart, the parties have settled the issue amicably between them.

6. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Ramgopal and others vs. The State of Madhya Pradesh reported in 2021 (6) CTC 240*** and the relevant paragraphs are extracted hereunder:-

18. It is now a well crystalized axiom that the plenary jurisdiction of this Court to impart complete justice under [Article 142](#) cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to [Section 482 Cr.P.C.](#) conferring powers on the Supreme Court to abrogate and set



aside criminal proceedings, the jurisdiction exercisable under [Article 142](#) of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sublime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sumup and hold that as opposed to [Section 320](#) Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under [Section 482](#) Cr.P.C. or vested in this Court under [Article 142](#) of the Constitution, can be invoked beyond the metes and bounds of [Section 320](#) Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.

20. Having appraised the aforestated parameters and weighing upon the peculiar facts and circumstances of the two appeals before us, we are inclined to invoke powers



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under [Article 142](#) and quash the criminal proceedings and consequently set aside the conviction in both the appeals. We say so for the reasons that: Firstly, the occurrence(s) involved in these appeals can be categorized as purely personal or having overtones of criminal proceedings of private nature; Secondly, the nature of injuries incurred, for which the Appellants have been convicted, do not appear to exhibit their mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest; Thirdly, given the nature of the offence and injuries, it is immaterial that the trial against the Appellants had been concluded or their appeal(s) against conviction stand dismissed; Fourthly, the parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s); Fifthly, the occurrence(s) in both the cases took place way back in the years 2000 and 1995, respectively. There is nothing on record to evince that either before or after the purported compromise, any untoward incident transpired between the parties;

Sixthly, since the Appellants and the complainant(s) are residents of the same village(s) and/or work in close vicinity, the quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any illwill and have no vengeance against each other; and Seventhly, the cause of administration of criminal



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justice system would remain unaffected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the Appellants; more so looking at their present age.

7. In view of the aforesaid, the Judgment dated 04.05.2018 passed in Spl.S.C.No.23 of 2016 on the file of the learned Mahila Court, Salem, Salem District, is hereby set aside.

8. Accordingly, this Criminal Appeal stands allowed.

03.11.2022

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Index : Yes / No

Speaking / Non Speaking order

To

1.The learned Mahila Court,
Salem. Salem District.

2.The Inspector of Police,
All Women Police Station,
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G.K.ILANTHIRAIYAN, J.
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