

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16/6/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.7041 of 2022
a n d
Crl.M.P.Nos.3991 and 3994 of 2022

Prakash

... Petitioner

Vs

1. The State
rep. By The Inspector of Police
All Women Police Station
Namakkal, Namakkal District.
(Crime No.14/2021)

2. S. Kannika

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in Spl.C.C.No.115 of 2021 on the file of FTC Mahila Court, Namakkal.

For Petitioner ... Mr.M.Devaraj
for Mr.C.Karthik

For Respondents ... Mr.A.Gokulakrishnan
Additional Public Prosecutor
for R.1.

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in Spl.C.C.No.115 of 2021 on the file of FTC Mahila Court, Namakkal.

2. The case of the prosecution is that there was a love affair between the petitioner and victim girl/third respondent. The petitioner who is 35 years old, kidnapped the victim girl, aged 16 years and married her at Manmalai Murugan Kovil at Sengaligoundanoor on 21/8/2020. Thereafter, she got pregnant.

3. On knowing the above said fact, the Social Welfare Officer preferred a complaint to the respondent Police on 18/11/2021. Respondent Police investigated and filed a final report and the same is taken cognisance for the offences

punishable under Sections 9 of Prohibition of Child Marriage Act, 2006, Sections 6, 5 (1) & 5 (j) (ii) of the Protection of Child from Sexual Offences Act and Section 366 of the Indian Penal Code in Spl.C.C.No.115 of 2021 on the file of the Fast Track Court, Namakkal.

4. Heard Mr.M.Devaraj, learned counsel for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor for the first respondent.

5. The learned counsel appearing for the petitioner submitted that the parties hail from the lower state of Society and they were unaware of the rigors and consequences of the POCSO Act. Now, the victim girl has attained majority. Due to the intervention of the relatives, marriage was performed and registered.

6. Today, when the matter was taken up for hearing, petitioner, defacto complainant and third respondent were present. This Court examined the victim girl and stated that there was a love affair between herself and the petitioner and that she is not willing to undergo this agony any further and wanted the criminal proceedings to be quashed. Memorandum of joint Compromise, dated 31/3/2022 was filed to that effect.

7. The learned Additional Public Prosecutor appearing on behalf of the first respondent submitted that though the parties entered into a compromise while this case is pending, this Court, taking into account the seriousness of the offence has to consider the issue as to whether an offence of this nature can be quashed on the ground of compromise between parties.

8. In this regard it is relevant to refer the judgment of the learned Single Judge of this Court, in Sabari v. Inspector of Police reported in 2019 (3) MLJ Cr1 110, wherein the learned single Judge had discussed in detail about the cases in which persons of the age group of 16 to 18 years are involved in love affairs and how in some cases ultimately end up in a criminal case booked for an offence under the POSCO Act. The relevant portions of the judgment are extracted here under for proper appreciation:

" 21.When this case was taken up for hearing, this Court became concerned about the growing incidence of offences under the POCSO Act on one side and also the Rigorous Imprisonment envisaged in the Act. Sometimes it happens that such offences are slapped against teenagers, who fall victim of the application of the POCSO Act at an young age without understanding the implication of the severity of the

enactment.

26. In addition to the above, this Court is of the view that 'warning' of attraction of POCSO Act must be displayed before screening of any film, which have teenage characters suggesting relationship between boy and girl.

27. Apart from the above, this Court is of the view that as per the 3rd respondent's report, majority of cases are due to relationship between adolescent boys and girls. Though under Section 2(d) of the Act, 'Child' is defined as a person below the age of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the school final or entering the college, the relationship invariably assumes the penal character by subjecting the boy to the rigorous of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure to be sentenced 7 years or 10 years as minimum imprisonment, as the case may be.

28. When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.

29. Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of

teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence".

9. In the case on hand, the petitioner and the third respondent got married on 19/10/2021, with the help of the close relatives and now the said victim has become major. After the complaint lodged by the Social Welfare Officer, the respondent Police registered the FIR for offences of kidnapping and various offences under POCSO Act. Several criminal cases were booked under the POCSO Act which fall under this category. As a consequence, invariably the boy gets arrested and thereafter, his youthful life comes to a grinding halt. The provisions of the POCSO Act, as it stands today, will surely make the acts of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defense, if the criminal case is taken to its logical end. Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. It is high time that the legislature takes into consideration the cases of this nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act.

10. The main issue that requires the consideration of this Court is as to whether this Court can quash the criminal proceedings involving non-compoundable offences pending against the petitioner. The Hon'ble Supreme Court in the case of Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrat, reported in 2017 9 SCC 641 and in case of The State of Madhya Pradesh Vs. Dhruv Gurjar and Another reported in (2019) 2 MLJ CrL 10, has given sufficient guidelines that must be taken into consideration by this Court while exercising its jurisdiction under Section 482 of Cr.P.C, to quash non-compoundable offences. One very important test that has been laid down is that the Court must necessarily examine if the crime in question is purely individual in nature or a crime against the society with

overriding public interest. The Hon'ble Supreme Court has held that offences against the society with overriding public interest even if it gets settled between the parties, cannot be quashed by this Court.

11. In the present case, the offences in question are purely individual/personal in nature. It involves the petitioner and the victim girl and their respective families only. It involves the future of two persons. Quashing the proceedings, will not affect any overriding public interest in this case and it will in fact pave way for the petitioner and the victim girl to settle down in their life and look for better future prospects. No useful purpose would be served in continuing with the criminal proceedings and keeping these proceedings pending will only swell the mental agony of the petitioner, victim girl and their parents as well.

12. In view of the above, this Court is inclined to quash the criminal proceedings in Special C.C.No.115 of 2021 on the file of the learned Fast Track Mahila Court, Namakkal, in exercise of its jurisdiction under Section 482 of the Criminal.

13. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in Special Spl.C.C.No.115 of 2021, on the file of the learned Fast Track Mahila Court, Namakkal is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Fast Track Mahila Court, Namakkal.
2. The Inspector of Police
All Women Police Station
Namakkal, Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.C.Karthik, Advocate, S.R.No.36401

CrI. O.P. No.7041 of 2022

PM(CO)

CT/13/07/2022