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Crl.A.No.412 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM:

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

Crl.A.No.412 of 2018

Vijayan

... Appellant

Vs.

The State by the Inspector of Police,
All Women Police Station,
Thiruvannamalai,
Thiruvannamalai District.
(Crime No.8 of 2014)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the entire records in connection with S.C.No.133 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thiruvannamalai, Thiruvannamalai District and set aside the judgment dated 15.11.2017.

For Appellant

: Mr.V.Parthiban
For Mr.E.Kannadasan

For Respondent

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



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JUDGMENT

WEB COPY This Criminal Appeal has been filed against the order dated 15.11.2017 made in S.C.No.133 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thiruvannamalai, thereby convicting the appellant for the offences under Section 366(A) of IPC and under Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 4 of the Protection of Children from Sexual Offence Act, 2012.

2. The learned counsel appearing for the appellant submitted that the parties are amicably settled the issues between them and entered into a compromise. He also produced a Joint Memo of Compromise dated 09.11.2022 which have been signed by the appellant and the victim and her parents. Hence he prayed to allow the appeal.

3. The Joint Memo of Compromise dated 09.11.2022 has been filed before this Court, which is extracted herein under :-

“The parties filed the following averments to support the joint compromise memo:-

The said appellant/accused Vijayan was convicted under Section 366(A) of IPC and sentenced to undergo rigorous imprisonment for 10



years, and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three years and convicted for the offence under Section 9 of the Prohibition of Child Marriage Act, 2006 and sentenced to undergo rigorous imprisonment for two years and convicted for the offence under Section 4 of the Protection of Children from Sexual Offence Act, 2012 and sentence to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three years passed by the learned Sessions Judge, Fast Track Mahila Court, Thiruvannamalai, Thiruvannamalai District in S.C.No.133/2014 by judgment dated 15.11.2017 and sentences are ordered run concurrently.

2. The case of the prosecution was that P.W.2 Rajeshwari (Victim Gir) is the daughter of P.W.1 and P.W.2. P.W.1, Samikannu, father of P.W.5 gave a complaint before the Inspector of Police, Mangalam Police Station, Thiruvannamalai on 28.03.2014 stating that her daughter who was studied upto +2 was found missing on 25.03.2014 from his house. According to the P.W.1, P.W.5 was aged about 16 years. The case registered in Crime No. 73 of 2014 under the head of girl missing. Thereafter, the case



was transferred to the respondent police and new crime number was assigned as Crime No.8 of 2014 on 21.04.2014 and the offence was altered into 366(A), 376 of IPC r/w Section 4 of Protection of Children from Sexual Offence Act, 2012.

3. Prior to transfer of the case to the respondent police the Inspector of Police Mangalam Police Station arrested the appellant/accused Vijayan on 07.04.2014 at 6.00 pm., at Palanandhal Joint Road and the victim girl was secured. During investigation P.W.5 victim girl was stated that there was love affair between the appellant and her, with her consent the appellant married her and had a marital relationship.

4. During the trial, the appellant/accused was convicted as above and he was let out on bail during the pendency of the appeal filed before this Hon'ble Court in Crl.A.No.412 of 2018.

5. The parties above submitted that the victim girl P.W.5 and the appellant Vijayan were living together happily till now. Moreover the victim now aged about more than 26 years and also she is in the advance stage of pregnancy. P.W.1 and P.W.2 the parents of P.W.5 are also accepted the same.

6. The parties above have submitted that there



was no age proof or certificate to prove the age of P.W.5 filed before the trial Court. Even the Doctor P.W.13 (Arumugam) has given an opinion that she is aged about 17 years in Ex.P.7. Even during cross examination, he admitted that age may be more than 1 or 2 years from his opinion of 17 years.

7. Now, P.W.5 and the appellant are living together and the issues were compromised. Moreover they fully settled their issues and living together. If the said compromise is not accepted by this Hon'ble Court they will be put into irreparable loss and great hardship. Moreover the peaceful life of P.W.5 and the appellant will be disturbed. The said issue between P.W.5 and the appellant are predominantly of a private nature and irrespective of the facts that the trial was already ended in a conviction. Moreover for the interest of justice the conviction and sentence given against the appellant/accused may be set aside and he may be acquitted from all charges based on the compromise ended between P.W.1, P.W.2, P.W.5 and the appellant/accused."

4. The victim girl and their parents filed separate affidavit dated



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09.11.2022 before this Court. All the parties are present and identified by their respective counsel and the Police. In order to identify the respective parties, they have also produced the copies of the Aadhaar Card are made part of the record. This Court also enquired both the parties and was satisfied that the parties have come to an amicable settlement between themselves.

5. 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 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;



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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 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.”

6. In view of the above, the judgment dated 15.11.2017 made in S.C.No.133 of 2014 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thiruvannamalai, is hereby set aside. The appellant/accused acquitted of all charges. Fine amount, if any, paid shall be refunded to the appellant forthwith. Bail bonds, if any, executed shall stand cancelled.

7. Accordingly, the Criminal Appeal stands allowed.



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Index : Yes/No

Internet : Yes

Speaking /Non Speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Thiruvannamalai,
Thiruvannamalai District.
- 2.The Inspector of Police,
All Women Police Station,
Thiruvannamalai,
Thiruvannamalai District.
- 3.The Public Prosecutor,
Madras High Court,
Chennai.

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