



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.7837 OF 2022

S.Sathish Kumar

...Petitioner / Accused No.1

Vs.

1.The State rep by

The Inspector of Police,
K.V.Kuppam Police Station,
Vellore District.

(Crime No.299/2018)

...1st Respondent

2.S.Venkatesan

...2nd Respondent / Defacto Complainant

PRAYER : This Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records in pursuant to the charge sheet in SPL.S.C.No.94 of 2019 in Cr.No.299 of 2018 dated 11.08.2018 pending on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, 2012 at Vellore and quash the same.

For Petitioner : Ms.A.Anusuya

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1

O R D E R

This Criminal Original Petition has been filed to call for the entire records in pursuant to the charge sheet in SPL.S.C.No.94 of 2019 in Cr.No.299 of 2018 dated 11.08.2018 pending on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, 2012 at Vellore and quash the same.

2.The brief facts of the case is as follows:-

Based on the complaint given by the 2nd respondent/ S.Venkatesan/defacto complainant had preferred a complaint on 11.08.2018 before the 1st respondent police that his daughter namely V.Jothika (minor aged 17 years) who was studying B.Sc., 2nd year in Abirami Arts and Science College at Gudiyatham was found missing. The case in Cr.No.299 of 2018 was registered by the respondent police under the caption "girl missing".



WEB COPY

Thereafter, during the course of investigation it came to light that the petitioner/A1 had kidnapped the victim from the lawful guardianship of the defacto complainant and had committed an offences punishable under Section 363 and 366 of IPC and in the same incident he had taken her to nearby Amman Temple and the A2, the cousin of the petitioner herein had helped A1 to perform child marriage with the victim by tying thali around the neck of the victim. Thereby, committed an offences punishable under Section 9 of the Prohibition of Child Marriage Act, 2006 and A2 had committed an offence punishable under Section 10 of the Prohibition of the Child Marriage Act, 2006. In the course of the same incident between 11.08.2018 and 15.08.2018, the A1 had taken the victim to his house at Sholingapuram and repeatedly committed penetrative and sexual assault, thereby the petitioner had committed an offences punishable under Section 6 r/w 5(1) of the Protection of Child from Sexual Offences Act, 2012. Thereafter, the respondent after completion of the investigation had filed the final report as against the accused for an offences under Section 5(1), 6 and 17 of Protection of Child from Sexual Offences Act, 2012, Sections 363 and 366 of IPC and Sections 9 and 10 of Child Marriage Restraint Act, 1929.

3. The case has been taken up in Spl.S.C.No.94 of 2019 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, 2012 Vellore and the case is pending trial. The present petition has been filed seeking to quash the proceedings on the terms of compromise between the petitioner and the victim.

4. The learned counsel for the petitioner would submit that the victim and the petitioner were hail from the same vicinity and they belong to two different communities, they were in love with each other. During the relevant time, the victim was studying in B.Sc., 2nd year at Abirami Arts and Science College, Gudiyatham, coming to know about the love affair, the defacto complainant/father of the victim had compelled her to marry someone against her choice and preparation were made for the marriage against her wishes. Thereby, the victim eloped from the house and joined the petitioner and they got married in a temple on the same day. The victim was born on 09.07.2000 and on the date of occurrence/elopement on 11.08.218, she was 18years and 1month old and she was not a child, whereas, the father of the victim had given a false complaint as if the victim was minor, based on which the case was registered. Subsequently, coming to know of the registration of the case the petitioner and the victim voluntarily surrendered before the police and the petitioner/A1 and his cousin/A2 were arrested and they were granted bail by this Court in CrI.O.P.Nos.21470 and 21471 of 2018 dated 06.09.2018. Meanwhile, the victim was taken on custody by the defacto complainant. The petitioner had filed HCP.No.2313 of 2018 before this Court seeking for production of



the victim girl, pursuant to which, the victim was produced before this Court on 12.11.2018. Before the Division Bench of this Court, the victim girl informed that she had married the petitioner and thereby she was allowed to join the petitioner.

WEB COPY

5. The learned counsel would further submit that the petitioner is working as a Sephoy in the Indian Army and he had taken the victim/his wife along with him to his place of employment. After the marriage, the victim has also delivered a male child on 28.08.2019 and the child has been named as S.Hirthik and the child is now 2 1/2 years old. The names of the wife and child/S.Hirthik were added in the Army service record of the petitioner and the petitioner is serving under 18MADRAS (Mysore), The Madras Regiment and now posted at Delhi. She would further submit that the parents and the relatives of the petitioner had accepted the marriage and taking care of the entire family. Whereas, the defacto complainant who is antagonized has not reconciled with the victim and the petitioner and he is not interested in compromising the matter.

6. The learned counsel would further submit that the registration of the case and the filing of the final report and further proceedings is nothing but an abuse of process of law. The case of the defacto complainant is that he had given a complaint as if his daughter was a minor on 11.08.2018, whereas the fact remains that the victim was born on 09.07.2000 and on the date of occurrence, the victim had completed 18 years and she was free to choose her own will, however, the second respondent/defacto complainant being a Government Servant abused his position and given a false complaint as if his daughter was less than 18 years. Based on the false complaint, a case was originally registered in Cr.No.299 of 2018 under the caption "girl missing" coming to know of the case, the petitioner and the victim were surrendered before the respondent police. However, the petitioner was arrested and he was remanded to judicial custody. Thereafter, the police have also without taking into consideration that the victim was not a child on the date of occurrence had filed the final report for the offence under Sections 5(1), 6 and 17 of Protection of Child from Sexual Offences Act, 2012, Sections 363 and 366 of IPC and Sections 9 and 10 of Child Marriage Restraint Act, 1929. On this score also, the petition is liable to be quashed on merits. The offence alleged against the petitioner would also not be attracted.

7. The learned Additional Public Prosecutor would submit that based on the complaint given by the second respondent/S.Venkatesan/defacto complainant father of the victim that his minor daughter was missing a case in Cr.No.299 of 2018 was registered under the caption "girl missing" after



WEB COPY

registration of the case, the petitioner surrendered along with the victim and he was arrested. Thereafter, the respondent continued with the investigation and filed final report for the offence under Sections 5(1), 6 and 17 of Protection of Child from Sexual Offences Act, 2012, Sections 363 and 366 of IPC and Sections 9 and 10 of Child Marriage Restraint Act, 1929 and the case is now pending trial on the file of the Special Court for Exclusive Trial of cases under POCSO Act, 2012, Vellore . He would further submit that as instructed by this Court, the respondent police have intimated the second respondent about the pendency of the quash petition and that he has not shown any interest in pursuing the matter. The respondent police would also confirm that the second respondent has been put on notice.

8. The learned Additional Public Prosecutor would further submit that earlier the petitioner had filed HCP.No.2313 of 2018 before this Court and the victim girl was produced before this Court and this Court finding that they were married had permitted the victim to join the petitioner on 12.11.2018. He would further submit that as per the instructions of the respondent/police it is learnt that the victim and the petitioner are married and they have got a child and both of them are living at Delhi. He would also confirm that as per the transfer certificate issued by the Saraswathi Vidyalaya Matriculation Higher Secondary School in Sl.No.768 and Admn.No.1454/07-06-2010, the victim was born on 09.07.2000.

9. The petitioner and the alleged victim are present before this Court, this Court enquired both of them. The petitioner submits that he belong to a lower strata in the society and the alleged victim/Jothika belongs to the upper caste community. He would submit that coming to know of their love affair, her father wanted to separate them and he had forced her to marry someone against her choice, thereafter, after attaining majority she eloped from the house and got married to the petitioner. Due to the pressure given by the father of the victim girl a false case has been registered. The petitioner and his cousin had surrendered before the respondent police and they were arrested and released on bail and after completing investigation the final report has been filed.

10. This Court also enquired the victim girl, she would submit that she was born on 09.07.2000 and in support of her claim she produced the transfer certificate issued by Saraswathi Vidyalaya Matriculation Higher Secondary School in Sl.No.768 and Admn.No.1454/07-06-2010. She submitted that she belongs to upper caste community and the petitioner/her husband belong to SC community and that her father in order to separate them had given a false complaint, as if she was minor and based on the false complaint, the respondent has registered a case and filed



the final report. She would also submit that she had delivered a male child and that her name and her child's name has been entered in the service register of the petitioner who is working for Indian Army. Both the petitioner and the alleged victim would submit that they do not want to proceed against the defacto complainant or the police for registering a false case against the petitioner.

11. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the 1st respondent and perused the materials available on record and the joint compromise memo dated 12.04.2022 signed by both the parties.

12. In *Gian Singh vs. State of Punjab* [2012 (10) SCC 303], the Supreme Court has held as follows:

"61. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society."

13. In *Narinder Singh v. State of Punjab* [2014(6) SCC 466], after considering the *Gian Singh's* case referred to above, the Hon'ble Supreme Court has held as follows :-

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not



WEB COPY

compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."

14. In *Parbatbhai Aahir v. State of Gujarat* [AIR 2017 SC 4843], the Supreme Court held thus"

"(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inherent in the High Court.

(2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the



WEB COPY

purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) the decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulate.

(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic



WEB COPY

offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

15. Subsequently, a three judges bench of the Hon'ble Apex Court in State of Madhya Pradesh v. Laxmi Narayan reported in (2019) 5 SCC 688 the Hon'ble Supreme Court, considering all the above judgments, has held as follows:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would



WEB COPY

lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

16. Keeping the above principles in mind, let us now consider the instant case as to whether it is a fit case to quash the criminal proceedings based on the settlement arrived at between the parties.

17. In the case on hand, the petitioner is charged for the offences punishable under Sections 5(1), 6 and 17 of Protection of Child from Sexual Offences Act, 2012, Sections 363 and 366 of IPC and Sections 9 and 10 of Child Marriage Restraint Act, 1929. Further, it is now submitted that on the date of occurrence/date of complaint, the victim/Jothika was a major, however due to the influence of the defacto complainant/second respondent/father of the alleged victim who was a Government servant a case was registered initially under the caption girl missing and thereafter it was altered for the offence under Section 363 and 366 IPC and ultimately a final report has been registered for the offence referred to above. The victim has produced her birth certificate and as per the birth certificate she was born on 09.07.2000 and on the date of occurrence she has completed 18years. Whereas, the respondent police without taking into consideration and without conducting a proper enquiry had filed the final report for serious offence under the POCSO Act. The registration of the case and the filing of the final report is nothing but an abuse of process of Court.



Since, because the petitioner belong to a lower strata in the society, the defacto complainant using his influence had attempted to separate them and based on his false complaint a case has been registered and the final report has been filed. The continuation of the proceedings against the petitioner is nothing but an abuse of process of law and the petition deserves to be allowed on merits also.

18. Further, the petitioner and the victim have got married and due to wedlock they have also got a male child. In the above circumstances, the continuity of the criminal proceedings would only cause oppression, frustration and prejudice to the parties. Further, in this case, the petitioner's cousin has also been implicated as A2. In order to secure the ends of justice, this Court is inclined to quash the proceedings as against the petitioner/A1 and his cousin/A2.

19. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioner/A1 and his Cousin/A2 in Spl.SC.No. 94 of 2019 in Cr.No.299 of 2018 pending on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, 2012 at Vellore is quashed in entirety and joint compromise memo signed by the petitioner and the victim, shall form part of Court records.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

jas/tsh

To

- 1.The Inspector of Police,
K.V.Kuppam Police Station,
Vellore District.
- 2.The Presiding Officer,
Special Court for Exclusive Trial of Cases under POCSO Act,
Vellore.
- 3.The Public Prosecutor,
High Court of Madras.

CrI.O.P.No.7837 of 2022

SSN(CO)
RVM(17/05/2022)