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CRL.A.No.502 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM:

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

CRL.A.No.502 of 2018

Vijayakumar

... Appellant

Vs.

The Inspector of Police,
Rasipuram Police Station,
Namakkal District.

... Respondent

Prayer: The Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the order of conviction passed by the Sessions Judge, Fast Track Court at Namakkal in Spl.C.C.No.44 of 2015 dated 27.07.2018 under Section 363 IPC, for R.I., of 5 years and to pay a fine amount of Rs.2000/- in D/T of which sentence to undergo R.I., of 3 months and under Section 5(1) r/w 6 of POCSO Act 2012, for R.I., of 10 years and to pay a fine amount of Rs.3000/- in D/T of which sentence to undergo R.I., of 4 months by allowing the present criminal appeal.

For Appellant : Mr.S.Sankar

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



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ORDER

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This criminal appeal is directed as against the judgment passed in Spl.C.C.No.44 of 2015 dated 27.07.2018 on the file of the Sessions Judge, Fast Track Mahila Court, Namakkal, thereby convicted the appellant for the offence under Sections 363 IPC and Section 5(1) r/w 6 POCSO Act, 2012.

2. The case of the prosecution is that the victim was aged about only 14 years. While being so, the accused fell in love with the victim and with an intention to have sexual intercourse, on the pretext of marriage, he induced the victim to elope somewhere. Believing his words, the victim left her house on 30.04.2015 at about 1.00 p.m., as per the instruction of the accused. He had taken her to Attur and thereafter to Hosur by bus and they stayed there near a temple. On the next day i.e on 01.05.2015 at about 6.30 a.m., the accused tied Thali and thereafter, went to Thiruvannamalai and stayed there in a lodge and had sexual intercourse. Based on the complaint the respondent registered FIR in Crime No.166 of 2015 and thereafter, it was altered under Sections 366(A) IPC and Section 3, 5(1) r/w 6 of POCSO Act. After investigation the respondent filed final report and the same has been taken cognizance by the trial Court in Spl.C.C.No.44 of 2015 for the offence under Section 366(A) IPC and Section 5(1) r/w 6 of POCSO Act.



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3. In order to bring the charges to home, the prosecution examined PWs 1 to 19 and marked Exs.P1 to 16 and on the side of the appellant no one was examined and no document was marked.

4. On perusal of oral and documentary evidence, the trial Court found the appellant guilty for the offence under Section 366(A) IPC and Section 5(1) r/w 6 of POCSO Act, and sentenced him to undergo five years rigorous imprisonment and imposed fine of Rs.2000/- in default to undergo three months rigorous imprisonment for the offence under Section 363 IPC and also sentenced him to undergo ten years rigorous imprisonment and fine of Rs.3000/- thousand in default to undergo four months rigorous imprisonment for the offence under Section 5(1) r/w 6 of POCSO Act. Aggrieved by the same, the present appeal.

5. The learned counsel for the appellant would submit that while pending this appeal, after the victim attained majority, the appellant got married with the victim and they are living happily and gave birth to two children. The victim had delivered a child recently and therefore, she could not appear before this Court.



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6. The learned Government Advocate (Crl. Side) also verified that they got married and living together happily and they gave birth to two children.

7. The learned counsel for the appellant also produced some photographs and Birth Certificate of the first son born to the appellant and the victim. Therefore, it is true that they settled their issues amicably and got married and living happily. Therefore, the conviction imposed on the appellant cannot be sustained.

8. The learned counsel for the petitioner also submitted a joint memo of compromise before this Court to that effect, which is extracted hereunder;-

"1. The above Criminal Appeal against the order of conviction passed by the Sessions Judge, Fast Track Mahila Court at Namakkal in Spl.C.C.No.44 of 2015 dated 27.07.2018, under Section 363 of the Indian Penal Code, for R.I., of 5 years and to pay a fine amount of Rs.2000/- in D/T of which sentence to undergo R.I of 3 months and under Section 5(1) r/w 6 of POCSO Act, 2012, for R.I of 10 years and to pay a fine amount of Rs.3000/- in D/T of which sentence to undergo R.I of 4 months.

2. The petitioner submits that as per order of



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conviction passed by the Sessions Judge, Fast Track Mahila Court at Namakkal in Spl.C.C.No.44 of 2015 dated 27.07.2018, the petitioner had undergone five months of imprisonment in jail.

3. The petitioner further submits that later this Hon'ble Court in the present Criminal Appeal preferred along with the Criminal Miscellaneous Petition in CMP.No. 11071 of 2018 to suspend the sentence, was pleased to suspend the sentence of the petitioner by an order dated 18.12.2018 on the condition to execute a bond for a sum of Rs. 10,000/- with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahileacourt, Namakkal, and on further condition that the petitioner shall stay at Chennai and report before the V Metropolitan Magistrate, Egmore, Chennai, once in a week i.e. on every Monday at 10:30 a.m. pending disposal of the appeal.

4. The petitioner submits that the petitioner and the victim/P.W.3 have entered compromise and settled the matter on the basis that they got married on 28.08.2019 in the presence of their family and that they are happily living together. The petitioner further submits that due to their wedlock their First Child was born on 24.05.2021 and Second Child was born on 02.11.2022.



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5. Hence, the petitioner and the Victim/P.W.3 prays that this Hon'ble Court may be pleased to record this Joint memo of Compromise and acquit the petitioner under Section 363 of the Indian Penal Code and Section 5 (1) r/w 6 of Act 2012 and pass order in the above terms and thus render justice. Dated at Chennai on this 04th day of November 2022."

9. 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 sum up 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;

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.

10. In view of the aforesaid decision, the Judgment dated 27.07.2018



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passed in Spl.C.C.No.44 of 2015 on the file of the Sessions Judge, Fast Track

WEB COURT Mahila Court, Namakkal, is hereby set aside.

11. Accordingly, this Criminal Revision case stands allowed.

04.11.2022

ata

Index : Yes / No

Speaking / Non Speaking order

To

1. The Sessions Judge,
Fast Track Mahila Court,
Namakkal.
2. The Inspector of Police,
Rasipuram Police Station,
Namakkal District.



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G.K.ILANTHIRAIYAN, J.
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