



CrI.O.P.No.7542 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.08.2022

CORAM

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

CrI.O.P.No.7542 of 2021 and
CrI.MP.Nos.4990 & 4992 of 2021

- 1.Sakthi @ Sakthivel
- 2.Kumar @ Santhakumar
- 3.Sankar
- 4.Sakthi @ Sakthivel
- 5.Sivalingam
- 6.Thangamani
- 7.Vanitha

... Petitioners

Vs

- 1.State, rep. by the
The Inspector of Police,
All Women Police Station,
Harur,
Dharmapuri District
(crime No.11 of 2020)

- 2.Santhoshini

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the complaint in Spl.SC.No.16 of 2021 on the file of the Fast Track Mahila Court, Dharmapuri and quash the



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same as far as the petitioners are concerned.

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For Petitioners : Mr.V.Sakkarapani

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : Mr.T.Panchatsaram

ORDER

This petition has been filed to quash the proceedings in Spl.SC.No.16 of 2021 on the file of the Fast Track Mahila Court, Dharmapuri, thereby taken cognizance for the offences under Sections 366, 366(A) IPC & 5(1), 6, 16, 17 of POCSO Act, 2012 and Sections 9, 10 of Prohibition of Child Marriage Act, 2006 in Crime No.11 of 2020, as against the petitioners.

2. The case of the prosecution is that on 14.08.2020 at about 14.30 hrs, one, Santhosini lodged a complaint against the petitioners before the respondent stating that in the year 2018, the defacto complainant was studying 11th standard. At that time, A1 namely Sureshkumar had love with the defacto complainant and on 03.02.2018, when the defacto complainant was washing the clothes near the Well in her land, at that time the



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Sureshkumar kidnapped the defacto complainant and married and also stayed three days in the house of his parental uncle i.e. Paneer. On 06.02.2018, the Village Administrative Officer along with Revenue Inspector came to know about the defacto complainant's marriage and came to the Paneer's house to enquire and also advised that the defacto complainant was a minor and should not conduct the marriage and informed to them to hand over the defacto complainant to her parents. On 07.02.2018, all the accused got together and conducted the defacto complainant's marriage with the first accused. Thereafter, the first accused took the defacto complainant to his house. At that time, the first accused family members advised that it is a minor marriage and unnecessary problem would arise. Therefore, they advised the first accused to leave the defacto complainant in her parent's house. Now the defacto complainant has become major. Therefore, on 01.07.2020, the defacto complainant's father approached the first accused family through one, Shivalingam to talk about defacto complainant's marriage with the first accused and the defacto complainant came to know that they are demanding dowry for conducting the marriage. Hence the present complaint is lodged against the petitioners and others.



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3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.11 of 2020 for the offences under Sections 366, 366(A) IPC & 5(1), 6, 16, 17 of POCSO Act, 2012 and Sections 9, 10 of Prohibition of Child Marriage Act, 2006, as against the petitioners and the same has been taken cognizance in Spl.SC.No.16 of 2021 on the file of the Fast Track Mahila Court, Dharmapuri. Hence he prayed to quash the same.

4. The learned Government Advocate(crl.side) would submit that the trial has been commenced and some of the witnesses have been examined in this case.

5. Heard Mr.V.Sakkarapani, learned counsel appearing for the petitioners, Mr.A.Gopinath, Government Advocate(crl.side) appearing for



the first respondent, and Mr.T.Panchatsaram, the learned counsel appearing for the second respondent.

6. It is seen that there are specific overt act as against the petitioners and they are not entitled for quashment of entire proceedings. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***CrI.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but



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not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in ***CrI.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during



trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are



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allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

9. In view of the above discussion, this Court is not inclined to



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quash the proceedings in Spl.SC.No.16 of 2021 in crime No.11 of 2020 on the file of the Fast Track Mahila Court, Dharmapuri. The petitioners are at liberty to raise all the grounds before the trial Court. Further, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

10. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

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Index:Yes/no
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G.K.ILANTHIRAIYAN. J,

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To

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

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