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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/6/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.9355 of 2022

a n d

Crl.M.P.No.5443 of 2022

Sarathkumar ... Petitioner/Accused - 1

Vs

1. The State
rep. By The Inspector of Police
Annur Police Station
Coimbatore. ... Respondent/Respondent
2. Shanmugam ... Respondent/Defacto Complainant
3. Sneha ... Respondent/Victim

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in SPLCC.No.81 of 2021 pending on the file of the Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Coimbatore District for offences under Sections 306 of the Indian Penal Code and Section 5 (1) and 6 (1) of POCSO Act, 2012 and Section 9 of CH MRG Act, 2006.

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

Mr.M.Vignesh
for R.2.

R3 - Approved in Person

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in SPLCC.No.81 of 2021, pending on the file of the Sessions Judge, Special Court, for exclusive trial of cases, under POCSO Act, Coimbatore District, for offences punishable



under Sections 306 of the Indian Penal Code and Section 5 (1) and 6 (1) of POCSO Act, 2012 and Section 9 of CH MRG Act, 2006.

2. The case of the prosecution is that there was a love affair between the petitioner and victim girl/third respondent and on the insistence of the victim girl, the petitioner had eloped with the victim girl and thereafter, victim girl was secured. Subsequently, the victim girl attained majority and the marriage has also been solemnized on 25/5/2021.

3. Based on the statement of the defacto complainant, a case was registered in Crime No.1351 of 2020, for the offences punishable under Sections 366 of the Indian Penal Code and Sections 5 (1) and 6 (1) of POCSO Act, 2012 and Section 9 of CH.MRG Act, 2006. Subsequently, final report has been registered in Spl.C.C.No.81 of 2021, on the file of the learned Sessions Judge, Special Court, for exclusive trial of cases under POCSO Act, Coimbatore District.

4. Heard Mr.Deepan Uday, learned counsel for the petitioner, Mr.A.Gokulakrishnan, learned Additional Public Prosecutor for the first respondent, Mr.M.Vignesh, learned counsel for the second respondent and Mr.R.Ashwin, learned counsel for the third respondent.

5. Today, when the matter is taken up for hearing, petitioner, defacto complainant and third respondent were present in Court, with their respective counsel. On enquiry, the second respondent/defacto complainant undertakes to withdraw the case lodged against the petitioner in Crime No.1351 of 2020. The second and third respondents have filed joint compromise memo to quash the proceedings, in Spl.C.C.No.81 of 2021, pending on the file of the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Coimbatore District.

6. The age of the victim girl was 17 years and 11 months and she had an affair with her cousin/petitioner. Now both the petitioner and third respondent are married. Only twenty days are there for completion of eighteen years by the defacto complainant.

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 a 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



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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 light of the above, in the present case the petitioner and the daughter of the second respondent got married and they are now living happy and peaceful life. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally in cities. After the parents or family lodge a complaint, the police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. As a consequence of such a FIR being registered, 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 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 petitioners. The Hon'ble Supreme Court in the case of Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath, 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 Cr1 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 young persons who are still in their early twenties. 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 first 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 Spl.C.C.No.81 of 2021 on the file of the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Coimbatore, in exercise of its jurisdiction under Section 482 of the Cr.P.C.



13. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in Special Spl.C.C.No.81 of 2021 on the file of the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, Coimbatore. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mvs.

To

1. The Sessions Judge, Special Court
for exclusive trial of cases under POCSO Act,
Coimbatore District
2. The Inspector of Police
Annur Police Station
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

Crl. O.P. No.9355 of 2022

CA(CO)
GMY(07/07/2022)