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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.04.2022
DELIVERED ON : 27.05.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.16726 of 2018
and
Crl.M.P.No.8625 fo 2018

R.Sathiyamurthi
S/o. Late T.V.Ramasubbaiyer ... Petitioner/Accused

Versus

V.Devrajan ... Respondent

PRAYER : Criminal Original petition filed under Section 482 Cr.P.C. praying to call for the proceedings under C.C.No.14 of 2018 on the file of Judicial Magistrate Court Court No.VI, Coimbatore and quash the same.

For Petitioner : Mr.N.Senthilkumar

For Respondent : Mr.C.S.Dhanasekaran

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.14 of 2018 on the file of Judicial Magistrate Court No.VI, Coimbatore.

2. The petitioner, who is facing trial on a private complaint filed by the respondent for the offence under Section 74(3) of the Juvenile Justice (Care and Protection of Childrens) Act, 2015 (J.J. Act), has filed this quash petition. The petitioner had now filed a memo informing the Court that C.C.No.14 of 2018 was transferred to the Court of the Judicial Magistrate-II, Coimbatore and renumbered as C.C.No.1396 of 2019 and the same is pending.

3. The gist of the case is that on 01.01.2017 at about 11.00 a.m., when the respondent/complainant was in his house along with his friends, he came across a report in "Dinamalar" daily paper, Erode edition dated 18.07.2016. At page No.6 of the daily, the petitioner published a news item under the caption "9 வயது சிறுமியை செக்ஸ் பலாத்காரம் செய்ய முயற்சி, தொழிலாளி கைது". The respondent



was shocked and surprised to see such news published in the daily newspaper, which has wide circulation in the state of Tamil Nadu. The victim in this case is a 9 years old child. The victim's grandmother name had been published. Further, the victim is a 4th standard school going child and due to the publication of the such item, the petitioner had committed an offence under Section 74(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015. The respondent sent a lawyer notice on 09.01.2017 to the petitioner calling for explanation as to why he should not be prosecuted. The legal notice dated 09.01.2017 was received by the petitioner on 11.01.2017. Thereafter, no reply was forthcoming. Hence, a complaint was lodged on 23.02.2017. Initially, respondent/complainant's sworn, statement recorded. Thereafter, the respondent side witnesses, namely, C.W.1-P.Ravindran and C.W.2-P.Suresh were recorded. The trial Court, satisfying, prima facie case is made out, took the complaint on file, issued summons to the petitioner, against which, the petitioner has filed this quash petition.

4. The contention of the petitioner is that the petitioner along with his brothers, is running the Tamil daily newspaper "Dinamalar". The petitioner is in-charge of the Erode and Salem editions as its Editor, Printer and Publisher. There are 10 editions of "Dinamalar". The petitioner had commenced his journey with the newspaper nearly 50 years ago. He worked as Assistant to his father, late T.V.Ramasubbiyer and thereafter rose to the level of Editor. The newspaper got wide circulation and following, on an average, nearly 300 news items are published daily. The daily circulation of the newspaper in Tamil Nadu is about 9 lakh copies per day. In the Erode edition of the newspaper dated 18.07.2016, a news item was published with regard to an attempt of molestation of a 9 years old minor girl and the arrest of a worker. The petitioner submits that the press report about the sexual assault was released by the concerned police. Since the victim was of 9 years old minor girl, it has become a sensational in the locality. Further, there was an apprehension that no person's life and property is secured. To bring confidence and faith over the police, the police released the press report informing the public about the steps taken in securing the accused. The petitioner had published the press report issued by the concerned police. It is apparent from the report that the particulars found therein are provided by the police, which was published. Further, the respondent had not called upon the concerned police, why such press release was given. On the other hand, proceeded against the petitioner for obvious reason, pressurising the petitioner to come for some settlement. The respondent had sent a notice, in which it was alleged that the petitioner committed an offence under Section 23 of the POCSO Act. The petitioner on receipt of



notice, sent a reply, wherein, the petitioner had shown his remorse and tendered apology. Further requested the respondent not to precipitate the matters any further and give a quietus to the issue. Further gave undertaking that suitable reformatory and corrective steps, already been taken and instructed the staff concerned ensuring that such aberrations do not surface again in future. The respondent after coming to know, no offence has been made under POCSO Act, filed a complaint for violation of Section 74(3) of the Juvenile Justice Act. On the bare reading of the publication it could be seen that nowhere the victim's name had been disclosed. Section 23 of the POCSO Act laid down procedure for media, directing them not to report or present comments on any child from any form of media or studio, etc., which may have the effect of lowering his/her reputation, or infringing upon his/her privacy. Section 74 of the Juvenile Justice Act would also not get attracted, since the publication had not disclosed the particulars thereby disclosing the identity of the victim. The petitioner had also expressed his remorse and tendered his apology for the aberration.

5. Further, the learned counsel submitted that the petitioner is aged more than 75 years and the newspaper is in 69 years of publication, this is the first time, such aberration occurred, which is a publication of Law enforcing agency report, which was primarily by oversight. Further taking into confidence on the police, press release was made and nothing more. The petitioner has put in more than 50 years in the publication field and he used to read each and every article or depute his assistance to verify the reports. As far as this publication is concerned, it somehow skipped and got published. The petitioner also found that on the date of publication, the petitioner was indisposed and not attended the office, it was his subordinates, who effected the publication. Be that as it may, as an editor he is in-charge of the publication, except publishing the police press release, nothing more had been done. He further submitted that copy of the notice, sent to various authorities, including Juvenile Justice Board and Child Welfare Committee. As per the Juvenile Justice Act, it is Board or the Committee, who are the protectors of the child welfare, had they seen and felt injustice or any violation committed immediate enquiry would be conducted, they could have lodged a complaint. It is not so in this case. Further, the petitioner re-iterates that he is not disputing the publication, only giving reasons under what circumstances such an aberration had taken place. Further, the respondent is total stranger to the person concerned in the news item and for obvious reasons such complaint has been filed. In support of his contention, he relied upon the decision of the Hon'ble Apex Court in the case of Simranjit Singh Mann Vs. Union of India and Another reported in (1992) 4 SCC 653 and Subramanian Swamy and Others Vs. Raju through Member, Juvenile



Justice Board and Another reported in (2014) 8 SCC 390, wherein, the Apex Court had held that ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the same or permit the next friend to move the Court on his behalf and not by a total stranger, who has no direct personal stake in the outcome thereof. He further submitted that Law enforcing agency, who released the press note, have not been questioned.

6. The learned counsel for the respondent submitted that the respondent is a Social Activist and a public spirited citizen. The respondent commands respect in the society. He is lending helping hand to the poor, needy and downtrodden people. On 01.01.2017, when he was reading the Dinamalar Erode Edition dated 18.07.2016, he was shocked to see that the petitioner, published a news article concerning 9 years old minor girl. As per Section 74 of the Juvenile Justice (Care and Protection of Children) Act, it is prohibited, further duty is cast upon the Media, Printing, Publishing, etc. to follow the procedure that no report in any Newspaper, Magazines, audio-video, media or any other form of communication regarding the investigation or enquiry shall disclose the name, address or school or any other particulars, which may lead to the identification of the child in conflict with the Law or a child in need of care and protection. In this case, though the victim's name was not published, her grandmother name, school address and class particulars have been mentioned as well as the name of the accused also published, which would clearly reveal the identity of the victim. Hence, the petitioner committed an offence under Section 74(3) of the Juvenile Justice Act. As per Section 86(3) of the Juvenile Justice Act, a complaint can be filed for such offence before the Judicial Magistrate and hence, the respondent has filed a complaint before the learned Judicial Magistrate No.VI, Coimbatore. The learned Judicial Magistrate, Coimbatore examined the respondent and recorded his sworn statement. In his sworn statement, he had stated about the entire facts of the case. C.W.1-P.Ravindran and C.W.2-P.Suresh, the friends of the respondent were examined. Their evidence is also in conformity and corroborating the respondent's sworn statement. The trial Court, on a perusal of the evidence and materials produced, taken the complaint on file. He further submitted that the petitioner himself is not certain whether he has committed an offence under the POCSO Act or under Juvenile Justice Act. The petitioner admitted his offence and shown his remorse and tendered apology. Further, the contentions of the petitioner are factual, which ought to be decided during the trial and not in a quash petition. Hence, learned counsel prayed for dismissal of the petition.



7. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondent and perused the materials available on record.

8. Considering the submissions of the learned counsel on either side and on perusal of the material, it is seen that, it is not in dispute that the petitioner is the editor and publisher of "Dinamalar" Erode edition. Further, from plain reading of the news item, it is clear and confirms that it is a press release issued by the Police, which has been published. Further, from the news item, it is seen that the identity of the victim is not completely disclosed. In that news item, victim's grandmother name, school address and class particulars have been mentioned. This is obviously could be provided only by the Police and it is not the news item collected by petitioner, reporter and published by the publisher on his own. Though Section 74 of the Juvenile Justice Act prohibits such publication, without arraying the concerned police as a party to the proceedings, it would not be appropriate to continue the proceedings against the petitioner alone. Further, the petitioner, who is aged more than 75 years, is in the newspaper industry for more than 50 years, shown his remorse, tendered apology and gave an undertaking that in future such aberrations would not take place. Further, the sworn statement, the respondent had stated about the presence of his friends and had not given their names, the presence of C.W.1 and C.W.2 is highly doubtful. The publication is only a reproduction of Police Press release about the incident of molestation of a 9 years old minor girl. Neither the statutory authorities, namely, the Board or the Committee under Juvenile Justice Act nor the victims have made any complaint. The respondent has no locus. Further, as per Section 42 of the POCSO Act, an alternate punishment, which is greater in degree to be imposed on the accused. The POCSO Act not only provides punishment, also issued guidelines, wherein the procedure to conduct the trial has been clearly stated. As per the news publication, the accused is being prosecuted under the POCSO Act. The POCSO Act is a special Act, which overrides other Act and for publication of the news item involved under the POCSO Act, the petitioner cannot be prosecuted under the said Act. Further on perusal of the materials, it is seen that there is no offence committed by the petitioner either under the POCSO Act or under the Juvenile Justice Act.

9. In view of the above, this Court finds that continuation of the proceedings against the petitioner would amount to abuse of process of law. Hence, the proceedings against the petitioner in C.C.No.14 of 2018, which has been renumbered as C.C.No.1396 of 2019, presently pending before the learned Judicial Magistrate-II, Coimbatore, is hereby quashed.



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10. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate-II,
Coimbatore.

2.The Honourable POCSO Committee
High Court, Madras.

Crl.O.P.No.16726 of 2018

JP (CO)
SB (13/06/2022)