



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.O.P.No.11814 of 2022

and

M.P.No.6694 of 2022

Sathish Kumar

... Petitioner

-Vs-

State Rep.by
The Inspector of Police,
All Women Police Station,
Mannargudi.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, pleaded to set aside the order passed in Crl.M.P.No.82 of 2022 in S.C.No.42 of 2020 on the file of learned Mahila Court, Thiruvavarur District.

For Petitioner : Mr.V.Krishnamoorthy

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order passed in Crl.M.P.No.82 of 2022 in S.C.No.42 of 2020 on the file of learned Mahila Court, Thiruvavarur District.

2. It is the case of the prosecution that the victim and the petitioner/accused were in love with each other and both eloped and had sexual intercourse. Hence the petitioner has been charged for offences under Section 366(A) IPC and Sections 5(1) and 6 of POCSO Act, 2012 on the complaint lodged by the victim's aunt.

3. The learned counsel for the petitioner submitted that the prosecution has examined P.Ws.1 to 18 and during trial, they filed a petition to examine the Head Master of Co-operative Urban Bank Municipal High School, Mannargudi in order to mark the Admission Register of the victim girl to prove her age and the trial Court allowed the petition. Aggrieved by the same, the petitioner has file the present petition.



4. The learned Additional Public Prosecutor submitted that examining the Head Master of the School along with the Admission Register for ascertaining the age of the victim is necessary for the case. Hence he prayed that this petition deserves to be dismissed.

5. Heard both sides.

6. The learned counsel appearing for the petitioner submitted that the victim herself in her evidence admitted that she has completed her schooling up to 9th standard and also retained the Transfer Certificate in her possession. The prosecution without seeing the original Transfer Certificate sought reliance on the xerox copy of the Transfer Certificate which was objected. At this stage, the trial Court has allowed the petition filed under Section 311 of Cr.P.C. for examining the Head Master of the school along with the Admission Register. He further submitted that as per the Juvenile Justice (Care and Protection of Children) Act 2015 only the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available and in the absence thereof, birth certificate given by a corporation or a municipal authority or a panchayat or in the absence of both, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board. Hence his contention is that without following the procedure contemplated under the Juvenile Justice Act, as a matter of right, Head Master cannot be summoned to bring the Admission Register. It is relevant to refer Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which deals with presumption and determination of age. Sub clause (ii) of Section 94 makes it very clear that the Date of Birth of the victim can be proved by Birth Certificate from the school or matriculation or equivalent certificate from the concerned examination Board, if available and in the absence thereof, birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of both, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board. Therefore, it is very clear that when school Register relating to the Date of Birth is available, it would be the best evidence for the proof of the age of the victim. Therefore, merely because separate certificate has not been obtained from the Head Master that will not diminish the value of the Admission Register which was all along maintained by the school authorities and there is always a presumption and genuineness to it unless rebutted. Therefore, mere summoning of the Head Master to bring the original document cannot be said to be violation of the procedure in proving of



documents. After all the lower Court has summoned the person who has the custody of the documents to prove the entries therein. Therefore, this Court is of the view that separate certificate is not at all required. Such view of the matter, this Court does not find any infirmities or inconsistencies in the order passed by the trial Court.

7. Accordingly the Criminal Original Petition stands dismissed. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

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To

1. The Judge,
Mahila Court,
Thiruvarur District.
2. The Inspector of Police,
All Women Police Station,
Mannargudi.
3. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.11814 of 2022

AD[co]
NSK/29/06/2022