



CrI. O.P. No.13631 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated: 11/7/2022

**C O R A M**

**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**

**CrI. O.P. No.13631 of 2022**

**a n d**

**CrI.M.P.No.7290 of 2022**

N. Mahendran

...

Petitioner

Vs

1. The State  
rep. By The Inspector of Police  
All Women Police Station (East)  
Coimbatore City.

2. M. Karthika

...

Respondents

**PRAYER**: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the criminal case in C.C.No.57 of 2020 on the file of the learned Special Court for Exclusive trial of Cases under POCSO Act Cases, Coimbatore and quash the same.



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|                 |     |                                                             |
|-----------------|-----|-------------------------------------------------------------|
| For Petitioner  | ... | Mr.N.Manoharan                                              |
| For Respondents | ... | Mr.E.Raj Thilak<br>Additional Public Prosecutor<br>for R.1. |

R 2 – appeared in person

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**ORDER**

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.57 of 2020, pending on the file of the learned Special Court for Exclusive trial of Cases under POCSO Act Cases, Coimbatore, for the offences punishable under Sections 5 (i), 5 (j) (ii) and 6 of the POCSO Act and Section 9 of the Prohibition of the Child Marriage Act, 2006.

2. The case of the prosecution is that the second respondent is the close relative of the petitioner. Since the father of the defacto complainant died, mother of the second respondent struggled hard to take care of the second respondent. Hence the second respondent and petitioner got married on 16/1/2019 at Vinayagar Kovil, Kuniamuthur, Coimbatore. The second respondent became pregnant and was taken to the Government Hospital, Coimbatore for delivery, where she gave birth to a male child on 1/3/2020 at 3.30 p.m.



3. An intimation was sent by the Government Hospital, Coimbatore to D 1 Ramanathapuram Police Station, with regard to the above said fact and a case was registered in Crime No.280 of 2020. As per the Police report, the second respondent was born on 28/11/2004 and she was 15 years old, at the date of marriage.

4. Heard Mr.N. Manoharan, learned counsel for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for the first respondent.

5. Today, when the matter is taken up for hearing, petitioner, defacto complainant/second respondent with their son, aged 2 years and 3 months, were present in Court, and they were identified by Ms.Jude Priya, Special Sub-Inspector of Police, All Women Police Station (East), Coimbatore.

6. An affidavit, dated 2<sup>nd</sup> June 2022 was filed by the petitioner, wherein it is stated that the petitioner and second respondent got married on 16/1/2019 and the second respondent gave birth to a male child on 1/3/2020 and they are living happily under one roof. Moreover, the second respondent is also not willing to prosecute the case against the petitioner.



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7. On enquiry, the second respondent/defacto complainant submitted that they both are living happily and peacefully.

8. The learned Additional Public Prosecutor appearing on behalf of the first respondent submitted that though the petitioner and defacto complainant are living happily, 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.

9. In the case on hand, the petitioner and second respondent are living happy and peaceful life. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally in cities. As per the custom prevailing in their Community, it is quite common for performing the marriage even before attaining the age of 18 years. 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. A boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. Punishing a boy who enters into a relationship with a minor girl by treating him as an offender, was never the object 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. A 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 petitioner. The Hon'ble Supreme Court in the case of *Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrat*, 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 Crl 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. 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.57 of 2020 on the file of the learned Special Court for exclusive trial of cases under POCSO Act, Coimbatore, in exercise of its jurisdiction under Section 482 of the Cr.P.C.



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13. Accordingly, this **Criminal Original Petition is allowed** and the criminal proceedings in Special Spl.C.C.No.57 of 2020 on the file of the learned Special Court for exclusive trial of cases under POCSO Act, Coimbatore. Affidavit, dated 2<sup>nd</sup> June, 2022 filed by the petitioner shall form part of the records. Consequently, the connected Criminal Miscellaneous Petition is closed.

11/7/2022

mvs.

Index: Yes/No

Internet: Yes

Speaking/Non-speaking order

To

1. The Special Court for exclusive trial of cases under POCSO Act, Coimbatore District
2. The Inspector of Police  
All Women Police Station (East)  
Coimbatore City.
3. The Public Prosecutor,  
High Court, Madras.



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**N. SATHISH KUMAR, J**

mvs.

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