

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.06.2022
CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.O.P.No.14091 of 2022
and Crl.M.P.Nos.7679 and 7684 of 2022

Dhanalakshmi ... Petitioner/Accused(A2)
Vs

1.State of Tamil Nadu
Rep. by Inspector of Police
All Women Police Station
Ooty Rural
Nilgiris District
Tamil Nadu

..1st Respondent

2.Ashmitha ...2nd Respondent/Defacto Complainant

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Special C.C.No.31 of 2022 on the file of the Mahalir Needhimandram, Udhagamandalam and quash the final report / charge sheet dated 26.04.2022, bearing number FR-3/2022 as against the petitioner and consequently, quash the proceedings in Special C.C.No.31 of 2022 on the file of Mahalir Needhimandram, Udhagamandalam as against the petitioner.

For Petitioner : Mr.N.L.Rajah, Senior Counsel
for Mr.E.Jayasankar
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records in Special C.C.No.31 of 2022 on the file of the Mahalir Needhimandram, Udhagamandalam and quash the final report dated 26.04.2022, bearing number FR-3/2022 filed as against the petitioner / A2, who is the mother of the defacto complainant.

2.The prosecution has been proceeded on the basis of the complaint given by the defacto complainant against A1. It is alleged that A1, is the step father of the defacto complainant and he was living with A2, the mother of the defacto complainant. The defacto complainant has three other sisters. A1 on one or two occasions molested the defacto complainant and the same was informed to A2. However, complaint has not been

lodged immediately, therefore, she was also prosecuted for abetment as well as failure to report the occurrence immediately.

3.Learned counsel for the petitioner would contend that when the defacto complainant informed about some misbehaviour of A1, in order to find out the truth, the petitioner / A2 had to make some enquiry, hence there was a delay in preferring the complaint immediately. However, he submitted that the complaint was lodged only at the instance of the petitioner / A2 along with her minor daughter. Therefore, at no stretch of imagination such delay in preferring the complaint amounts to abetment of the offence u/s.19 and 20 of POCSO Act. Further, the failure to inform the police immediately will not attract offence, as the mother considering the well being of her other minor female children, she had to enquire and find out the veracity of the statement made by the minor child. Therefore, mere delay in lodging the complaint will not attract offence u/s.20 of the POCSO Act.

4.Heard Mr.N.L.Rajha, the learned Senior Counsel appearing for the petitioner / A2 and the learned Additional Public Prosecutor appearing for the 1st respondent.

5.The defacto complainant has now attained majority and pursuing her Medical Course in Mahatma Gandhi Medical College, Puducherry. The defacto complainant is also present before this Court, she was identified by the learned counsel on record and her identity was not disputed by the respondent police. The defacto complainant submitted that her mother was the one who took her to the police station to lodge a complaint against A1, with whom the mother was living for some period. Whereas, the police has implicated her mother as accused /A2 and otherwise the contention is that, the mother was unnecessarily implicated in this case.

6.Be that as it may. At the first instance, mere delay in reporting the offence, the charges u/s.16 of the POCSO Act will not be attracted. Secondly, to attract the offence of abetment, there must be some act on the part of the petitioner to aid the main offender to commit the offence or otherwise must be instigated or induced A1 to commit such offence. The entire materials collected by the prosecution do not show any such materials to show that A2 has abetted A1 to commit some sexual offence against the defacto complainant. Therefore, the prosecution against the petitioner / A2 for the offence u/s.16 certainly will not be attracted along with r/w 19 and 20 of the POCSO Act. Similarly, the petitioner / A2 is also prosecuted u/s.21 of the said Act, for failure on her part to inform or report the offence to the authorities immediately. It is not the offence of penetrative sexual assault that has been committed by

A1 therefore, there was some delay in reporting the offence. In view of this Court, offence u/s.21 will not be attracted against A2. It is not the case of the prosecution that the petitioner has wilfully made misrepresentation or wilfully concealed the material fact to construe such delay as an instigation.

7.It is relevant to note that it is not the case of the prosecution that the petitioner / A2 has totally suppressed such act or not informed or reported the same to the police, in fact, F.I.R was lodged at her instance and the same can be seen on reading of the F.I.R itself. It is not disputed by the prosecution that, apart from the defacto complainant, the petitioner also has three other minor female children. It is the normal conduct of any mother to find out any such incident reported to her is true or not in the family.

8.In such view of the matter, as the defacto complainant herself submitted before this Court that her mother has been falsely implicated, no materials available on record to substantiate the case against the petitioner / A2. This Court is of the view that continuing the prosecution against the mother / petitioner / A2, who is in fact accompanied the defacto complainant to the police station and lodged a complaint is nothing but harassing the petitioner and it is a futile exercise in keeping the final report pending.

9.Accordingly, this Criminal Original Petition stands allowed. The final report, prosecuting the petitioner / A2 in Special C.C.No.31 of 2022 on the file of the Mahalir Needhimandram, Udhagamandalam dated 26.04.2022, bearing number FR-3/2022 stands quashed. The trial Court shall proceed with the trial as against A1 and expedite the disposal of the matter expeditiously. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kas/ggs

To

1.The Inspector of Police

All Women Police Station

Ooty Rural, Nilgiris District, Tamil Nadu

2.The Judge, Mahalir Needhimandram, Udhagamandalam.

3.The Public Prosecutor, High Court of Madras.

+1 cc to Mr.E.Jayasankar , Advocate Sr.NO. 38608

Crl.O.P.No.14091 of 2022

&Crl.M.P.No.7679&7684/2022

RR(CO)

A.SK(14/07/2022)