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CrI.O.P.No.19220 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

CrI.O.P.No.19220 of 2021 and
CrI.M.P.No.10518 of 2021

N.Divakaran

... Petitioner

Vs.

1.State through
The Inspector of Police,
W-18, AWPS, M.K.B.Nagar,
Vyasarpadi,
Chennai – 600 039.
(Crime No.614 of 2014)

2. P.Boominathan

... Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in Spl.S.C.No.15 of 2021 now pending on the file of learned Sessions Judge (Sessions Court for exclusive trial of cases under POCSO Act) at Chennai and quash the same.

For Petitioner : Mr.R.Ganesh Kumar

For 1st Respondent : Mr.A.Damodaran
Additional Public Prosecutor

For 2nd Respondent: Mr.K.C.Karl Marx



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ORDER

This Criminal Original Petition is filed to quash the proceedings in Spl.S.C.No.15 of 2021 pending on the file of learned Sessions Judge (Special Court for exclusive trial of cases under POCSO Act) at Chennai.

2. Heard the learned counsel for the petitioner, learned counsel for the 1st respondent and learned Additional Public Prosecutor appearing for the 2nd respondent.

3. The learned counsel for the petitioner would submit that there is no materials to charge the petitioner for the offences under Section 8 of the Protection of Children from Sexual offenses Act, 2012 or Section 12 of the Protection of Children from Sexual offenses Act, 2012 (hereinafter referred as POCSO Act); even according to the statement of the victim child, there is no statement with regard to the sexual abuse caused to her; since the charge sheet has been filed against the accused without any basis, the proceedings should be set aside.

4. The learned counsel for the 2nd respondent / defacto complainant



would submit that even though there is no allegation about the commission of sexual abuse in the complaint, the child revealed the same later to her father and on that basis only, the charge sheet has been filed for the offences under Sections 379, 511 of IPC r/w. Section 12 of the Protection of Children from Sexual offenses Act, 2012 and hence the present petition should be dismissed.

5. On perusal of the complaint given by the 2nd respondent, it is seen that the allegation is made with regard to an attempt made by the petitioner to steel the chain of his minor daughter aged 10 years. On hearing the scream of his daughter, the 2nd respondent came to the spot along with other persons in the locality and caught hold of the accused and handed over him to Police.

6. The petitioner is a Gas delivery boy in the locality. The allegation made by the defacto complainant in his complaint is that the petitioner had tried to snatch the chain of the child and hence the child screamed. Subsequently he had given a statement that the petitioner had improperly



touched the child over her body and only because of that she screamed.

However, It is stated by the defacto complainant that he did not like his daughter coming to Court for giving 164 statement. The first statement of the child would show that she was about to go to the nearby grocery shop to buy biscuits and during that time the accused was standing near the shop has pulled her hands and attempted to snatch away the chain worn by her. The complaint has been given on 06.04.2014. The witnesses were enquired on the same day and they had given statement that the petitioner had attempted to snatch the chain of the child and on hearing the noise of the child, the father of the child came out of his house and caught hold of the accused.

7. In the second statement only, the child has stated that the accused had hugged her and she shouted. The time gap between her alarm and arrival of the father was not too long and hence the child could not have imagined to state something else to her father by conceding the sexual abuse caused on her. Her first statement is more reliable due to its spontaneity. The subsequent statement of the child can be relied only after due



verification. If the child had appeared before the Court and given 164 statement, it would have been very helpful to the prosecution. But the 2nd respondent stated that he did not like his daughter going to Court and giving statement. In that case, the statement of the child will not be considered as a reliable material. The other witnesses had not stated anything about the commission of sexual abuse committed by the petitioner. Since the offence under Section POCSO Act are very serious in nature and it has stringent punishment, in the absence of any other solid materials, it is dangerous to proceed the case.

8. Since the child do not want to give statement before the Judicial Magistrate, no useful purpose would be served if the petitioner is put on trial with these weak materials. The materials available are not sufficient enough to prosecute the accused for the offenses either under Section 8 of the POCSO Act or Section 12 of the POCSO Act. Hence, I feel the powers of this Court under Section 482 of Cr.P.C., should be invoked in order to secure the ends of justice.



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9. In the result, this Criminal Original Petition is allowed. The proceedings in Spl.S.C.No.15 of 2021 pending on the file of learned Sessions Judge (Special Court for exclusive trial of cases under POCSO Act) at Chennai is quashed. Consequently, connected miscellaneous petition is closed.

10.11.2022

vum

Index:yes/No

Speaking order / Non speaking order

To

1. The Inspector of Police,
W-18, AWPS, M.K.B.Nagar,
Vyasarpadi,
Chennai – 600 039.

2. The Public Prosecutor,
Madras High Court,
Chennai.



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R.N.MANJULA,J.

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