



CrI.O.P.No.18648 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CrI.O.P.No.18648 of 2019 and
CrI.M.P.No.9469 of 2019

1.Arunprakash

2.Mariselvam

... Petitioners

/vs/

1.State by Inspector of Police,
All Women Police Station,
Tiruppur North, Tiruppur.
(Crime No.3 of 2019)

2.P.Niranjana Devi

... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records and quash the charge sheet in Spl.C.C.No.18 of 2019 on the file of Mahila Court, Tiruppur.

For Petitioners

... Mr.J.Franklin

For Respondents

... Mr.A.Gopinath,
Govt. Advocate (CrI.Side) for R1

No appearance for R2



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ORDER

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This Criminal Original Petition has been filed to call for the records and quash the charge sheet in Spl.C.C.No.18 of 2019 on the file of Mahila Court, Tiruppur.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for the first respondent.

3. The petitioners are the accused 1 and 2. They have been charged for the offence under Sections 11(1) & 12 of the POCSO Act, 294(b), 506(i) of IPC. The second respondent defacto complainant is the mother of the victim girl. The case of the prosecution is that the victim girl who is aged about 14 years is studying in Government School at her native place. On 15.02.2019, when the victim girl was returning from School to home along with her two friends, the first accused who is the cousin of one of the friends of the victim girl called the girls for taking photographs. The first accused asked the victim girl to stretch her hand in front of him and give a pose and the second accused has taken the photograph. Thereafter on 13.03.2019, the photos were morphed to show that the first accused was



giving a rose flower to the victim by kneeling down and the same was being received by her and uploaded it in the Instagram. The brother of the victim girl's friend showed the photo to the victim girl and she in turn reported it to her mother. Thereafter, the second respondent who is the mother of the victim girl gone to the police station and made a complaint. On the said complaint, FIR has been registered in Crime No.3 of 2019. After investigation, the charge sheet has been filed against both the petitioners for the above said offences.

4. The learned counsel for the petitioners submitted that none of the ingredients seen from the materials produced by the prosecution makes out an offence under Section 12 of the POCSO Act; he has further submitted that the offences under Sections 294(b) and 506(i) of IPC also not made out; the petitioners who are Visual Communication students have taken the photograph out of curiosity and uploaded it; since they did not have any sexual intention and the photograph also did not exhibit any sexual act, the charge sheet is liable to be quashed.



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5. The learned Government Advocate (Crl.Side) appearing for the first respondent submitted that the first accused has harassed the victim girls by uploading the photograph which cannot be taken well by the viewers; the photograph would show the sexual intention of the accused and hence the accused should be subjected to trial.

6. In order to charge a person for the offence under Section 12 of the POCSO Act, the ingredients as defined under Section 11 of the POCSO Act should be seen to be present. From the statement of the victim girl and others, it is seen that the accused have taken photograph of the School children while they were in uniform. Though L.W.2/victim girl has stated that the first accused had asked her to stretch her hands and give a pose for the photograph, the said photograph does not reflect the same. It only shows that three girls along with a boy were standing and witnessing the scene of first accused giving a flower to one girl by kneeling down with one leg. Though the said pose is similar to the proposal of love, it is not seen with any criminal intention. In fact the boy was smiling and it only appears that the first accused was doing something playfully. But the serious part



was given when he uploaded the said picture in the Instagram. The act of the first accused will be annoying, but does not fall under sexual harassment as defined under POCSO Act.

7. The second respondent has stated that when she had gone to the first accused to ask him about the occurrence at his house, he abused her in filthy language. The offence was not taken place in public place in order to make out an offence under Section 294(b). In fact, in the statement of L.W.2/ who is the victim girl, she has stated to her mother that the photograph was taken just for the purpose of making a photo album. The victim girl was 14 years old at the time of occurrence. The petitioners/ accused 1 and 2 were 21 and 19 years. The act of the petitioners is seen to be more like a teenage issue than a criminal act. It can be at the worst be reprimanded. Since the ingredients are not serious enough to make out a case against the petitioners under the above Sections, I feel it is appropriate to invoke the jurisdiction of this Court under Section 482 of Cr.P.C. to quash the proceedings against the petitioners to secure the ends of justice.



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8. In the result, this Criminal Original Petition is allowed and the proceedings against the petitioners in Spl.C.C.No.18 of 2019 on the file of Mahila Court, Tiruppur, is quashed. Consequently, connected miscellaneous petition is closed.

21.12.2022

Index: Yes/No

Internet: Yes/No

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To

1.The Mahila Court, Tiruppur.

2.All Women Police Station,
Tiruppur North, Tiruppur.

3.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA ,J.

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