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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.01.2022.

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THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.848 of 2021

Vignesh @ Vickky

... Petitioner/Petitioner/Accused

Vs.

State by.

The Inspector of Police,
All Women Police Station,
Hosur,
Krishnagiri District.
(Crime No.19 of 2020)

... Respondent /Respondent/Complainant

Prayer: Criminal Revision filed is under Section 397(1) & 401 of Criminal Procedure Code, to call for the records pertaining to the order passed in Crl.M.P.No.605 of 2021 in Spl.S.C.No.6 of 2021 dated 18.10.2021 by the learned Sessions Judge, Mahila Court, Krishnagiri, and set aside the same.

For Petitioner : Mr.A.Balamurugan

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

ORDER

(This case has been heard through video conferencing)

The Criminal Revision Petition has been filed against the dismissal of the discharge petition filed by the petitioner/A3 in Spl S.C.No.6 of 2021.

2. Brief facts of the case are as under:-

(a) The petitioner is arrayed as A3. The petitioner alongwith A1/Prashanth and A2/Prabhanjan was charge-sheeted in Spl.S.C.No.6 of 2021. The petitioner and A2/Prabhanjan were charge sheeted for the offence under Section 366 (A) IPC and A1/Prashanth was charge sheeted for the offence under Section 363, 366 IPC and Section 5(1) r/w 6 of POCSO Act 2012 and Section 9 of Prohibition of Child Marriage Act 2006. The charges



levelled against the accused are as under :-

"The de facto complainant witness Sundarajan s/o Nadarajan is residing in D.No. 1213/10, Sivnkovil street, Mookandapalli Village, NTR nagar, Hosur Taluk, Krishnagiri District and her daughter victim was born on 09.12.2002. She is a child defined under Section 2(1)(d) of Protection of Children From Sexual Offences Act 2012. The victim girl is aged about 17 years as per the certificate issued by the competent authority. She is studying BCA First year in St.Joseph College, Hosur. The accused A1 to A3 is residing in the address noted in the margin. A2 & A3 are friends of A1. Prior to the occurrence, due to COVID 19 emergency period, victim girl victim was stayed in her sister's house by name Sowbhakiyalakshmi situated at TNHB-Phase 1, Housing Board Quarters, Thirupathur. During that period of stay, the accused Prasanth (A1) had developed love affairs with victim girl victim by taking advantage of tender age of the victim child victim and enticed her under the pretext of loving her and would marry her with intent to exploit her sexually.

While such being that state of affairs on 30.10.2020 at about night 12.00 hrs, from the house of the witness Sundarajan situated at D.No.1213/10, Sivnkovil Street, Mookandapalli Village, NTR nagar, Hosur Taluk, Krishnagiri District, within the jurisdiction of AWPS Hosur limits, the accused A(1) who waited at near the victim house. Seduced the victim child victim to come out of her house, in a deceitful manner, the accused (A1) with intent to marry her and to have illicit sexual intercourse with the child victim and kidnapped with assistance of A2 (Prabhanjan) and A3 (Vikki@Vignesh) from the lawful guardianship of her parents by Rental Swift Desire Car bearing Registration number TN 83 W 7381 to Krishnagiri and then accused (A1) took the victim girl victim to Uvari by bus and thereby the accused A1 had committed the offence punishable under section 363, 366 IPC and thereby the accused A2, A3 had committed the offence punishable under section 366(A) IPC.

In the course of the same transaction, on 01.11.2020 at about 7.00 AM, at the Temple situated at Uvari, Thirunelveli District and thus the accused being a male adult had who had marriage



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with the victim girl victim, knowing that she is a minor girl, at the time of contracting Child Marriage and thereby the accused Prasanth (A1) had committed the offence punishable under section 9 of Prohibition of Child Marriage Act- 2006.

In the course of the same transaction, by seducing the victim girl victim, the accused Prasanth (A1) took her to Uvari and stayed in the witness Hema's house along with the her, the accused (A1) had committed the aggravated penetrative sexual the assault, by forcibly having sexual intercourse with her repeatedly and thereby the accused (A1) had committed the offence punishable under section 5 (1) r/w 6 of Children from Sexual Offence Act-2012. Hence the final report."

(b) The petitioner/A3 had filed a Application under Section 227 of Cr.P.C seeking discharge. The Trial Court had dismissed the Application, against which, the present Revision has been filed.

3. The submissions of Mr.A.Balamurugan, learned counsel appearing for the petitioner are as follows:-

(a) Other than being a friend of A2, the petitioner has nothing to do with the alleged offence. The petitioner, A1 and A2 are the residents of Thirupathur. On 31.10.2020 in the early Morning, A1 had contacted A2/Prabhanjan and had informed him that while he was traveling towards Krishnagiri in a car, he met with an accident near Kandhikuppam and thereby, he had sought for help from A2, who is a Taxi driver. Since, it was early in the Morning, A2 had asked the petitioner to accompany him to the place. Then only, the petitioner and A2 in this case came to know that A1 was with a girl and A1 had requested them to drop at Krishnagiri bus stand and as requested by them, A2 had dropped them at Krishnagiri bus stand. Other than that, the petitioner is not aware of the fact that the girl, who was with A1 is a minor girl.

(b) The version of the petitioner is confirmed by the victim in her statement recorded by the Magistrate under Section 164 Cr.P.C. In the statement recorded under Section 164 Cr.P.C., she had specifically stated that she and A1 were traveling in a car and the car met with an accident and thereafter, A1 had called A2 for help and A2 and the petitioner had come to the place and they picked them from the place of accident and dropped them at Krishnagiri bus stand to board the bus to Madurai and other than that, nothing has been stated about the petitioner either by the victim or by any other witness.



(c) Subsequently, the respondent had recorded further statement under Section 161 (3) Cr.P.C, where she had given a different version stating that A2 and Petitioner had picked A1 and the victim from her sister's house and they had dropped them at Krishnagiri. Though the victim has stated that A2 and the Petitioner had picked them from her sister's house and dropped them at Krishnagiri, no material has been produced by the prosecution to make out a charge for the offence under Section 366 A IPC against the petitioner. In order to frame a charge against the petitioner, there should be materials to show that the accused had induced any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person. There is absolutely no material to show that the petitioner induced the minor girl to go from any place with an intent that she may be seduced to illicit intercourse with another person.

(d) The petitioner other than having accompanied A2, who is taxi driver, does not know anything about the background of the victim or what was relationship between A1 and the Victim. There is absolutely no ground for proceeding against the petitioner and in such circumstances, the Trial Court ought to have allowed the discharge petition and thereby, he seeks to set aside the order in Crl.M.P.No.605 of 2021 in Spl.S.C.No.6 of 2021 dated 18.10.2021 by allowing the above Revision.

4. Learned Government Advocate (Crl.Side) would submit that the complaint was given by the father of the victim and the case was registered in Crime No.19 of 2020 for the offences under Sections 363, 366 and 366(A) IPC and as per de facto complainant, his younger daughter was born on 09.12.2002 and she is aged about 17 years and during the Covid pandemic period, she was staying in his elder daughter's house at Tirupathur and that during such time, she had developed friendship with A1 and his elder daughter reprimanded her and thereafter, the de facto complainant had brought her daughter to Hosur and thereafter, on 31.10.2020 in the morning, he had found that his minor daughter was missing and the de facto complainant searched her in her sister's house at Tirupathur and later he came to know that her daughter was taken by A1/Prashanth. Thereby, the defacto complainant had enquired with the father of the said Prashanth and he had contacted A1 and informed that his son would bring back his daughter. On further enquiry, he came to know that A2/Prabhanjan and the petitioner had taken the victim in a car from Mookandapalli to Krishnagiri. Thereafter, since the victim girl was not produced by the accused, he had given complaint against the accused on 13.11.2020 and thereafter, the car was secured and statement was recorded from the victim girl under



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Section 164 Cr.P.C on 15.11.2020. In the statement, the victim had stated that A1 had befriended the victim when she was in her sister's house and coming to know that her sister reprimanded her and they were in search of bridegroom for her and she had informed to A1 and he had told her that he would take her and marry her and while so, on 31.10.2020 at night 12.00 hours, the said person had asked the victim to come out of the house and thereafter, he had taken the victim against her will in a car and while enroute to Krishnagiri, the car met with an accident and thereafter, the friends of A1 had come to that place and picked them up and dropped at Krishnagiri to take the bus to Madurai. Further, during the statements recorded by the respondent under Section 161(3) Cr.P.C, the victim had stated that A2 and the petitioner along with A1 had come to the house of her sister and had taken her in a car and dropped them at Krishnagiri bus stand. However, he would fairly submit that there is no material available as against the petitioner that he induced the girl to go from the place or that he did any act that such girl may be forced or seduced to illicit intercourse.

5. This Court carefully perused the materials available on record and heard the counsel appearing on either side.

6. The petitioner being A3 seeks discharge from the case lodged for the offence punishable under Section 366-A IPC. It is the case of the petitioner that being a friend of A2, he had accompanied him on his call to assist A1, who met with an accident, in picking him from Kandhikuppam and dropping him at Krishnagiri Bus Stand. It is his further case that only on arrival at the spot of the accident, he came to understand that A1 was there with a minor girl and without knowing the consequences, he had merely accompanied A2 in picking up both A1 and the girl from Kandhikuppam and dropping them at Krishnagiri Bus Stand to board a Bus to Madurai.

7. The petitioner is charged with offence punishable under Section 366-A IPC. He had filed a petition before the Trial Court seeking discharge under Section 227 Cr.P.C. and the Trial Court, relying upon the statement of the victim girl, had dismissed the petition.

8. Before proceeding further, it is apposite to refer to the relevant legal provisions. Section 366-A IPC reads as under:-

"Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that



she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and also be liable to fine."

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Section 227 Cr.P.C. reads as under:-

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

9. In order to frame charges for the offence under Section 366-A IPC, the prosecution should go out with the following materials,

1. the accused must have induced a girl;
2. the said girl must be below 18 years of age;
3. the said girl was induced to go from a place, or to do any act, with intent or knowledge that such girl would be forced, or seduced to illicit intercourse with a person.

10. Taking into consideration the materials available on record including the statement recorded from the victim girl, there is no material to suggest that the petitioner had induced the victim girl to go from any place or to do any act with the intent that she may be, or knowing that it is likely that she will be, forced or suggest to illicit intercourse with another person.

11. This Court, after hearing the submissions, considers that there is no sufficient grounds to proceed as against the petitioner. In view of the above, the Criminal Revision stands allowed and the order passed by the learned Sessions Judge, Mahila Court, Krishnagiri in Crl.M.P.No.605 of 2021 in Spl.S.C.No.6 of 2021 dated 18.10.2021 is set aside and the petitioner stands discharged from the charges leveled against him.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar



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To

1. The Sessions Judge, Mahila Court,
Krishnagiri.

2. The Inspector of Police,
All Women Police Station,
Hosur,
Krishnagiri District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Balamurugan, Advocate, S.R.No.5130

Cr1.R.C.No.848 of 2021

PMK(CO)
CT 24/02/2021