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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.23657 of 2019
and Crl.M.P.Nos.12459 of 2019
& 4824 of 2022

Agilandeswari

... Petitioner

Vs.

The State rep. by:
the Inspector of Police
W-30, All Women Police Station
Poonamallee
Thiruvallur District
(Crime No.15 of 2017)

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to pass an order for withdrawal of the case in C.C.No.14 of 2018 on the file of the learned Juvenile Justice Board, Chengalpattu and transfer the same to the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu and club the case with Spl.S.C.No.25 of 2019 along with the other two co-accused in the same Crime Number.

For Petitioner : Mr.V.Kannadasan

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)

ORDER

This petition has been filed to pass an order for withdrawal of the case in C.C.No.14 of 2018 on the file of the learned Juvenile Justice Board, Chengalpattu and transfer the same to the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu and club the case with Spl.S.C.No.25 of 2019 and try along with the other two co-accused in the same Crime Number.



2. The learned Counsel for the Petitioner submitted that this case involves an offence under POCSO Act and this petition is filed by the mother of the victim girl to transfer the case pending on the file of the Juvenile Justice Board, Chengalpattu to the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu.

3. The learned Counsel for the Petitioner submitted that as per the prosecution case, when the victim was proceeding to her School, the first Accused had taken her by force and had sexual intercourse with her. Subsequently, he had indulged in the very same offence. Based on the complaint given by the mother of the victim, the case was registered. After the investigation, final report was filed before the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu. Since the main Accused claimed to be a minor on the date of the occurrence, the case against him was split up and sent to the Juvenile Justice Board, Chengalpattu. The mother of the victim was summoned to depose before the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu as a witness, then only she came to know that the case against the first accused was split up and pending before the Juvenile Justice Board Chengalpattu. Therefore, she did not depose and filed this petition.

4. It is the contention of the learned Counsel for the Petitioner that the father of the victim was doing Laundry business and the mother of the victim is house wife. In order to render justice for the minor girl, he objected to produce her before the Juvenile Justice Board, Chengalpattu.

5. In the meanwhile, the first Accused, who claims to be a minor on the date of the occurrence has filed CrI.M.P.No. 4824 of 2022 and sought to implead him in this case.

6. The learned Counsel for the first Accused, had placed reliance on the certificate issued by the Sathiyabama Engineering College, wherein it is mentioned that the first accused was studying first year Civil Engineering at the time of the alleged occurrence. He placed reliance on the certificate and alleged that on the date of occurrence, he was present in the College and attendance to that effect is also available. The learned Counsel further submitted that in the typed set of papers furnished by him in page Nos.31, 33 and 35, the photographs are enclosed, which were taken on mobile, to show the appearance of the accused.



7. He further read out the statement of the victim, wherein, the victim had identified the Accused as "Mottai uncle." When the Accused was in custody, the photographs of the Accused were shown by the Police among the Prosecution witnesses. They the Police Officers described the name of the Accused based on confession of the Accused and those are mentioned by the victim. Therefore, there is dispute with regard to the name and identity of the Accused as per the submission of the learned Counsel for the impleading party. Hence, the learned Counsel for the impleading party submitted his arguments objecting the petition in Crl.O.P.No.23657 of 2019 seeking transfer of the case to the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu.

8. At this stage, this Court had raised query to the learned Government Advocate (Crl.Side) and as per his submission, the case is pending before the learned Mahila Sessions Judge, Fast Track Mahila Court, Chengalpattu for adducing evidence of the Petitioner and she was summoned to depose evidence as witness. Subsequently, an interim stay was granted. Therefore, the case could not be proceeded.

9. The learned Government Advocate (Crl.Side) further submitted that whether the case pending against the first Accused before the Juvenile Justice Board, Chengalpattu shall be transferred to the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu, is the only point for consideration before this Court by exercising discretionary power under Section 482 of Cr.P.C., and nothing more.

10. The submission of the learned Counsel for the impleading party, regarding the materials that he had furnished in the typed set of papers is objected by the learned Government Advocate (Crl.Side) stating that this contention has to be considered by the Accused before the trial Court, viz., the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu or the Juvenile Justice Board and not by this Court.

11. In reply, the learned Counsel for the Petitioner relied on the forensic report which is the certificate of examination of sexual offences as well as the age certificate wherein the Doctor had given an opinion that the age of the accused is found to be more than 18 years, but less than 21 years. The learned Counsel for the Petitioner/mother of the victim placed reliance of the above certificates and submitted that this case is a fit case to be transferred to the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu.



12. It is the further submission of the learned Counsel for the Petitioner that on the date of alleged offence, the first Accused had crossed the age of minority. Therefore, he cannot be tried before the Juvenile Justice Board, Chengalpattu. Further, as per the provision of the Juvenile Justice Board Act, the Magistrate had subjected the first Accused for sexual examination and found that he is not minor. He further submitted that the opinion of the Judicial Magistrate was not known to the Petitioner earlier. She came to know about the same only when she appeared before the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu, to depose the evidence, wherein the main Accused not appeared before the Court and then only she filed the petition. The learned Counsel for the Petitioner came to know the fact only from the typed set of papers. He further submitted that it is best to trust the report of the Medical Officer than the certificate issued by the Sathiya Bama Engineering College as he is only a student of that College.

13. In the light of the above, this Court is of the opinion that what had been submitted by the learned Counsel for the Petitioner/the mother of the victim is found to be justified as he has relied the age of the accused as per the age certificate issued by the Doctor. In view of the above, the submissions of the learned Counsel for the Petitioner in CrI.O.P.No.23657 of 2019 is accepted.

14. The arguments of the learned Counsel for the first Accused are considered as well as his valuable defense, but the same cannot be considered to invoke the extraordinary power of the High Court under Section 482 Code of Criminal Procedure to dismiss this Petition in CrI.O.P.No.23657 of 2019. It has to be made before the Trial Court only at the time of trial. Hence, the submission of the first Accused is rejected. Accordingly, the CrI.M.P.No.4824 of 2022 is dismissed.

15. The submission of the learned Government Advocate (CrI.Side) is found to be acceptable. Due to the stay granted by this Court, the trial Court could not proceed with the examination of the witnesses. Hence, the stay granted by this Court is hereby vacated.

16. In view of the above, this Petition is allowed with a direction to the Juvenile Justice Board, Chengalpattu to transfer the case to the file of the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu. Further, the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu, is directed to club the case with the Session case and conduct



trial and dispose of the case with in a reasonable period of three months from the date of receipt of a copy of this order by the learned Sessions Judge, Fast Track Mahila Court, Chengalpattu. Consequently, CrI.M.P.Nos.12459 of 2019 is closed.

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SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

dna
To

- 1.The Juvenile Justict Board,
Chengalpattu.
- 2.The Mahila Sessions Judge,
Fast Track Mahila Court,
Chengalpattu.
- 3.The Inspector of Police
W-30, All Women Police Station
Poonamallee, Thiruvallur District.
- 4.The Public Prosecutor
High Court, Madras.

CrI.O.P.No.23657 of 2019
and CrI.M.P.Nos.12459 of 2019
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mt[co]
srg 13/05/2022