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CRL.O.P.No.26875 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P. No.26875 of 2022
and Crl.M.P. Nos.16509 & 16547 of 2022

Swetha Bhai

...

Petitioner/A2

Versus

State Rep by the Inspector of Police,
W-17 All Women Police Station,
Peravallur, Chennai 600 082.
[Crime No.05/2022]

...

Respondent/complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in Spl.S.C.No.122 of 2022 on the file of the Special Court for Exclusive Trial of Cases Under POCSO Act-2012, Chennai and quash the same.

For Petitioner	:	Mr.B.Kalaiahasan
For Respondent	:	Mr.E.Raj Thilak, Additional Public Prosecutor.

ORDER

This Criminal Original Petition has been filed seeking to call for the records in Spl.S.C.No.122 of 2022 on the file of the Special Court for Exclusive Trial of Cases Under POCSO Act-2012, Chennai and quash the same.

2. The petitioner is the mother of the victim child, who was also impleaded



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as an accused in the case registered by the Respondent/Police in Cr.No.5/22 of W-17, All Women Police Station, for the offences under Sections 9(m)(n) r/w10 of POCSO Act & 21(1) of POCSO Act, 2012.

3. Heard the submission made by the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent police and perused the materials available on record.

4.The learned counsel for the petitioner submitted that the complaint was given by a CWC Member by name N.Lalitha; the allegation made in the complaint is that the victim child appeared disturbed at her school due to sexual abuse caused by her own father; she revealed the said facts to her teacher; on coming to know this, the Head Master of her School called the Child Help Line and thereafter the CWC members met the child, enquired her and filed this complaint; so far as the allegation against the petitioner is concerned, she did not report the occurrence to the police despite she had knowledge about the sexual abuse caused by her husband on her child.

4.1. The learned counsel for the petitioner further submitted that the petitioner who is the mother of the victim child did not have any intention to



suppress the matter; but the perpetrator being her own husband and the father of the victim child, she needed a time to decide about the legal action; in the 164 statement the victim child, she has stated that she had revealed the matter to her mother during February 2022; hence the case as against the petitioner should be quashed.

5. The learned Additional Public Prosecutor appearing for the first respondent police submitted that despite the mother had the knowledge about the occurrence, she did not come forward to give a complaint and only because of that she had been impleaded as an accused. He also submitted that notice should be sent to the *defacto* complainant, who is a CWC Member.

6. Since the *defacto* complainant has just set the law in motion and she is not the victim in this case, I feel it is sufficient to hear the learned Additional Public Prosecutor appearing for the respondent police on behalf of the State.

7. The records would show that the mother has been impleaded as an accused in this case on the allegation that she did not report the sexual abuse caused to her own daughter, to the police. On the above allegations the petitioner has been charged for the offence under Section 21(1) of the POCSO Act-2012.



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8. It is a sad case where the perpetrator happened to be the very father of the minor child. In this difficult situation, it is not easy for both the victim and her mother to take decision about the appropriate legal action against the accused, who stand in a very close relationship with them. Even according to the complaint the mother of the victim had enquired about this to her husband during February 2022. Though allegations were made that the child had informed the occurrence to her mother during February 2017, the 164 statement of the child would show that she had informed her mother only during February 2022.

9. As stated already, due to the difficult and intimate relationship of the victim and the petitioner with the accused, it can not be inferred that the petitioner had an intention to suppress the occurrence. It is needless to state that in sexual offences, the complaint can be given with some delay. And that may be due to social stigma and familial integrity and all other associated.

10. Though such kind of occurrence should be reported immediately, if the perpetrator happens to be the father of the victim child, the mother cannot be expected to give a complaint without making thorough enquiry and ascertaining the facts from every angle and that may take some time. The gap between the time



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when the victim informed her mother and the date of the complaint made by the CWC Member is not too long. Hence, I feel the petitioner deserves to be given with the benefit of doubt even at the threshold level without subjected to futher process.

11. I feel it is an appropriate case where the Court has to invoke its power under Section 482 of Cr.PC to quash the proceedings against the petitioner alone.

In the result, the Criminal Original Petition is **allowed** and the FIR in Cr.No.5/22 of W-17, All Women Police Station against the petitioner / A2 alone is quashed. Consequently, connected miscellaneous petitions are closed.

04.11.2022

Index: Yes
Internet: Yes
Speaking

jrs



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R.N.MANJULA, J.,

jrs

To:

- 1.The Special Court for Exclusive Trial of Cases
Under POCSO Act, Chennai.
2. The Inspector of Police,
W-17 All Women Police Station,
Peravallur, Chennai 600 082.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.

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