



WEB COPY



Crl.O.P.No.29641 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.O.P.No.29641 of 2022

Mohammed Abdul Hamid

...Petitioner

Vs.

1.The State rep. by
Inspector of Police,
T-14 Mangadu Police,
Chennai – 600 056.
(Crime No.76 of 2021)

2.Salim

...Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in Crime No.76 of 2021 on the file of the 1st respondent and quash the same.

For Petitioners : Mr.K.Thenrajan

For 1st Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records in Crime No.76 of 2021 on the file of the 1st respondent and quash the same.



2. On the complaint given by the 2nd respondent that his sister's daughter was missing from 12.12.2021, a case has been registered for girl missing in Crime No.76 of 2021 on the file of the T-14 Mangadu Police Station, Chennai 600 056 and subsequently the charges have been altered from girl missing to Sections 6 r/w 5J (ii) (i) POCSO Act, 2012.

3. Today when the matter is taken up for hearing, it is submitted that the petitioner had married the victim girl as per Muslim rites and customs and the couple has a three months old infant born out of their marriage. It is further submitted that the *de facto* complainant who is the paternal uncle of the victim girl has also filed an affidavit by stating that in view of the marriage between the victim and the petitioner, he does not want to pursue the case.

4. The petitioner, the defacto complainant, the victim girl and her mother were present before this Court and they were identified by the Police viz., Ms.K.Gracy, SSI, SRMC All Women Police Station, Mangadu. The 2nd respondent has produced the copy of the Aadhar Card.



5. A joint compromise memo, dated 02.12.2022 has also been filed.

The second respondent has stated that she affixed her signature without fear or coercion.

6. The records would reveal that the date of birth of the victim girl is 03.06.2004 and she has attained majority. As it has been stated already, the marriage between the victim girl and the accused had taken place and they have constituted a family and become parents for a female child. In such circumstances, if the prosecution is allowed to continue, that will not serve any useful purpose and that will de-stabilize the family equilibrium of the petitioner and the victim.

7. Even though the offences under POCSO Act are non-compoundable in nature, in the circumstances of the present case, I feel it is appropriate to take the cue from the principles laid down by the Hon'ble Supreme Court in the case of ***Parbatbhai Aahir Vs. State of Gujarat*** reported in ***AIR 2017 SC 4843***. In the said case, in Paragraph 15, it has held as under:-

"15.The Broad Principles which emerge from the



precedents on the subject, may be summarised in the following propositions:-

(i) Section 482 Cr.P.C preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inherent in the High Court.

(ii) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

8. The petitioner who had married the victim girl, if subjected to trial that would affect the interest of the victim girl herself. In order to serve the ends of justice, I feel it is appropriate to quash the criminal proceedings against the petitioner by invoking the powers of this Court under Section 482 of Cr.P.C.



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9. In the result, this Criminal Original Petition stands allowed and as a sequel, the further proceedings in Crime No.76 of 2021 on the file of the 1st respondent, is quashed in terms of compromise. The terms of Joint Compromise Memo, dated 02.12.2022 shall form part of this Order.

02.12.2022

vum
Index:yes/No
Speaking order / Non speaking order



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R.N.MANJULA,J.

vum

To

1. The Inspector of Police,
T-14 Mangadu Police,
Chennai – 600 056.
2. The Public Prosecutor,
Madras High Court,
Chennai.

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02.12.2022