



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2022

CORAM

THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P(MD) No.834 of 2021

S.Alla Pitchai

... Petitioner/ Sole Accused

Vs

1. The Inspector of Police,
Arumuganeri Police Station,
Thoothukudi District.

(Crime No.221 of 2017) ... 1st Respondent / Complainant

2.Seyed Ali Fathima ... 2nd Respondent / Defacto Complainant

3.Noor Ayisha ... 3rd Respondent/ Victim

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying this Court to quash the charge sheet filed by the first respondent Police in Special S.C.No.224 of 2019, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi.

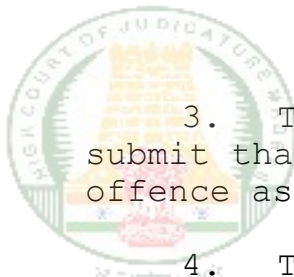
For Petitioner : Mr.N.Pragalathan

For Respondent : Mr.B.Thanga Aravindh
No.1 Govt.Advocate(Crl.Side)

ORDER

This petition has been filed to quash the proceedings in Special S.C.No.224 of 2019, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi. thereby taken cognizance for the offences under Sections 366(A) of IPC and Section 5(l), 6 of the Protection of Child from Sexual Offences Act, 2012, as against this petitioner.

2. The case of the prosecution is that the petitioner and the third respondent fell in love with each other and on 24.07.017 at about 1.15pm., the petitioner herein and the third respondent left their house and went to Tisayanvilai . Hence the second respondent gave complaint on 24.07.2017 for which the first respondent registered a case under Girl Missing . Subsequently they returned home, hence the first respondent has filed a charge sheet for the above stated offences and the same is taken cognizance in S.C. No.224 of 2019 and still pending.



3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution.

4. The learned Government Advocate(Crl.Side) would submit that the trial has been commenced and some of the witnesses have been examined in this case.

5. Heard the learned counsel appearing on either sides.

6. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court,



in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

9. In view of the above discussion, this Court is not inclined to quash the proceedings in Special S.C.No.224 of 2019, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi. The petitioner is at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of twelve months from the date of receipt of copy of this Order.



10. Accordingly, this criminal original petition is dismissed.

Sd/-
Assistant Registrar (AS)

WEB COPY

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

aav

To

- 1 The Special Judge,
Special Court for Exclusive Trial of
Cases under POCSO Act,
Thoothukudi.
2. The Inspector of Police,
Arumuganeri Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P(MD)No.834 of 2021
11.02.2022

MK/24.02.2022/4P/4C