



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.1267 of 2022

and

Cr.M.P (MD) Nos.919 & 921 of 2022

1.Sujin
2.Sunitha
3.N.Radhakrishnan

... Petitioners/
Accused Nos.1 to 3

Vs.

1. The State represented by
The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.
(Crime No.2 of 2018)

... 1st Respondent/
Respondent

2.Usha Rani

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records pertaining to the case in Spl.S.C.No.47 of 2018 on the file of the learned Special Court of POCSO Offences, Kanyakumari District, Nagercoil and quash the same.

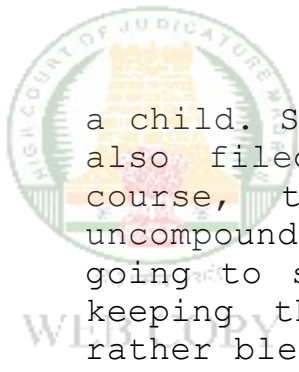
For Petitioners : Mr.B.Micheal Sebastin
For Respondents-1 : Mr.E.Antony Sahaya Prabahar
Additional public Prosecutor for R.1
For Respondents-2 : Mr.A.Venkateshkumar

ORDER

The petitioners are facing trial for the offences under Sections 366(A), 451 IPC, 5(1), 5 and 17 of Protection of Child from Sexual Offences Act, 2012.

2. The defacto complainant Usha Rani is present in person before this Court. She has been duly identified by Thiru.K.Senthil, All Women Police Station, Nagercoil. The victim has attained majority. She has also got married and given birth to

<https://hcmca.cemadoc.org/indocsema>



a child. She does not want to pursue the matter. The parties have also filed a joint memo of compromise dated 24.01.2022. Of course, the offences under the POCSO Act are serious and uncompoundable. But the victim has made it clear that she is not going to support the prosecution. No purpose will be served in keeping the prosecution alive. The chances of conviction are rather bleak.

3. I am conscious that the offences under POCSO Act are not compoundable. However, a learned judge of this Court, vide order dated 27.01.2021 in the decision reported in **CDJ 2021 MHC 636 (Vijayalakshmi Vs. State rep. by the Inspector of Police)** had held as follows:-

"19.The main issue that requires the consideration of this Court is as to whether this Court can quash the criminal proceedings involving non-compoundable offences pending against the second respondent. The Hon'ble Supreme Court in the case of Parbathbhai Aahir @ Parbathbhai Vs. State of Gujarat reported in 2017 9 SCC 641 and in the case of The State of Madhya Pradesh Vs. Dhruv Gurjar and another reported in (2019) 2 MLJ Crl 10 has given sufficient guidelines that must be taken into consideration by this Court while exercising its jurisdiction under Section 482 of Cr.P.C., to quash non-compoundable offences. One very important test that has been laid down is that the Court must necessarily examine if the crime in question is purely individual in nature or a crime against the society with overriding public interest. The Hon'ble Supreme Court has held that the offences against the society with overriding public interest even if it gets settled between the parties, cannot be quashed by this Court.

20. In the present case, the offences in question are purely individual / personal in nature. It involves the second petitioner and the second respondent and their respective families only. It involves the future of two young who are still in their early twenties. The second respondent is working as an auto driver to eke his livelihood. Quashing the proceedings, will not affect any overriding public interest in this case and it will in fact pave way for the second petitioner and the second respondent to settle down in their life and look for better future prospects. No useful purpose will be served in continuing with the criminal proceedings and keeping these proceedings will only swell the mental agony of the victim girl and her mother and not to forget the second respondent as well."



4. Respectfully adopting the very same approach, I quash the impugned proceedings also. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mga

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Special Court of POCSO Offences,
Kanyakumari District,
Nagercoil.
2. The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.VENKATESH KUMAR, Advocate (SR-3191[F] dated 31/01/2022)

Crl.O.P(MD)No.1267 of 2022

and

Cr.M.P(MD)Nos.919 & 921 of 2022

28.01.2022

USK/02.03.2022/3P/5C