



WEB COPY

Crl.O.P.(MD) No.3151 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM:

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

Crl.O.P.(MD) No.3151 of 2022

and

Crl.M.P.(MD).No.2356 of 2022

Mayil@Kannathal
(Transgender)

..Petitioner/Accused No.3
Vs.

1. State rep by
The Inspector of Police,
Soolakkarai Police Station,
Soolakkarai,
Virudhunagar District,
In Crime No.51 of 2021

..1st Respondent/Complainant

2.Mohanraj

..2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records Crime No.51 of 2021 on the file of 1st Respondent dated 12.03.2021 along with altered report and quash the same as illegal.

For Petitioner : M/s.Muthu Samundeeswaran.V

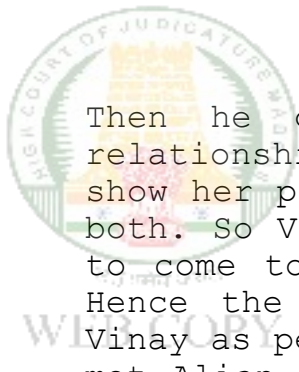
For Respondents : Mr.R.M.Anbunithi
No.1 Additional Public Prosecutor(Crl. Side)

ORDER

This petition has been filed seeking direction to call for the records Crime No.51 of 2021 on the file of 1st Respondent dated 12.03.2021 along with altered report and quash the same as illegal.

2. The case of the prosecution is that the defacto complainant lodged a complaint before the respondent police on 12.03.2021 stating that he is Srilankan staying in Kullur Sandhai Srilankan Refugee Camp having three children and her daughter namely Reshma was missing from 11.03.2021. As usual she came to the RC Higher Secondary School , but she did not return back.Initially case was registered under Girl Missing and later alter to Sections 366(A) of IPC and Section 7r/w8, 11(iv)(v)r/w.12 of POCSO Act. Further on the statement recorded under Section 161(3) of Cr.P.C, the victim has stated that there was school function took place for which Sandaimelam came to school and she saw one Vinay who came with troop entice her and called her to teach to play the Sandaimelam. So she went with him but he molested her by touching her private part.

<https://hcservices.ecourts.gov.in/hcservices/>



Then he gave his mobile number to her, due to which their relationship developed and Vinay asked her to skim her dresses and show her private part. Finally it came to her father and he warned both. So Vinay who is the first accused with bad intention made her to come to Virudhunagar bus stand but he was not available there. Hence the minor girl got the plan from the petitioner contacted Vinay as per his direction she came to Madurai Railway Junction and met Alian Abu who is the friend of Vinay and went to Kerala, there she was made to wait for more than three hours. Then the traffic police took care of her and left her in a social welfare board. With the above allegations, the respondent police registered the above FIR.

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 Additional Public Prosecutor would submit that the investigation is completed and the respondent police are about to file the final report before the concerned court. He would also submit that from the statement under Section 164(3) of Cr.P.C, the role played by the accused is clearly seen and she only kidnapped the victim girl.

5. Heard both sides and perused the materials available on record.

6. It is seen from the First Information Report that there are specific allegation as against the petitioner, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated **12.02.2019 - *Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.***, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been



made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

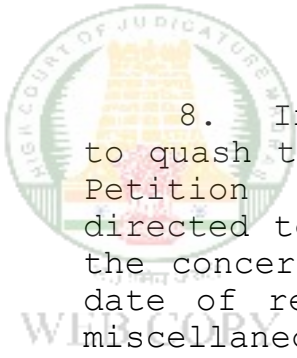
5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

6.....

7.....

8.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."



8. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original Petition stands dismissed. However, the respondent police is directed to complete the investigation and file final report before the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Inspector of Police,
Soolakkarai Police Station,
Soolakkarai,
Virudhunagar District,
- 2.The Additional Public Prosecutor
Madurai Bench of Madras High Court

CrI.O.P.(MD) No.3151 of 2022
15.02.2022

MGJ(24.02.2022) 4P 3C