



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.6649 of 2022

Shan Frindo @ Shanu

... Petitioner/ Accused

Vs.

1. The State represented by
The Inspector of Police,
AWPS- Colachel,
Kanyakumari District.

... 1st Respondent/
Complainant

2. Poondi Mary Josepath

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Spl.S.C.No.73 of 2019 on the file of the Special court for Exclusive Trial of cases under the POCSO Act, Nagercoil and quash the same as against the petitioner.

For Petitioner : Mr.M.P.Roniga

For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor
(Criminal Side)
for R.1

Mr.R.Bharathi for R.2

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Spl.S.C.No.73 of 2019 on the file of the Special Court for Exclusive Trial of cases under the POCSO Act, Nagercoil.

2. The case of the prosecution is that the petitioner is well known to the victim and they were in love with each other. Ultimately, they decided to get married and went away from their respective homes on 13.06.2019. So, the second respondent gave a



police complaint to the first respondent and the first respondent lodged a complaint in Crime No.25 of 2019. Later, the final report has been filed under Section 366 A IPC and Sections 5(1), 6 of POCSO Act and Spl.S.C.No.73 of 2019 was assigned by the Special Court for Exclusive Trial of cases under the POCSO Act, Nagercoil.

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3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he had not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.25 of 2019 for the offences under Section 366 A IPC and Sections 5(1), 6 of POCSO Act, as against the petitioner and the same has been taken cognizance in Spl.S.C.No.73 of 2019 on the file of the Special Court for Exclusive Trial of cases under the POCSO Act, Nagercoil. Hence, he prayed to quash the same.

4. The learned Additional Public Prosecutor would submit that the trial has been commenced and some of the witnesses have been examined in this case.

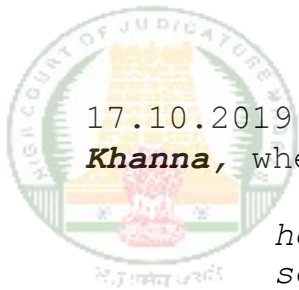
5. Heard both sides and perused the materials available on record.

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



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 petitioners cannot be considered by this Court under Section 482 Cr.P.C.

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9. In view of the above discussion, this Court is not inclined to quash the proceedings in Spl.S.C.No.73 of 2019 on the file of the Special court for Exclusive Trial of cases under the POCSO Act, Nagercoil. 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 three months from the date of receipt of copy of this Order.

10. Accordingly, this criminal original petition is dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 for Exclusive Trial of cases
under the POCSO Act,
Nagercoil.
- 2.The Inspector of Police,
AWPS- Colachel,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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