



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2022

CORAM:

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

Crl.O.P.(MD) No.7556 of 2022

and

Crl.M.P(MD) Nos.5142 and 5145 of 2022

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- 1.Asaitambi
- 2.Saminathan
- 3.Ammsavalli
- 4.Ramasamy

...Petitioners/Accused No. 1, 3, 4 & 5
Vs.

1. State represented by
The Inspector of Police,
Melur AWPS Police Station,
Madurai District.
(Crime No.147/15)

...1st Respondent/Complainant

2. *****,
Madurai District.

...2nd Respondent/Defacto Complainant

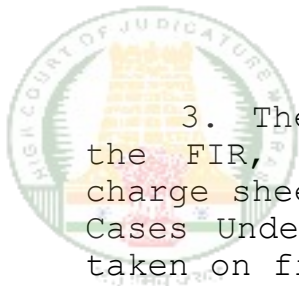
PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in connection with the impugned charge sheet in Spl.S.C.No.29 of 2018, dated 21.05.2016 on the file of the Learned Special Court for Exclusive Trial of Cases under POCSO Act, Madurai District and quash the same.

For Petitioner	:	Mr.D.Selvanayagam
For Respondent	:	Mr.R.M.Anbunithi
No.1		Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in Spl.S.C.No.29 of 2018, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Madurai District.

2. The case of the prosecution is that the defacto complainant is the sixteen years old girl who had love affair with the first petitioner and the first petitioner on false promise of marriage fraudulently had sexual relationship and on knowing the same, the defacto complainant's family went to the petitioner's house for proposal of marriage. The second accused (died) mother of the first petitioner, second and third petitioner are brother and sister of the first petitioner and fourth petitioner is a relative of them rejected the same proposal and threatened them with dire consequences. Aggrieved over the said act, the second respondent lodged the case against the petitioners/accused person. Being aggrieved over the act, FIR in Crime No.147 of 2015 has been registered.



3. The petitioners humbly submit that thus after registering the FIR, the first respondent conducted investigation and laid charge sheet before the learned Special Court for Exclusive Trial of Cases Under POCSO Act, Madurai District and now the case has been taken on file in Spl.S.C.No.29 of 2018, dated 21.05.2016.

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4. The learned Counsel for the petitioner would submit that at the time of occurrence the victim girl attained majority and complete eighteen years seven months and four days. Therefore, the offence under the POCSO Act could not attract as against the first accused. So far as the entire offence are considered under Section 294(b) and 506(ii) of IPC would not attract other accused persons, since the occurrence was not took place in the public place. In support of this contention he claim the documents to bring his contention, those documents cannot be considered and since it has to be tested before the trial Court.

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

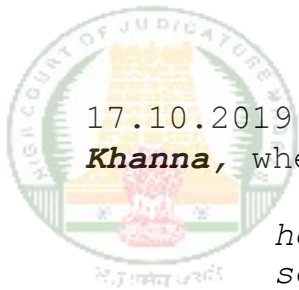
6. Heard both sides and perused the materials available on record.

7. 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.

8. 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."

9. 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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10. In view of the above discussion, this Court is not inclined to quash the proceedings in Spl.S.C.No.29 of 2018, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Madurai District. The petitioners are 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 a copy of this Order.

11. Accordingly, this criminal original petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

btr

To

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

+1 CC to M/s.D. SELVANAYAGAM, Advocate (SR-21380[F]
dated 26/04/2022)

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and

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sp(CO)

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