



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28/10/2022

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.RC(MD)No.385 of 2021
and
Crl.MP(MD)No.4013 of 2021

S.Vijay : Petitioner/Petitioner/A4

Vs.

State rep. By
The Inspector of Police,
All Women Police Station,
Srivaikundarm,
Thoothukudi District.
(Crime No.28 of 2018)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order passed in Crl.M.P No.159 of 2021 in Spl. SC No.11 of 2020, dated 16/04/2021 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi and set aside the same.

For Petitioner : Mr.D.Srinivasaragavan

For Respondent : Mr.S.Manikandan
Government Advocate
(Criminal side)



O R D E R

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This criminal revision has been preferred seeking to set aside the order, dated 16/04/2021 made in Cr.M.P No.159 of 2021 in Special SC No.11 of 2020 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi.

2.The case of the prosecution in brief:-

The victim girl was in love with A1 for about four years. Under the guise of marrying and on the false promise of marrying the victim girl, A1 committed penetrative assault upon the victim girl in various places on several times. Because of that, the victim girl has become pregnant. When she demanded marriage, A1 forced her to abort her child by taking pills. When that was brought to the notice of his father, A2 to A6, who are the family members of A1 abused the victim girl in filthy language and criminally intimidated her. Now A1 is facing the charges under section 5(1),(j),(ii) r/w 6 of POCSO Act, 2012 and section 506(ii) IPC. A2 to A6 are facing the charges for the offences under sections 294(b) and 506(i)IPC. Pending trial process, the petitioner, who is arrayed as A4 moved CrI.M.P No.159 of 2021 before the trial court seeking discharge.



3. That application was resisted by the respondent.

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4. After hearing both sides, that application came to be dismissed by the trial court, by order, dated 16/04/2021.

5. Now challenging the above said order, this revision has been preferred by the petitioner on the ground that only bald allegation has been made against this petitioner and no specific overtact attracting the ingredients of the offences under sections 294(b) and 506(i) IPC has been mentioned. So only on the basis of the bald allegation, it may not be proper for the prosecution to subject him to face the trial. He would further submit that the petitioner was selected for Uniformed Service and because of pendency of the case, he was not given appointment order. This ground must be taken into account for considering the culpability of the petitioner into the offence.

6. The learned counsel appearing for the petitioner would rely upon many judgments starting from the judgment of the Hon'ble Supreme Court rendered in the case of **N.S.Madhanagopal and another Vs. K.Lalitha (Criminal Appeal No.1759 of 2022, dated 10/10/2022)** and the order of this court in the case of **S.Subathra and three others Vs.**



K.Palanikumar (Crl.OP(MD)No.8275 of 2018, dated 10/03/2020)

and in the case of S.P.Seshamanikandan Vs. State and

another (Crl.OP No.15587 of 2015, dated 15/10/2018) for the

purpose of argument that to attract the offence under section 294(b) IPC, the ingredients as stated by the Hon'ble Supreme Court in the above said judgment must be clearly mentioned in the final report. Similarly for the offence under section 506(i) IPC also, the ingredients must be clearly spelt out and in the absence of such ingredient, the final report itself is wrong. The trial court, without applying its mind, has dismissed the discharge petition.

7.*Prima facie* materials have been collected to show that A1 is the biological father of the victim girl. Now this petitioner be the brother of A1. He is not directly connected with the offence, that was alleged to have been committed by A1. But however, reading of the statement of the victim girl recorded under section 164(3) Cr.P.C shows that when the issue was brought to the notice of A2, who is the father of A1, originally he agreed for settlement, but later refused. So a panchayat was convened in a temple. In the panchayat, the accused persons were present and in that talk, she was abused and criminally intimidated. This is the statement of the victim girl.



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8. Even though, the specific word, that is alleged to have been uttered by the petitioner is not mentioned by her either in the course of the statement or in the final report, the fact remains that this petitioner was also present in the panchayat, that was arranged for resolving the issue. What happened on that particular date is a matter for evidence. So even though, the petitioner heavily relied upon the above said judgments and the principles to be adopted has been set out, the factual circumstances in this case must also be taken into account.

9. As mentioned earlier, in the alleged panchayat, that took place on a particular date, the above said abusive words and criminal intimidation alleged to have been committed. So it requires a thorough trial process. Simply because the petitioner has been selected for Uniformed Service, that will not give any right to him to be discharged from the criminal proceedings.

10. In the order passed by the trial court, it has been mentioned that 19 witnesses have been examined by the Investigating Officer. Finding that enough material has been collected during the course of investigation to implicate this petitioner also in the above said abusive and criminal intimidation, the trial court dismissed the petition. So, I am of the considered view that this is not



a fittest case to discharge the petitioner from the criminal prosecution. He has to undergo the trial process.

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11.I find no illegality or irregularity in the order of the trial court in dismissing the discharge petition.

12.In the result, this criminal revision is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

28/10/2022

Index:Yes/No
Internet:Yes/No

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To,

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



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G.ILANGOVAN, J

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