



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.8155 of 2022

Velraj

... Petitioner/Sole Accused

Vs.

1.State through

The Inspector of Police,
Vasudevanallur Police Station,
Vasudevanallur,
Tenkasi District.
(Cr.No.85 of 2021)

...1st Respondent/Complainant

2.Ganapathyammal

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records and quash the proceedings of the charge sheet in Special Case No.124 of 2021 on the file of Special Court for POCSO Cases, Tirunelveli District and quash the same.

For Petitioner : Mr.K.Prabhu

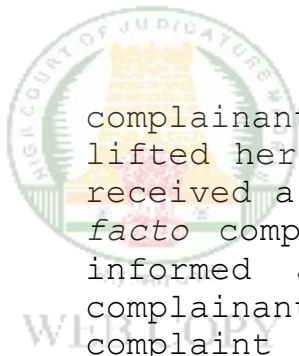
For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor for R1

ORDER

This petition has been filed to quash the proceedings in Spl.S.C.No.124 of 2021 on the file of the Special Court for POCSO Cases, Tirunelveli District.

2.Though the petitioner and the victim's mother namely the second respondent entered into compromise, the victim girl is aged only 9 years old, therefore, this Court is not inclined to quash the petition on compromise.

3. The case of the prosecution is that the daughter of the *defacto* complainant, namely Ishwarya, who is nine years old, is studying 4th standard. On 02.04.2021 while the daughter of the *defacto* complainant was playing in the street near the house of the petitioner, the petitioner called her to his house stating that he will show fish tank in his house. When the daughter of the *defacto*



complainant refused, the petitioner forcibly closed her mouth and lifted her and took her to his house. At that time the petitioner received a call and while speaking on phone, the daughter of the de facto complainant ran away from the house and came her house and informed about the same to her mother, who is the defacto complainant herein. Thereafter, the defacto complainant preferred a complaint to the respondent police. The respondent police has registered the case as against the petitioner.

4. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.85 of 2021 for the offences under Section 8 r/w 7 of Protection of Children from Sexual Offences Act, 2012, as against the petitioner and the same has been taken cognizance in Spl.S.C.No.124 of 2021 on the file of the Special Court for POCSO Cases, Tirunelveli District. Hence he prayed to quash the same.

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 17.10.2019 in the case of **Central Bureau of Invstigation 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.

.....



WEB COPY

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

10. In view of the above discussion, this Court is not inclined to quash the proceedings in Special Case No.124 of 2021 on the file of Special Court for POCSO Cases, Tirunelveli District.

11. Accordingly, this Criminal Original Petition is dismissed. However, the petitioner is at liberty to file a fresh quash petition on the ground of joint compromise memo.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

To

1.The Special Court for POCSO Cases,
Tirunelveli District.

2.The Inspector of Police,
Vasudevanallur Police Station,
Vasudevanallur,
Tenkasi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-22235[F] dated 28/04/2022)

CrI.O.P(MD)No.8155 of 2022
28.04.2022