



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.[MD].No.10832 of 2020
and
CRL.M.P.[MD]No.4931 of 2020

1.Sureshkumar
2.Murugan
3.Nagajothi
4.Senthil Kumar

... Petitioners / Accused Nos.1 to 4

Vs.

State Rep. by
1.The Inspector of Police,
All Women Police Station,
Theni.
Crime No.22 of 2019

... 1st Respondent / Complainant

2.Sneka

... 2nd Respondent / Defacto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in Spl.S.C.No.23 of 2020 on the file of the learned Mahila Court, (Special Court for POCSO Act), Theni, quash the same as against these petitioners.

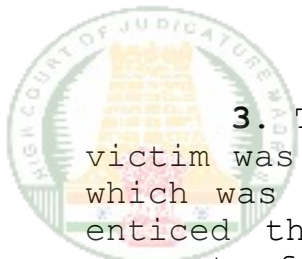
For Petitioners : Mr.N.Mohideen Basha

For R1 : Mr.A.Thiruvadikumar,
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to quash the final report filed in Spl.S.C.No.23 of 2020 on the file of the Mahila Court, (Special Court for POCSO Act), Theni.

2. A1 stood charge for the offence under Section 6 of POCSO Act, Section 9 of Child Marriage Act and Section 294(b) IPC. A2 to A4 were charged for the offence under Section 17 of POCSO Act, Section 10 of Child Marriage Act and Section 294(b) IPC.



3. The crux of the allegation in the final report is that the victim was aged about 16 years. A1 wanted to marry the victim girl which was refused by the parents of the victim girl. However, he enticed the girl and had an intercourse. Thereafter, with the support of A2 to A4, A1 married the victim girl. As a result, she became pregnant and later it was aborted. The above final report is sought to be quashed mainly on the ground that the marriage was solemnized with the consent of the victim girl and there was no penetrative sexual assault. Since the accused have already prosecuted under the Child Marriage Act, once again, they cannot be slapped with charges under the POCSO Act.

4. Mr.Mohideen Basha, learned counsel appearing for the petitioners would contend that there was a consent of marriage and therefore, the offence under Section 6 of the POCSO Act will not be attracted in this case. Similarly, there is no evidence for the marriage to attract the offence under the Child Marriage Act, hence, prays to quash the final report.

5. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the first respondent would submit that the girl was aged about 16 years at the time of occurrence, she was enticed and subjected to the penetrative sexual assault, as a result, she became pregnant and thereafter, miscarriage was also done. He further submitted that the prosecution has laid the final report after investigation. Hence, opposed the quashing of the final report.

6. Heard the submissions of the learned counsel appearing on either side and perused the materials available on record.

7. On a perusal of the entire final report, this Court is of the view that quashment of the proceedings cannot be made particularly in case of similar nature, when serious allegation has been made against the accused for committing the alleged aggravated penetrative assault besides Child Marriage Act. It has to be seen only in the trial not in an application filed under Section 482 Cr.P.C. Therefore, this Court is of the view that since this matter requires trial, the final report cannot be quashed.

8. Accordingly, this Criminal Original Petition is dismissed. At this stage, the learned counsel appearing for the petitioner seeks indulgence of this Court to dispense with the personal appearance of the accused. Considering the fact that, there appears to be an affair between A1 and the victim girl, the personal appearance of the petitioners alone is dispensed with before the trial Court except for the hearing dates, receiving the copies, framing the charges, questioning under Section 313 Cr.P.C., and at the time of passing judgment or any other dates that may be fixed by the Trial Court. The trial Court shall expedite the trial and dispose of the case in Spl.S.C.No.23 of 2020 as expeditiously as



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possible on its own merits and in accordance with law.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

VSM

To

- 1.The Judge, Mahila Court,
(Special Court for POCSO Act),
Theni,
- 2.The Inspector of Police,
All Women Police Station,
Theni.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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