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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.07.2022

Delivered on 26.08.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.610 of 2022

in

CrI.M.P.(MD)No.7624 of 2022

1.Jothi Murugan

2.Archana

: Petitioners/A1 & A2

Vs.

State through the
Inspector of Police,
Thadicombu Police Station,
Dindigul District.
Crime No.766 of 2021.

: Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records in Spl.S.C.No.3 of 2022 on the file of the learned Sessions Judge/Fast Track Mahila Court, Dindigul and set aside the order in CrI.M.P.No.814 of 2012, dated 15.06.2022, consequently, conduct single trial on the file of the learned Additional Sessions Judge/Fast Track Mahila Court, Dindigul.



For Petitioners : Mr.N.Anantha Padmanabhan,
For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor.

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ORDER

The Criminal Revision is directed against the order passed in CrI.M.P.No.814 of 2022 in Spl.S.C.No.3 of 2022, dated 15.06.2022 on the file of the Fast Track Mahila Court, Dindigul, in dismissing the petition filed under Section 219 of the Code of Criminal Procedure.

2. The revision petitioners are the accused Nos.1 and 2 in both the cases in Spl.S.C.No.3 of 2022 and in Spl.S.C.No.4 of 2022 pending on the file of the Fast Track Mahila Court, Dindigul.

3. It is not in dispute that the respondent has registered two FIRs in Crime No.766 of 2021 on 19.11.2021 and in Crime No.767 of 2021 on 20.11.2021; that the respondent, after investigation, has laid final reports, in the first case in Crime No.766 of 2021 on 11.0.2022, for the offence under Section 506(i) IPC and under Sections 9(f), 10 and 18 of Protection of Children from Sexual Offence Act, 2012 against the first petitioner/first accused and under Section 506(i) IPC and under Sections 16 r/w 17 of POCSO Act, 2012 as against the second petitioner/second



accused and in the second case in Crime No.767 of 2021 on 20.11.2021, for the offence under Section 506(i) IPC and under Sections 9(f) r/w 10 and 18 of POCSO Act against the first petitioner/first accused and under Section 506(i) IPC and under Sections 16 r/w 17 of POCSO Act, 2012 as against the second petitioner/second accused and that the cases were taken on file as stated above.

4. It is also not in dispute that charges have already been framed in both the cases; that the trial in Spl.S.C.No.4 of 2022 has already been commenced and that the other case in Spl.S.C.No.3 of 2022, is pending for trial.

5. The petitioners have filed the above petition under Section 219 Cr.P.C, seeking orders for joint trial of both the cases Spl.S.C.No.3 of 2022 and Spl.S.C.No.4 of 2022.

6. The main contention of the petitioners is that the alleged occurrence in both the cases had taken place within three months time; that out of total witnesses in both the cases, 12 persons are common in both; that the statements under Section 161(3) Cr.P.C of the said 12 witnesses reveal the same facts and that both the cases are to be tried jointly, else it would prejudice the petitioners.



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7. The respondent Police has filed a counter statement raising objections that joint trial is not feasible, on the following grounds :

- * the witnesses 1 to 4 in both the cases are different persons;
- * the charges levelled against both the accused in both cases are also different;
- * except six witnesses, all other witnesses cited in both the cases are different persons.

8. The learned Sessions Judge after enquiry, has passed the impugned order, dated 15.06.2022, dismissing the said petition. Aggrieved by the said dismissal order, the accused Nos.1 and 2 have come forward with the present Criminal Revision.

9. The learned trial Judge has assigned a reason that in POCSO cases, the victims name will not be recorded explicitly in the deposition and that if joint trial is ordered, recording of chief and cross-examination with respect to both victims will confuse the petitioners as well as the prosecution.



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10. I find absolutely no merit in the said contention. The learned trial Judge can very well refer the victim girls as victim No.1 and 2 or as X and Y or as victim in Special S.C.No....., if there arises a need to refer the victims of both cases in the very same deposition. As such, there need not be any confusion in referring the victim girls. It is pertinent to note that the victims' identity should not be disclosed in the evidence as well as in the judgment in POCSO cases, but for the convenience, the victim has to be referred with some other mark, which can be done and this cannot be a reason to dismiss the application for joint trial.

11. At the outset, it is pertinent to note that in Criminal jurisprudence, separate trial is the rule and joint trial is the exception. Sections 218 to 223 of Code of Criminal Procedure deal with the joint trial. The Hon'ble Supreme Court in **Nazith Singh Vs. State of Punjab** reported in **2021 SCC Online SC 924**, has specifically observed that Section 218 provides that the separate trials shall be conducted for distinct offence alleged to be committed by a person and Sections 219 to 221 of Cr.P.C provide exceptions to this general rule and that if a person falls under these exceptions, then a joint trial for the offence, which a person is charged with may be conducted. Similarly under Section 223 Cr.P.C a joint trial may be held for persons charged with difference offences, if any of the clause in



the provisions are separately or on a combination satisfied. It is necessary to refer the other principles laid down by the Hon'ble Supreme Court in Nazith's case.

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“While applying the principles enunciated in Sections 218 – 223 CrPC on conducting joint and separate trials, the trial court should apply a two-pronged test, namely, (i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.

The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the result of the trial. The Appellate Court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether the trial had prejudiced the right of accused or the prosecutrix;

Since the provisions which engraft an exception use the phrase ‘may’ with reference to conducting a joint trial, a separate trial is usually not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice; and A conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial. To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be.”

12. Bearing the above legal position in mind, let us consider the case on hand.



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13. Admittedly, the victim girls in both the cases are different. In the first case in Spl.S.C.No.3 of 2022, the prosecution has cited 45 witnesses and whereas in the second case in Spl.S.C.No.4 of 2022, the prosecution has cited 31 witnesses. It is admitted by both the parties that in both the cases five independent witnesses and four official witnesses have been shown as witnesses, totally nine witnesses were cited as common witnesses in these two cases.

14. As rightly contended by the learned counsel for the petitioners, if separate trials are allowed to proceed and common witnesses are examined at different dates, the same would cause serious prejudice to the accused.

15. No doubt, as rightly pointed out by the learned trial Judge that directing a joint trial is not mandatory, but lies within the discretion of the trial Court under Section 223 of Cr.P.C. The learned trial Judge has also specifically observed that instead of joint trial, simultaneous trial can be conducted and that common witnesses can be examined on the same day.

16. As rightly observed by the learned trial Judge simultaneous trial if ordered, no prejudice would be caused to the petitioners. But at the same time,



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certain directions are to be issued with regard to the examination of the common witnesses. The learned trial Judge himself has stated that the common witnesses have to be examined on the same day. But, whether all the five common independent witnesses can be examined on the same day and whether all the four official common witnesses can be examined on the same day cannot be answered now. But the trial Court has to ensure that all the similarly placed common witnesses should be examined simultaneously on the same day in both the cases and in case, if all common witnesses could not be examined in one day, the remaining witnesses should be examined on the very next day.

17. Considering the above, the impugned order of the trial court rejecting the prayer for joint trial cannot be found fault with, but certain directions for simultaneous trial can be ordered.

18. In the result, the learned Sessions Judge, Fast Track Court Mahila Court, Dindigul, is hereby directed to proceed with the trial of Spl.S.C.No.3 of 2022 and Spl.S.C.No.4 of 2022 simultaneously and he is further directed to examine the common witnesses at a stretch, in both cases. The common witnesses similarly placed shall be examined simultaneously on the same day in both cases and in any case, if all common witnesses could not be examined in one day, remaining witnesses shall be examined on the very next day.



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19. With the above directions, the Criminal Revision Case is dismissed.

Consequently, connected Miscellaneous Petition is closed.

26.08.2022

Index : Yes/No

Internet : Yes/No

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To

1.The Additional Sessions Judge/Fast Track
Mahila Court, Dindigul.

2.The Inspector of Police,
Thadicombu Police Station,
Dindigul District.

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

4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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