



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/01/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.12441 of 2020
and
Crl.MP(MD)No.5633 of 2020

P.Nithish : Petitioner/Sole Accused

Vs.

1.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

2.The Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.

: Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records in connection with the case in Crime No.2 of 2020 on the file of the 2nd respondent and quash the same.

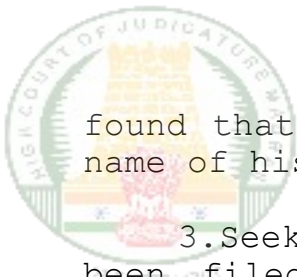
For Petitioner : Mr.M.Ajmal Khan
Senior counsel
for M/s.Ajmal Associates

For Respondents : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

O R D E R

This petition has been filed by the petitioner seeking quashment of the case in Crime No.2 of 2020 on the file of the 2nd respondent police.

2.The case of the prosecution is that the petitioner by using his Instagram shared the child pornographic picture on 05/05/2019 from 11.24.27 IST and this was noticed by the National Centre of Missing and Exploited Children. On the basis of the above said information, a case has been registered against the petitioner for the offences under sections 13, 14(1), 16, 17 of the Protection of Children from Sexual Offence Act, 2012 and Section 67(B) (b) of the Information Technology Act, 2000. During the course enquiry, it was



found that Broad Band connection used by the petitioner was in the name of his father.

3. Seeking quashment of the above said FIR, this petition has been filed mainly on the ground of forensic science laboratory report, dated 25/06/2020 does not support the prosecution case.

4. Heard both sides.

5. The entire CD file has been called for and perused. When the matter was heard, a specific stand was taken by the learned Senior counsel appearing for the petitioner that during the course of examination of the mobile phone that was used by the petitioner by the computer forensic science lab, no such contents were found or no trace of deletion of the contents were also found. To a query, then how the ID address was found bearing with that of the mobile phone of this petitioner, the learned Senior counsel has submitted that if really the mobile details with the details of the petitioner was used for a child or for any pornographic purpose through Instagram, traces would have been found in the mobile phone. So according to him, in the absence of any such particulars, the prosecution itself is to be an abuse of process of court.

6. But this court is also not in a position to know how the ID address of this petitioner can be found during the course monitoring by the Monitoring Centre called 'National Centre for missing and Exploited Children.' So it involves technical and scientific explanation. But as on today, now the mobile phone that has been used by the petitioner does not contain any child pornographic pictures. Similarly, there is no trace in the mobile phone to the effect that these pictures have been deleted from the mobile phone.

7. For better appreciation, let me reproduce the entire examination and findings in the report.

"EXAMINATION & FINDINGS:-

The items were examined with reference to the points raised in the Court letter vide reference. The findings during the examination are furnished hereunder:-

Hard disk in the laptop, Item 1

The data/files/folders stored in the hard disk were examined using the forensic software tool "Encase V7.7" under a write protected environment and the findings are furnished below.

(i) Partition/volume details of the hard disk are given in Annexure I.

(ii) On examination of all the retrieved (active/deleted) files, it is observed that no image/video files pertaining to child pornography or adult pornography was found stored.



(iii) On further examination no evidence could be retrieved for the access of any files/data on the date 05-05-2019.

(iv) In general the hard disk was found to contain files pertaining to images/videos of the individuals (group photos, family function photos, college student photos, etc.), document files pertaining to study materials, etc.,

No evidence was retrieved for the storage of pornography/Child pornography and postings of such contents in the social media viz., Instagram.

ITEM 2: Mobile phone

The internal memory of the mobile phone was acquired and examined using the forensic software tool "XRY, and findings are furnished below.

(i) Selected pages from the generated report using the software are given as Annexure II.

(ii) The social media application "Instagram" was found installed in the mobile phone. The retrieved details are given below.

(iv) In general, image files which were found created on 05-05-2-2019, are pasted below:

xxx

(v) In general, some of the picture files of female individuals pertaining to obscene nature were found stored and they are pasted below:-

xxx

(vi) Picture files of female individuals pertaining to obscene nature were found stored under the folder "Simran Instagram model" and two of them are pasted below:-

xxx

(vii) Selected pages (bearing information of the above images) from the generated report using the software are given as Annexure III.

On examination of the retrieved details, image/video files pertaining to child pornography were not found. Evidence for sharing such image/video file in the 'Instagram' application could not be retrieved.

Note: The above examination and findings are based on the retrieved details using "Advance logical" acquisition. The other type of acquisition viz., 'Physical acquisition' is not



supported by the available software tool for this mobile phone model (item 2), hence the retrieval of more information on the deleted contents/files (if any) is limited in this examination."

So reading of the report shows that no image of photo pertaining to the child phonographs were found. Evidence for sharing in the Instagram application also could not be retrieved. So the allegation against the petitioner that he shared child pornographic picture through Instagram application is not substantiated.

8. But it appears that some sort of obscene photographs were also found in the mobile phone. But those are not child pornographic pictures. So pointing out this, obscene pictures, it is submitted by the learned Additional Public Prosecutor that the petitioner is not having a good conduct, he has indulged in sharing the obscene pictures.

9. The charge against the petitioner is only with regard to sharing of the child pornographic pictures. So when no trace is available, a specific question was put to the learned Additional Public Prosecutor how the computer Sciences forensic report is supporting the prosecution case. But no convincing answer has been given by him, except stating that it is a matter for trial.

10. So even though the learned Senior counsel appearing for the petitioner submitted that sections 13, 14(1), 16, 17 of the Protection of Children from Sexual Offences Act, 2012 are not attracted, I am not going into those aspects, since the computer forensic Report is not supporting the prosecution case, no useful purpose is going to be served subjecting the petitioner to the trial process. So on the sole ground, this petition is liable to be allowed.

11. In the result, this criminal original petition is **allowed**. The FIR in Crime No.2 of 2020 on the file of the 2nd respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

er

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

- 1.The Judge,Special Court for Pocso,
Srivilliputhur,
Virudhunagar District,
- 2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
- 3.The Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Cr1.OP(MD)No.12441 of 2020
12/01/2022**

MGJ(04.03.2022) 5P 5C