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Crl.O.P.(MD) No.15727 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.09.2022

PRONOUNCED ON : 17.10.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.15727 of 2022

Vijayan

...Petitioner

vs

1.The Inspector of Police,
All Women Police Station,
Nilakottai,
Dindigul District.
Crime No.5 of 2020

2.Palaniammal

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in connection with the impugned trial proceedings in Spl.S.C.No.24 of 2021 pending on the file of the Mahila Court (Fast Track) Dindigul and quash the same in view of the compromise entered between the Petitioner, the second Respondent/defacto complainant and the victim girl.

For Petitioner	: Mrs.Radhi Sathish
For R1	: Mr.Albert James
	Government Advocate
For R2	: Mrs.J.Saranya



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in Spl.S.C.No.24 of 2021 pending on the file of the Mahila Court (Fast Track) Dindigul.

2.The learned Counsel for the Petitioner submits that the Petitioner is the accused. At the relevant point of time, he was aged 25 years. The victim was aged seventeen and half years. Therefore, the provision of POCSO Act was invoked. After arrest and release on bail during the pendency of the case before the Trial Court, the Petitioner herein married the victim girl with the blessings of the elders of both the families. Hence, he seeks quashment of charge sheet in Spl.S.C.No.24 of 2021 on the file of the Mahila Court (FTC), Dindigul.

3.The learned Government Advocate for the first Respondent vehemently objected by stating that the cases under special enactments cannot be quashed, considering the nature of the offences. Also, he would submit that the Honourable Supreme Court had deprecated the practice of exercising the power under Section 482 Cr.P.C.



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4.The learned Counsel for the Petitioner by way of rejoinder submitted that there are rulings to the point, which are as follows:

“(1)Crl.Appeal No.796 of 2022 (K.Dhandapani vs the State by the Inspector of Police)

(2)Crl.O.P.(MD)No.14151 of 2022 (Kalimuthu vs The State and another).”

5.The learned Counsel for the Second Respondent/the mother of the victim, fairly conceded that during the pendency of the case with the blessings of the elders in both the families the victim was married to the Petitioner herein.

6.Heard the learned Counsel for the Petitioner, learned Government Advocate for the first Respondent and the learned Counsel for the second Respondent.

7.Admittedly, the case had been registered against the Petitioner herein, who was in love with the defacto complainant, under the POCSO



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Act. After released on bail during the pendency of the case before the trial Court, with the blessings of the elders of both the families, the Petitioner married to the victim girl. Therefore, joint memo of compromise filed by the learned Counsel for the Petitioner is found acceptable, as the second Respondent, the mother of the victim girl, had also consented to the same.

8.In the course of the argument, when this Court had put a query to the learned Counsel for the Petitioner that they can face the trial, since the victim as P.W1 and the mother of the victim as P.W2 in the statement or deposition before the trial Court is likely to depose in favour of the accused and thereby, the prosecution may treat them hostile and there is a possibility of acquittal, the learned Counsel for the Petitioner submitted that invariably in POCSO cases, the Judges will award sentence of imprisonment and invariably in all the cases, there is a possibility of conviction, even if the independent witnesses turned hostile. Therefore, they do not want to take risk. Under those circumstances, the Petitioner had filed this Petition invoking the extraordinary powers of this Court under Section 482 Cr.P.C.



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9. In *Vijayalakshmi and another Vs. The Inspector of Police and another* reported in **2021 SCC OnLine Mad 317:(2021) 2 CTC 191:(2021) 1 MWN (Cri) 252**, it has been stated as under:-

“19. The main issue that requires the consideration of this Court is as to whether this Court can quash the criminal proceedings involving noncompoundable offences pending against the second respondent. The Hon'ble Supreme Court in the case of Parbathbhai Aahir @ Parbathbhai v. State of Gujrat, reported in (2017) 9 SCC 641 and in case of The State of Madhya Pradesh v. Dhruv Gurjar reported in (2019) 2 Mad LJ (Cri) 10, has given sufficient guidelines that must be taken into consideration by this Court while exercising its jurisdiction under Section 482 of Cr.P.C, to quash noncompoundable offences. One very important test that has been laid down is that the Court must necessarily examine if the crime in question is purely individual in nature or a crime against the society with overriding public interest. The Hon'ble Supreme Court has held that offences against the society with overriding public interest even if it gets settled between the parties, cannot be quashed by this Court.

20. In the present case, the offences in question are purely individual/personal in nature. It involves the 2 Petitioner and the 2 Respondent and their respective families only. It involves the future of two young persons who are still in their early twenties. The second respondent is working as an Auto driver to eke his livelihood. Quashing the proceedings, will not affect any overriding public interest in this



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case and it will in fact pave way for the 2 Petitioner and the 2 Respondent to settle down in their life and look for better future prospects. No useful purpose will be served in continuing with the criminal proceedings and keeping these proceedings pending will only swell the mental agony of the victim girl and her mother and not to forget the 2 Respondent as well.

21. In view of the above, this Court is inclined to quash the criminal proceedings in Special S.C. No. 24 of 2018 on the file of the learned Sessions Judge, Mahila Court (Fast Track Mahila Court) Erode in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code, 1973. Accordingly, the same is quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is also closed.”

10.In ***Ashwinbhai @ Raj Ranchhodbhai Poyala Vs. State of Gujarat*** reported in ***R/CR.A/1089/2021***, it has been stated as follows:-

“ 7.The glaring aspect of the matter is that, there is evidence Exh. 76, which - because of legal requirement needs to be called as evidence of "the victim", who stated that, she on her own, because of her wish had walked out of home and she started living with the present appellant and with that relation she has given birth to two children, one on 29.06.2019 and second on 22.01.2021. Neither the mother nor the father of these two children disown their birth nor paternity and still the father is convicted inter alia under [Section 376](#) of the Indian Penal Code and is ordered to undergo RI for 10 years. The Sessions Court is also conscious of this



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fact, since even in the operative part of the judgment in para:4, it is noted that since these two persons are staying as husband and wife, any compensation / assistance received from any of the Government(s) need to be refunded. It is under these circumstances, this Court finds that the conviction recorded by the Sessions Court needs to be set aside. Standing at the place R/CR.A/1089/2021 CAV JUDGMENT DATED: 01/10/2021 of law enforcement agencies, in the peculiar facts of the case, this can be termed as an offence under the [Prohibition of Child Marriage Act](#), which is observed more in breach than in compliance, more particularly in the lower strata of society. Non-interference by this Court would reduce the lady and two children without shelter of husband / father, which in no way would be in furtherance of justice.”

11.In the light of the above rulings and for the cordial relationship and the healthy relationship of the family for the institution of the marriage, this Criminal Original Petition is allowed. Consequently, the final report of the investigation, which had been taken cognizance by the learned Judge, Mahila Court, (Fast Track Court), Dindigul as Spl.S.C.No.24 of 2021, is quashed.

Internet :Yes./No
Index :Yes/No
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17.10.2022



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SATHI KUMAR SUKUMARA KURUP, J.

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To

- 1.The Judge,
Mahila Court, (FTC),
Dindigul.
- 2.The Inspector of Police,
All Women Police Station,
Nilakottai,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order in
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