



Crl.O.P.(MD) No.15686 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 06.09.2022

PRONOUNCED ON : 14.10.2022

CORAM

THE HON'BLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.O.P(MD)No.15686 of 2022

Kalaivanan

...Petitioner

VS

1.State represented by the Inspector of Police,
Sivanthipatti Police Station,
Tirunelveli District.

2.Baskarmani

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the impugned charge sheet in Spl.S.C.No.327 of 2019 on the file of the learned Mahila Court, Tirunelveli District and to quash the same.

For Petitioner
For R1

:Mr.K.Navaneetha Raja
:Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

Heard Mr.K.Navaneetha Raja, learned Counsel for the Petitioner and Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the first Respondent.



Crl.O.P.(MD) No.15686 of 2022

2.The learned Counsel for the Petitioner submits that the Respondent No.2 herein had preferred a girl missing complaint before the Sivanthipatti Police Station, Tirunelveli District. Based on the complaint of the second Respondent, an FIR in Crime No.206 of 2018 was registered by the Sivanthipatti Police Station, Tirunelveli District. Subsequently, in the course of investigation, it was found that the daughter of the De-Facto Complainant had eloped with the Petitioner herein. By that time, the Petitioner was arrested and the minor girl was rescued. They had got married.

3.It is the submission of the learned Counsel for the Petitioner that subsequent to their marriage, they had been living as husband and wife. The minor daughter of the De-Facto Complainant, as per the FIR in Crime No.206 of 2018, has now attained the age of majority and delivered a child, who is now aged about 1½ years. Therefore, he seeks to quash the final report filed before the Special Judge, Special Court for POCSO Act Cases, Tirunelveli, which was taken cognizance as Special S.C.No.327 of 2019.

4.The learned Additional Public Prosecutor would submit that at the time of occurrence, the victim girl was aged about 17 years. In



Crl.O.P.(MD) No.15686 of 2022

the trial proceedings, the examination of prosecution witnesses had almost been completed and it is posted for defence side witnesses on 15.09.2022. The learned Additional Public Prosecutor would further submit that the main witnesses had turned hostile. In the light of such development, it is not a fit case for quashing the criminal case.

5.By way of rejoinder, it is stated by the learned Counsel for the Petitioner that in the cases of this nature, instead of passing judgments based on appreciation of evidence, invariably the learned Special Judges dealing with the cases under the POCSO Act based on the statements of the victims given under Section 161 Cr.P.C. If the accused suffers conviction, then they had to wait till the appeal is disposed of by this Court. It causes miscarriage of justice. Considering the fact that the Petitioner and the victim are living as husband and wife, he seeks to quash the special case in the light of the depositions before the learned Sessions Judge, which is enclosed in the typed set of papers. The learned Counsel for the Petitioner also relied upon the following Rulings:

(a)2021 (1) MWN (Cr.) 252 (Vijayalakshmi and another and State; and

(b)2022 (1) LW Crl. 303 (Agavai vs the State).



Crl.O.P.(MD) No.15686 of 2022

6. During the arguments, the learned Counsel for the Petitioner submitted that simultaneously, the trial is proceeded before the Special Court under POCSO Act cases, Tirunelveli, wherein, the victim's parents, who are all prosecuting witnesses turned hostile. Still, the learned Counsel for the Petitioner submitted that there is apprehension in the minds of the accused that even when the witnesses turned hostile, the Special Judge under POCSO Act cases, invariably convict the accused. If the accused is convicted, he has to serve life imprisonment, in which case, an appeal has to be filed and when the appeal in the High Court is taken for disposal based on the year wise priority, the accused will suffer miscarriage of justice. Also, the learned Counsel for the Petitioner furnished a copy of deposition of the prosecution witness, who turned hostile for better appreciation.

7. It is stated that joint compromise had been recorded between the relatives of the victim and the accused and that both the Petitioner and the victim had married prior to the date of arrest and registration of the case, even though the victim was aged seventeen and half years. Even though the accused was arrested and remanded and consequent to his release on bail, the elders of both families, after the victim attained the age of majority, had performed the marriage of



Crl.O.P.(MD) No.15686 of 2022

the victim and the accused. They are living as husband and wife now.

They are blessed with a child aged one and half years. Therefore, if the provision of POCSO Act is mechanically applied, it will result in miscarriage of justice, thereby, separating the husband from the company of the wife and denying love and affection of the accused as husband of the wife and for no fault of the child.

8.In the light of the development and considering the family atmosphere in this case and in the light of the reported Ruling (a) ***2021 (1) MWN (Cr.) 252 (Vijayalakshmi and another and State)*** this Petition is allowed to avoid miscarriage of justice and considering the well being of the family and the case pending in Spl.S.C.No.327 of 2019 on the file of the learned Mahila Court, Tirunelveli District, is quashed.

Index:Yes/No
TM/cmr

.10.2022

To

- 1.The Special Judge, Mahila Court, Tirunelveli District.
- 2.The Inspector of Police,
Sivanthipatti Police Station,
Tirunelveli District.



WEB COPY



Crl.O.P.(MD) No.15686 of 2022

SATHI KUMAR SUKUMARA KURUP, J.

TM/cmr

Order made in
CRL.O.P(MD)No.15686 of 2022

14.10.2022