



WEB COPY

CrI.O.P.(MD)No.17771 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CrI.O.P (MD) No.17771 of 2021

and

CrI.M.P. (MD) Nos.9704 & 9705 of 2021

Mahalingam @ Customs Mahalingam ... Petitioner / Accused No.9

Vs

1.The State rep. by its,
The Inspector of Police,
Thuraiyur Police Station,
Trichy District.
(Crime No.1452 of 2020) ... 1st Respondent / Complainant

2.Ramaraj ... 2nd Respondents / Defacto complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records bearing in Spl.S.C.No.45 of 2021 on the file of the District and Sessions Judge, Mahila Court, Tiruchirappalli and quash the same as against the petitioner.

For Petitioner : Mr.M.Jegadeesh Pandian
For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the impugned proceedings as far as the petitioner is concerned.

2. The case of the prosecution is that the victim fell in love with the first accused Manikandan @ Rajesh. The victim left her house on 07.12.2020 and joined the first accused. She was taken to another village and marriage was also performed on 08.12.20220 in the presence of the parents of the main accused as well as the other persons. The main accused is said to have had physical intimacy with the victim. The only allegation against the petitioner is that subsequent thereto, he had given some cash to A1 and the victim and advised them to stay away as otherwise they will be caught by the police. The victim's father is the defacto complainant in Crime No.1452 of 2020 on the file of the Inspector of Police, Thuraiyur Police Station. The case was investigated and charge sheet was filed and cognizance of the offences under Sections 366(A) & 366 of IPC and Sections 9 & 10 of Prohibition of Child



Marriage Act, 2006 and Sections 5(1), 6 & 17 of Protection of Child from Sexual Offences Act, 2012 were taken. The case is presently pending trial in Special S.C.No.45 of 2021 on the file of the District and Sessions Judge, Mahila Court, Tiruchirappalli.

3. There are totally nine accused in this case. The petitioner is figuring as the ninth accused. As against the petitioner, the prosecution wants to fasten penal liability under Section 17 r/w Section 6(1) of POCSO Act. Obviously, the petitioner came into the picture only after perpetration and commission of the main offences. Kidnapping of the victim, her marriage and penetrative sexual assault on her had taken place well before 09.01.2021. The petitioner was nowhere in the scene till then. Only thereafter, the petitioner is alleged to have given financial assistance to A1 and the victim.

4. As rightly pointed out by the petitioner's counsel, the particulars have not been furnished. Since the petitioner had entered into the scene only subsequent to the commission of the offence, he cannot be said to have abetted at all. The petitioner's counsel relied on the decisions made in CrI.R.C.No.140 of 2016 and CrI.O.P.No.18055 of 2020.

5. Adopting the approach set out in those two cases, since there is absolutely no material available against the petitioner, the continuation of the impugned prosecution against the petitioner would be an abuse of legal process. The impugned proceedings stand quashed as far as the petitioner is concerned. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 District and Sessions Judge,
Mahila Court, Tiruchirappalli .
- 2.The Inspector of Police,
Thuraiyur Police Station,
Trichy District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P (MD) No.17771 of 2021
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NSN (CO)
TR(31.01.2022) 3P 4C