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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 30/09/2022

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.RC(MD)No.917 of 2022

and

Crl.MP(MD)No.11371 of 2022

1.M.Berlin Jose

2.V.John Prabhakar

: Petitioners/Petitioners/
A1 and A2

Vs.

State through

The Inspector of Police,

M.Chatrapatti Police Station,

Madurai District.

(Crime No.169 of 2019)

: Respondent/ Respondent/
Complainant

Prayer:-This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records relating to the order passed by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, in Crl.M.P No. 1000 of 2021 in Spl. SC No.29 of 2021, dated 18/03/2022 and set aside the same.

For Petitioners : Mr.T.A.Ebenezer

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

**ORDER**

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This criminal revision has been filed seeking to set aside the order passed by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, in CrI.M.P No.1000 of 2021 in Spl. SC No.29 of 2021, dated 18/03/2022.

2.The facts in brief:-

The victim girl was aged about 10 years and she was undergoing school education in Russ Foundation Home. On 14/10/2019, she celebrated her birthday with cake. Later, she become unconscious and complained head ache, etc., She was given some tablets. At about 9.00 am, on 15/10/2019, the de-facto complainant was informed that the victim girl is in high fever. So the de-facto complainant went to Russ Foundation Home situated in Ellis Nagar and found the victim girl in semi-conscious stage, examined in Kennet Hospital and thereafter, taken to Dr.Kavitha in Anna Nagar and thereafter, admitted in Government Hospital, Madurai. She was taking treatment for 4 days. During enquiry, the above said Dr.Kavitha stated that she did not know anything. The victim girl



later was shifted to the child ward. At that time, she informed that she was frequently touched inappropriately by the accused persons. On the basis of the complaint given by the de-facto complainant, FIR was registered. After that, final report was filed making allegation against the petitioners stating that the victim girl was subjected to unnatural penetrative sexual assault by the accused persons on various dates. So they charged sheeted for the offences under sections 5(m), 5(j)(i), 6, 5(f), 5(g), 9(f), 9(g), 9(j)(i), 9(m) and section 10 of POCSO Act and section 376 DB IPC.

3. When the trial court about to frame the charges, this petitioner filed CrI.MP No.1000 of 2021 seeking discharge and that was heard at length by the Special Court, finding that prima facie materials have been collected during the course of investigation to implicate the petitioner in the above said penetrative sexual assault upon the victim, the ground that has been raised for discharge were not sufficient to discharge, that was dismissed, on 18/03/2022.



4. Against the dismissal order, this revision has been preferred by the petitioner on very many grounds.

5. Heard both sides.

5. Before we go into the issue, the background of the case must also be taken into account.

6. CrI.MP No.1000 of 2021 was filed before the Special Court and that was dismissed, on 18/03/2022. During the course of the above said petition, a request was made by the petitioner to order fresh investigation under section 173(8) Cr.P.C and that request was rejected, on 16/08/2022.

7. The petitioner filed WP(MD)No.19567 of 2022 seeking the very same relief of further/afresh/de-nova/re-investigation by some other independent agency, on the basis of the representation made by the petitioner, dated 25/07/2022. No interim order was passed. Now it is pending before the Coordinate Bench of this court. Pending writ petition, this revision petition has been preferred by the petitioner, on 16/09/2022 under the guise of the revision against the dismissal order.



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8. During the course of argument, the very same request was made by the learned counsel appearing for the petitioners that a fresh investigation or reinvestigation must be ordered by the independent agency, then only the truth will come out. According to him, the petitioners have been victimized by the Chairman of the Child Welfare Committee not only due to the personal motive, but also due to official motive.

9. The learned Additional Public Prosecutor would submit that such a request was also made before this court by way of writ petition and no order was passed. He would further submit that this is the third attempt on the part of the petitioners to make such a plea for the very same cause.

10. The learned counsel appearing for the petitioners would submit that he is insisting only upon the reinvestigation or fresh investigation by the independent Agency.

11. So the point arises for consideration is



12. I am of the considered view that such an attempt by the petitioners should not be permitted and they cannot be permitted to take the chances. This is the ground, which is available against the revision petitioner. Even on merits, I find no irregularity and illegality in the order passed by the trial court.

30/09/2022

<https://www.mhc.tn.gov.in/judis>



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To,

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- 1.The Sessions Judge,
Principal Special Court for
Exclusive Trial of Cases
Under POCSO Act, Madurai.
- 2.The Inspector of Police,
M.Chatrapatti Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G . ILANGO VAN , J



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