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Crl.OP.No.2611 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.OP.No.2611 of 2021

and

Crl.MP.No.1434 of 2021

C.Arul Kumar

... Petitioner

Vs.

1.The State, represented by
Inspector of Police,
Kunnam Police Station,
Perambalur District

2.Gurumani

... Respondents

PRAYER:

Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records made in Spl.SC.No.12 of 2020 on the file of Mahila Court, Perambalur and to quash the same as illegal against the petitioner.

For Petitioner

: Mr.J.Jaya Sureya
for Mr.M.Velmurugan

For Respondents

For R1

: Mr.A.Gopinath,
Government Advocate(crl.side)

For R2

: No appearance



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in Spl.SC.No.12 of 2020 on the file of Mahila Court, Perambalur, thereby taken cognizance for the offence under Sections 366(A), 294(b) & 506(i) of IPC and Sections 16 & 17 of POCSO Act as against the petitioner.

2. The case of the prosecution is that the victim was aged about 16 years and when she was coming out from school, the first accused kidnapped the minor girl and had taken to his grandmother's house and there he committed aggravative penetrative sexual assault on the victim girl. After knowing that her father lodged complaint, he called the second accused, who came there and had taken the victim girl to drop her in her house. While dropping her, he threatened with dire consequences and also threatened not to disclose the same to anybody. Hence, the complaint. On receipt of the said complaint, the first respondent registered FIR in crime No.56 of 2019 for the offence under Sections 366A, 294(b), 506(i) of IPC and Sections 5(I) & 6, 16 and 17 of POCSO Act and Section 342 of IPC. After completion of investigation, they filed final report under Sections 366(A), 294(b), 506(i) of IPC and Section 16 r/w 17 of POCSO Act, 2012.



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3. Though notice was served on the second respondent, no one appeared on behalf of her before this Court either in person or through pleader.

4. There are totally two accused, in which the petitioner is arrayed as A2. Even according to the case of the prosecution, the petitioner is the paternal uncle of the first accused. When the victim girl was studying 11th std by staying in her grandmother's house, she used to go to her parents' house once in a week. While being so, on 20.02.2019, after school hours, when she was coming out from the school, the first accused stated that her mother fell ill and as such, he had taken her in his bike. Instead of going to her parents' house, he had kidnapped her to his grandmother's house at Tittakudi. There, he abducted her and committed aggravative penetrative sexual assault on her for one week. After knowing the complaint lodged by her father on 28.02.2019, he called his paternal uncle i.e. the petitioner herein. He came there and he scolded him. Thereafter, he had taken the victim girl in order to drop her in her house and while dropping her, he threatened her with dire consequences and threatened her that not to disclose to anybody. As far as the petitioner is concerned, he initially scolded the first accused for the offence committed by him and he only



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had taken the victim to her house. It would not amount to abetment. It is

relevant to extract the provision under Section 16 of the POCSO Act

hereunder:

16. Abetment of an offence—*A person abets an offence, who – First - Instigates any person to do that offence; or Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or Thirdly - Intentionally aids, by any act or illegal omission, the doing of that offence.*

5. Thus, it is clear that as far as the petitioner is concerned, only after the offence committed by the first accused, he had called the petitioner herein on 28.02.2019 i.e. after period of eight days from the date of kidnapping. The petitioner went to the first accused's house and in fact, he scolded him for the offence committed by him. Immediately, he had taken the victim to her house by his motorcycle. Therefore, it would not amount to abetment of offence. He never abetted to commit the offence by the first accused. If he instigates any person to do that offence or engages with one or more other person or persons in any conspiracy for the doing of that offence would amount to abetment. Further, whoever either prior to or at the time of



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commission of an act, does anything in order to facilitate the commission of that act and thereby facilitates the commission thereof, is said to aid the doing of that act. Therefore, as far as the act of the petitioner is concerned, only after the commission of offence, the first accused called him in order to take her to her home. Therefore, the offence under Section 16 of POCSO Act would not at all attract as against the petitioner.

6. To attract the offence under Section 294(b) of IPC, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the provision under Section 294(b) of IPC, as follows :-

"294. Obscene acts and songs —Whoever, to the annoyance of others— (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Admittedly, there is absolutely no words uttered by the petitioner as such to constitute the offence under Section 294(b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioner, the witnesses felt



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annoyed. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioner annoyed others, it cannot be said that the ingredients of the offence under Section 294(b) of IPC is made out.

7. It is relevant to rely upon the judgment reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**, which held as follows :-

"To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case."

The above judgment is squarely applicable to the present case and therefore, the offence under Section 294(b) of IPC is not at all attracted as against the petitioner.

8. Insofar as the offence under Section 506(i) of I.P.C is concerned, to attract the offence, threat and intention to cause an alarm are main ingredients. The third ingredient is that the intention must be to cause any person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, subsequent to the main ingredients. Whereas in the case on hand, even according to the case of the prosecution, the alleged



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threats issued by the petitioner were only empty threats and they had no effect on the complainant.

9. In this regard, It is relevant to rely upon the judgment of this Court made in ***CrI.O.P.(MD)No.11030 of 2014*** in the case of ***Abdul Agis Vs. State through the Inspector of Police***, which reads as follows:-

“7.It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(b) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the



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entire proceedings.”

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10. In view of the above, the entire proceedings in Spl.SC.No.12 of 2020 on the file of Mahila Court, Perambalur is quashed as against the petitioner alone and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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To

- 1.The learned Mahila Court,
Perambalur
- 2.Inspector of Police,
Kunnam Police Station,
Perambalur District
- 3.The Government Advocate,
High Court of Madras



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