



Crl.R.C.No.141 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2023

PRONOUNCED ON: 02.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.141 of 2023

and

Crl.M.P.No.1028 of 2023

R.Dakshina Murthy

...

Petitioner

/vs/

The State represented by
The Station House Officer,
D-1, Lawspet Police Station,
Puducherry.

(Crime No.158/2016)

...

Respondent

PRAYER : Criminal Revision Case has been filed under Sections 397 r/w 401 Code of Criminal Procedure to call for the records in Spl.S.C.No.20 of 2020 pending on the file of the learned Special Judge (Under POCSO Act 2012) at Puducherry and set aside the charges framed dated 07.12.2022 by the learned Special Judge (Under POCSO Act 2012) At Puducherry in Spl.S.C.No.20 of 2020.

For Petitioner

...

Mr.R.Vivekananthan

For Respondent

...

Mr.K.S.Mohandass
Public Prosecutor (Puducherry)



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ORDER

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This criminal revision case has been filed to call for the records in Spl.S.C.No.20 of 2020 pending on the file of the learned Special Judge (Under POCSO Act 2012) at Puducherry and set aside the charges framed dated 07.12.2022 by the learned Special Judge (Under POCSO Act 2012) At Puducherry in Spl.S.C.No.20 of 2020.

2.The fact of the case is that the petitioner is an Advocate by Profession. He appeared to the accused in a case registered in Crime No.158 of 2016. The complainant Lalithambigai and the accused Sumathi are relatives, who are residing in the same building and independent portions. The family dispute occurred on 27.10.2016. In view of the dispute, the complaint has been given to the respondent police on 29.10.2016 and a case has been registered in crime No.158 of 2016 for the offences punishable under Sections 294(b), 323, 323 r/w 34 IPC. At the same time, the accused Sumathi also lodged a complaint against the complainant Lalithambigai, Periyasamy @ Jambu, Jaibalan and Hariprasath before the same respondent police. In pursuance of the complaint, a case has been registered in Crime No.160 of 2016 for the



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offences punishable under Sections 294(b), 506(i) r/w 34 IPC. Both the cases are case in counter case.

3.In both the cases, the respondent police filed a final report before the learned Judicial Magistrate No.I, Pudhuchery. On receiving the final report, the Learned Judicial Magistrate No.I, Pudhuchery had taken cognizance in C.C.No.210 of 2019 in respect of the case registered in Crime No.158 of 2016 and in S.T.C.No.101 of 2019 in respect of the case registered in crime No.160 of 2016.

4.The defacto complainant Lalithambigai filed a criminal original petition before this Court in Crl.O.P.No.8600 of 2019 for quashing the criminal case in STC.No.101 of 2019 on the file of the Judicial Magistrate No.I, Pudhucherry. This petitioner as an Advocate entered appearance before this Court on behalf of Sumathi, the defacto complainant in that case. This Court disposed the criminal original petition with a direction to the learned Judicial Magistrate No.I, Pudhuchery to complete both the cases in C.C.No.210 of 2019 and S.T.C.No.101 of 2019 within a period of four months from the date of receipt of a copy of the said order. During the



trial in C.C.No.210 of 2019, the daughters of Lalithambigai (defacto complainant) namely Divyadarshini and Kaviranji were examined as prosecution witnesses PW4 & PW5. While deposing before the Court, the daughters deposed that during their childhood days, Dakshina Murthy, the petitioner herein (A1) and LogaShanmugaperumal (A2) committed aggravated sexual assault upon them. Thereafter, Lalithambigai gave a complaint to Child Welfare Committee on 18.11.2016 for taking action against sexual harassment to her daughters. Thereafter, the police undertook further investigation and based upon the final report, the trial Court framed the following charges against the accused persons;

A1 – Section 8 & 10 of POCSO Act, 2012

A2 - Section 8 & 10 of POCSO Act, 2012, 324 r/w 34 IPC, 323 IPC r/w 34 IPC.

A3 – 324 IPC, 323 r/w 34 IPC and 323 IPC (2 counts), 294(b) IPC.

Challenging the charges under Sections 8 & 10 of the POCSO Act, 2012 framed against Dakshina Murthy (A1), the criminal revision case has been filed.



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5.The learned counsel for the petitioner submitted that the petitioner is an Advocate by profession. He appeared for the accused Sumathi in a case registered in Crime No.158 of 2016 and he is no way connected with the internal dispute between Sumathi and Lalithambigau. Further submitted that in the original complaint, while registering the case in crime No.158 of 2016, there is no allegation of sexual assault made by the petitioner prior to 27.10.2016. Further, while the defacto complainant was examined before the Court as PW1, she did not depose about the sexual assault made by the petitioner upon her daughters. Subsequently, with a motive and mala fide intention, Lalithambigai gave a complaint against this petitioner also before the Child Welfare Committee and the respondent police also without any sufficient material filed a final report against the petitioner. The trial Court also without mentioning a specific date, generally cited prior to 27.10.2016, the petitioner committed offences punishable under Sections 8 & 10 POCSO Act, 2012 which is unsustainable, hence, seeking to discharge the accused from the criminal proceedings.

6.Further, the learned counsel for the petitioner submitted that this



case meet the parameters laid down by the Hon'ble Supreme Court in ***State of Haryana vs. Ch.BhajanLal*** reported in (***AIR 1992 SC 604***), it is purely a criminal proceedings with mala fide intention and with an ulterior motive for wreaking vengeance against this petitioner and thus, pleaded to discharge from the criminal proceedings.

7.The learned Public Prosecutor (Pudhuchery) submitted that while framing a charges, the Court has to be satisfied only prima facie case about the existence of sufficient ground for proceedings against the accused. The Trial Court rightly framed the charges and no ground to discharge the accused at this stage, hence, pleaded to dismiss the criminal revision case.

8.I have considered the submissions made by the learned counsel for the petitioner as well as the learned Public Prosecutor (Puduchery) for the respondent.

9. A perusal of the records reveals that origin of this case is in Crime



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No.158 of 2016 for the occurrence took place on 27.10.2016 at about 9.30 p.m. in pursuance of the complaint given by the complainant Lalithambigai and at the same time for the same incident, the accused Sumathi also gave a complaint against the defacto complainant Lalithambigai, which was registered in Crime No.160 of 2016. The respondent police, after investigation, filed final report on both the complainants before the Judicial Magistrate No.I, Pudhuchery and the Judicial Magistrate No.I, Puduchery had taken on file in C.C.No.210 of 2019 for the case registered in Crime No.158 of 2016 and in STC No.101 of 2019 for the case registered in Crime No.160 of 2016. Further, it is noticed that this Court in CrI.O.P.No.8600 of 2019 directed the Judicial Magistrate No.I, Pudhucherry to complete the trial in both the cases i.e. C.C.No.210 of 2019 and STC.No.101 of 2019 within a period of four months from the date of receipt of a copy of that order. Admittedly, this petitioner has appeared for the accused Sumathi in all her cases.

10. Before the trial Court, so far 5 witnesses have been examined in



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C.C.No.210 of 2019. On perusal of the complaint Ex.P1 marked through the complainant PW1 Lalithambigai, there is no averment with regard to sexual assault committed by the petitioner/accused upon her minor daughters. In her evidence before the trial Court is also not stated anything about the sexual assault made by the accused/petitioner. In the statement given by the complainant before the police recorded under Section 161 also, she had not stated anything about the sexual assault committed by the petitioner/accused upon her minor daughters.

11.Further the charge also does not specify, when the criminal sexual assault tookplace. It is generally stated prior to 27.10.2016, no specific date is mentioned. Only on 18.11.2016 Lalithambigai gave a complaint to the Child Welfare Committee about the sexual assault made by the accused persons upon her daughters. This complaint has to be carefully considered. The police also, on receiving the proceedings of the Child Welfare Committee, recorded further statements and filed a petition under Section

173 (8) Cr.P.C seeking permission of further investigation and after that filed a final report. Under these circumstances, the contention of the



petitioner's counsel that it is a motivated complaint with mala fide intention after a long period cannot be rejected. If the complaint is true, the complainant ought to have complained much earlier than the registration of the case in Crime No.158 of 2016 and at least, she may state the act, while giving a complaint in Crime No.158 of 2016 at the time of registration of the complaint and also may report during the statement recorded by the police before filing final report. Only after filing the final report, the case has been taken on cognizance by the trial Court in C.C.No.210 of 2019 after the direction of the High Court and after recording some prosecution witnesses, she need not raise the allegation. For the first time, the defacto complainant gave the complaint to the Child Welfare Committee on 18.11.2016, subsequent to her police complaint dated 29.10.2016, she has not stated any acceptable reason for raising the subsequent allegations. So, it is clear that it is a subsequent development in a dispute between the relatives. Under these circumstance, the latter allegation meet the parameter laid down by the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajaj Lal (1992 AIR 604)***, the Hon'ble Supreme Court accepted to quash an FIR, if it is given manifestly with an ulterior motive



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for wreaking vengeance on the accused. Therefore, the framing of charge to the alleged occurrence which had happened prior to 27.10.2016 is not supported to any material on record to proceed further against the petitioner/accused. Therefore, the charges framed by the trial Court against the petitioner/accused (A1) is unsustainable and the petitioner/accused (A1) is entitled to discharge from the charges. Hence, the petitioner/accused (A1) is discharged from all charges framed against him.

In the result, this criminal revision case is allowed and the accused is discharged from the charges framed by the trial Court in Spl.S.C.No.20 of 2020 under Sections 8 & 10 of POCSO Act. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
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To

1.The learned Special Judge

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(Under POCSO Act 2012) at Puducherry.

2.The State represented by
The Station House Officer,
D-1, Lawspet Police Station,
Puducherry.
(Crime No.158/2016)

3.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM,J.

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Pre-delivery order made in
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