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Crl OP No. 4254 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 4254 of 2021

and

Crl.M.P. No. 2718 of 2021

Kevin Gandhi

... Petitioner

Versus

1.State Rep. by its,
The Inspector of Police,
Virudhachalam Police Station,
Cuddalore District.

2.Gopalakrishnan

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to the proceedings pending in Spl.S.C. No. 66 of 2020 pending on the file of Sessions Judge, Special Court for Exclusive Trial Cases under POCSO Act, Cuddalore District and quash the same.

For Petitioner : Mr. D. Dayalan.

For Respondent : Mr. A. Damodaran,
Additional Public Prosecutor for R1.



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R2 – party appeared.

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ORDER

The petition is to quash the final report in Spl.S.C. No. 66 of 2020 filed for the alleged offence under Sections 451 and 366 of the Indian Penal Code and Sections 5(1) and 6 of the Protection of Children from Sexual Offences Act, 2012.

2.It is alleged in the final report that the petitioner is guilty of penetrative sexual assault on the minor girl on 09.02.2020 and on 11.03.2020; that the victim had not completed eighteen years as on those dates as she was born on 14.01.2005.

3.The learned counsel for the petitioner submitted that the marriage between the victim and the petitioner was solemnized on 07.06.2023 and it was also came to be registered on 22.06.2023. Thereafter, the parties entered into a joint compromise memo and the defacto complainant, father of the victim has also filed an affidavit confirming the contents of the joint compromise memo.



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4.The learned Additional Public Prosecutor on instructions confirms the fact that the petitioner and the defacto complainant's daughter got married on 07.06.2023 and their marriage was registered on 22.06.2023.

5.The petitioner, the defacto complainant and his daughter were present in Court. The parties were identified by the Special Sub-Inspector of Police, Viruthachalam Police Station. This Court enquired the victim girl and she submitted that she was born on 14.01.2005. She also submitted that she is now married to the petitioner. The relevant observations of the joint compromise memo signed by the petitioner and the defacto complainant and counter signed by the learned counsel for the petitioner are extracted hereunder;

“3.The marriage was solemnized between my daughter and petitioner on 07.06.2023. It same was register before Registrar Office at Mannargudi on 22.06.2023 in Receipt No. 3028 of 2023 in Marriage Registration No. TMR / MANNARGUDI / 128 / 2023.

4.The Petitioner and the 2nd Respondent / De-facto Complainant herein undertake and assure that each of them will not lodge any complaint against each other in future.



5.The 2nd Respondent / De-facto Complainant undertake to withdraw the case against the Petitioner in Spl.S.C.No.66 of 2020 pending trial on the file of Sessions Judge, Mahila Court at Cuddalore District and undertake to cooperate with the petitioner to quash the same.

6.The 2nd Respondent / De-facto Complainant have filed Joint Compromise Memo before this Hon'ble High Court to quash the Spl.S.C.No.66 of 2020 pending trial against the petitioner on the file of Sessions Judge, Mahila Court at Cuddalore District.

7.The 2nd Respondent / De-facto Complainant agree to appear before the Hon'ble High Court and give his consent for quashing the Spl.S.C.No.66 of 2020 pending trial against the petitioner on the file of Sessions Judge, Mahila Court at Cuddalore District.”

6.The defacto complainant has also filed an affidavit confirming the contents of the joint compromise memo. This Court also enquired the defacto complainant and he submitted that in view of the marriage between his daughter and the petitioner, the continuation of the impugned proceedings would cause hardship to all the parties concerned and prayed that the case may be quashed.



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7.The question is whether this Court can quash the proceedings of this nature in view of the compromise. This Court on an earlier occasion, had considered a similar issue and quashed the proceedings since the petitioner in that case married the victim girl after she attained majority in Crl.O.P. No. 9691 of 2022 on 28.06.2022 and the relevant observations are extracted hereunder;

“10.The main issue that requires the consideration of this Court is as to whether this Court can quash the criminal proceedings involving non~compoundable offences pending against the petitioner. The Hon-ble Supreme Court in the case of Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath, reported in 2017 9 SCC 641 and in case of The State of Madhya Pradesh Vs. Dhruv Gurjar and Another reported in (2019) 2 MLJ Crl 10, has given sufficient guidelines that must be taken into consideration by this Court while exercising its jurisdiction under Section 482 of Cr.P.C, to quash non~compoundable offences. One very important test that has been laid down is that the Court must necessarily examine if the crime in question is purely individual in nature or a crime against the society with overriding public interest. The Hon-ble Supreme Court has held that offences against the society with



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overriding public interest even if it gets settled between the parties, cannot be quashed by this Court.

11. In the present case, the offences in question are purely individual/personal in nature. It involves the petitioner and the victim girl and their respective families only. It involves the future of two young persons who are still in their early twenties. Quashing the proceedings, will not affect any overriding public interest in this case and it will in fact pave way for the petitioner and the victim girl to settle down in their life and look for better future prospects. No useful purpose will be served in continuing with the criminal proceedings and keeping these proceedings pending will only swell the mental agony of the petitioner, victim girl and their parents as well.

12. In view of the above, this Court is inclined to quash the criminal proceedings in Special S.C.No.1 of 2021 on the file of the Special Court for Exclusive Trial of Cases registered under POCSO Act, Cuddalore in exercise of its jurisdiction under Section 482 of the Criminal.”

8. Further, this Court in similar circumstances in ***P.Jeyam Vs. State***



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Rep., by, the Inspector of Police and Another reported in **2021 SCC**

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Online Mad 6057 had quashed the proceedings where compromise was arrived at between the parties and the accused agreed to marry the victim girl after she attained majority.

9. In the light of the aforesaid decisions and considering the fact that the continuation of proceedings would cause untold hardship and suffering to both the victim and the petitioner, this Court is inclined to quash the proceedings.

10. Accordingly, this Criminal Original Petition is allowed by quashing the proceedings in Spl.S.C. No. 66 of 2020 pending on the file of Sessions Judge, Special Court for Exclusive Trial Cases under POCSO Act, Cuddalore District. The affidavit filed by the second respondent and the joint compromise memo shall form part of the record. Consequently, the connected miscellaneous petition is closed.

23.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order



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Neutral Citation: Yes / No

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To

- 1.The Inspector of Police,
Virudhachalam Police Station,
Cuddalore District.

SUNDER MOHAN, J

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- 2.The Sessions Judge,
Special Court for Exclusive Trial Cases under POCSO Act,
Cuddalore District.
- 3.The Additional Public Prosecutor,
High Court of Madras,
Chennai.

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and
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