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Crl.O.P.No.6362 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6362 of 2022

and

Crl.M.P.No.3561 of 2022

1. C.N.Siva Shankaran @ Siva Shankar Baba
2. Divya Balasubramaniam
3. Karuna
4. Neeraja
5. Deepa

.... Petitioners

Vs

1. State represented by
Inspector of Police,
CBCID North,
Kancheepuram
(Crime No.3 of 2021)

2. Ilakkiya
- Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to Crime No.3 of 2021 registered by the Inspector of Police, CBCID North, Kancheepuram dated 13.06.2021 and quash the FIR as against the petitioners.

For Petitioners	: Mr.Ravi, Senior Counsel for Mr.R.Vijayakumar
For R1	: Mr.A.Gopinath Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.3 of 2021 on the file of the first respondent police.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent.

3. The case of the prosecution is that the second respondent, while she was studying from 2010 to 2012 in the 11th and 12th Standard , the first accused used to bless everybody. Therefore, the second respondent had also respected him and she used to attend Satsang prayer. At that time, the first accused used to give spiritual lecture. After completion of school studies in the month of April 2012, farewell was conducted. On that day, the second accused instructed the victim to go to the first accused for clarification about spiritual matters, if any. Next day, the second accused had taken her to the lounge of the first accused. At that juncture, the first accused misbehaved with the victim. In the month of May, 2012, when the victim attended Satsang along with her mother and sister, after the prayer, the first accused had called her to his lounge.



She went along with her sister. There, the first accused misbehaved with her and committed sexual assault on her. Later, she came to know that there are so many victims like her. The first accused had committed sexual assault on the victims with the help of other accused persons. Hence, the complaint.

4. On receipt of the complaint, the Inspector of Police, All Women Police Station, Melmaruvattur, registered FIR in Crime No.5 of 2021 for the offence under Sections 354, 363, 365, 366, 109 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. After so many complaints from the victims, investigation has been transferred to the first respondent, who re-registered the FIR in Crime No.3 of 2021 for the same offence.

5. The learned counsel for the petitioner would submit that the alleged occurrence took place in the month of April and May, 2012, whereas, the present complaint was lodged in the year 2021. That apart, now the first respondent altered the offence into POCSO Act. Even assuming that the occurrence had taken place in the month of April and May, 2012, the POCSO Act was not in force. The Act was given assent



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only on 19.06.2012 and the same was published on 20.06.2012.

Therefore, the Act cannot be given effect to retrospectively for the alleged occurrence which took place in the month of April and May 2012. That apart, there is no allegations as against the other accused persons. The victim failed to state any valid reasons for the belated complaint and as such, it is barred by limitation as contemplated under Section 468 of Cr.P.C.

6. He further submitted that even according to the victim, there was no kidnapping and even then, the first respondent registered FIR for the offence under Sections 363, 365 and 366 of IPC. In order to attract those offences, there should be force or compulsion and coercion and against the will of a person, a person should be kidnapped or abducted. Therefore, he prayed for quashment of FIR.

7. A perusal of the records reveals that though the occurrence took place in the month of April and May, 2012, the victim was subjected to mental trauma by the sexual assault committed by the accused. When the victims were subjected for sexual assault, it cannot be expected that they would lodge a complaint immediately after the occurrence. They may not do so due to various reasons.



8. In the case of ***Sarah Mathew Vs. Institute of Cardio***

Vascular Diseases by its Director Dr.K.M.Cherian and Others reported in ***(2014) 2 SCC 62***, the Hon'ble Supreme Court of India held that for the purpose of computing the period of limitation under Section 482 Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. Therefore, the said judgment is pertaining to the limitation under Section 468 of Cr.P.C. In the case on hand, there is delay in lodgment of complaint before the police authority. Therefore, the above judgment is not applicable to the case on hand. For lodgment of compliant, there may be delay for several reasons. Normally for the crime against women, the delay cannot be a relevant material to quash the entire proceedings.

9. In the case of ***State of Punjab Vs. Gurmit Singh and Others*** reported in ***(1996) 2 SCC 384***, the Hon'ble Supreme Court of India following various judgments, held that the courts cannot overlook the fact that in sexual offence, delay in the lodging of FIR can be due to variety of reasons, particularly the reluctance of the prosecutrix or her family members to go to the police station and complain about the



incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. In the case on hand, admittedly the victim is residing in Australia. Only for the purpose of schooling, she came down to India and joined in the school of the first accused. After the occurrence, she obtained transfer certificate and went to Australia to continue her studies. Therefore, the delay in lodgment of complaint is duly explained by the victim and it is not the ground to quash the FIR on its threshold.

10. Recently, Hon'ble Supreme Court of India in the case of ***Niharika Infrastructure Private Limited Vs. State of Maharashtra and others*** reported in ***2021 SCC Online SC 315***, held as follows:

..... xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that



the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not.



The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

11. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** in the case of ***Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.***, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.



5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of



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process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

12. In view of the above discussion, this Court is not inclined to quash the FIR in Crime No.3 of 2021 on the file of the first respondent Police. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

01.12.2023

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Index:Yes/No
Internet:Yes/No

To

1.The Inspector of Police,
CBCID North,
Kancheepuram

2.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN,J.

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