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Crl.O.P.No.5185 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

Crl.O.P.No.5185 of 2021 and
Crl.M.P.Nos.3329 & 3330 of 2021

Papitha

...Petitioner

Vs.

1.State rep by its
The Inspector of Police,
All Women Police station,
Ranipet District
(Crime No.9/2020).

2.Tamizharasi

...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Spl.C.C.No.157 of 2020 pending on the file of the learned Special Court for the exclusive trial of POCSO Act cases, Vellore and quash the same.

For Petitioner : Mr.S.Suresh

For Respondent 1 : Mr.S.Balaji
Government Advocate (Crl.Side)

for Respondent 2 : Notice served
No appearance



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ORDER

The Criminal Original Petition has been filed to quash the final report in Spl S.C.No.157 of 2020 on the file of the Special Court for exclusive trial of POCSO Act Cases, Vellore.

2. It is alleged in the final report that the first accused, who is the husband of the petitioner herein had committed the offence of sexual assault on three occasions i.e 09.01.2020, 25.6.2020 and 28.07.2020, punishable under Section 10 read with 9(1) (m), POCSO Act, 2012 and Section 451 of IPC. It is alleged that the petitioner, who is the wife of the first accused had threatened the victim and her mother with dire consequences, to withdraw the complaint lodged by the victim's mother/ defacto complainant. The said threat is said to be have been made on 14.08.2020, after the registration of the FIR on 13.08.2020.

3. The learned counsel for the petitioner would submit that the petitioner is charged for the offences under Section 109 and 506(1) of IPC. He further submits that the reading of final report and the materials filed in support of the final report do not suggest that the petitioner had abetted the



alleged offence committed by her husband. The only allegation is that one day after the registration of FIR, she went and threatened the defacto complainant.

The learned counsel further submits that even assuming that the alleged threat is true the allegations against the petitioner cannot be tried along with offence under Section 10 read with 9(1) (m) of POCSO Act said to have been committed by her husband. Hence, the learned counsel appearing for the petitioner prayed for quashing the final report as against the petitioner.

4. The learned Government Advocate would submits that the victim had given 164 statement and in the said statement, she had mentioned about the threat made by the petitioner herein. The learned Government Advocate further submitted that the points raised by the petitioner has to be adjudicated only in the trial. Hence, he prayed for dismissal of the quash petition.

5. Though notice has been served on the second respondent and her name appeared in the cause list, there is no representation for the second respondent.



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6. On perusing the records and submissions made by the learned counsel on both side, this court finds that the allegation of sexual assault is against the petitioner's husband and there is no allegation or any material to show that the petitioner had abetted the said crime. However, the petitioner is sought to be prosecuted for the offence of abetment. The said offence is not made out as against the petitioner. There are allegations against the petitioner that she had threatened the second respondent and the victim with dire consequences if she did not withdraw the complaint filed by her daughter. The said occurrence is said to have been taken place after the registration of FIR. Even assuming that the said allegations are true, the offence under Section 109 is not made out as against the petitioner. As regards the offence under Section 506(i) of IPC, it has to be the subject matter of separate prosecution and cannot tried with the case instituted as against the first accused. Hence, the prosecution against the petitioner is liable to be quashed in respect of offence under Section 109 and 506 (i) of IPC against the petitioner. However, the respondent Police is at liberty to file a separate final report as against the petitioner in respect of the alleged occurrence of threat which is said to have been taken place on 14.8.2020, if they are advised to do so.



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20.03.2023

Index: Yes/No
Speaking / Non Speaking Order

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To

1. The Special Court for the exclusive trial of POCSO Act cases,
Vellore.
2. The Inspector of Police,
All Women Police station,
Ranipet District.
3. The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN, J

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