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Crl.O.P.No.5507 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.5507 of 2023
&
Crl.M.P.Nos.3456 & 3457 of 2023

1.Kumar

2.Thayammal @ Latha

... Petitioners

Vs.

1.The Union Territory of Puducherry Rep. By the
Station House Office,
Reddiarpalayam Police Station,
Puducherry.
[Cr.No.100 of 2021]

2.R.Sundarapandian

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the 1st respondent to withdraw and transfer the pending case in Spl.S.C.No.94 of 2021 pending on the file of the Hon'ble Special Judge under POCSO Act, Puducherry to that of any other court.

For Petitioner : Mr.V.S.Senthilkumar

For Respondent : Mr.K.S.Mohan Doss, (for R1)
Public Prosecutor Puducherry.



Crl.O.P.No.5507 of 2023

ORDER

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This Criminal Original Petition has been filed to direct the 1st respondent to withdraw and transfer the pending case in Spl.S.C.No.94 of 2021 on the file of the learned Special Judge under POCSO Act, Puducherry to any other court.

2. Learned counsel for the petitioners submitted that petitioners are 2nd & 3rd accused in Spl.S.C.No.94 of 2021 pending on the file of the learned Special Judge under POCSO Act, Puducherry. The respondent police filed final report against them for the offences under Sections 294(b), 506(i) r/w 34 of IPC. It is the case of the petitioners that 1st accused was charged for the offence under Section 12 of Protection of Children from Sexual Offences Act 2012 and 507, 506(i) r/w 34 of IPC and petitioners are not charged under POCSO Act and therefore, they have to be tried before learned Judicial Magistrate and not before the learned Special Judge, who is a Sessions Judge. In the said circumstances, this petition is filed for the transfer of Spl.S.C.No.94 of 2021 pending on the file of the learned Special Judge under POCSO Act, Puducherry to any other competent court.

3. In reply, learned Public Prosecutor (Puducherry) submitted that



special courts are empowered to try an offences other than an offence under POCSO Act with which the accused may, under the Code of Criminal procedure, 1973 be charged at the same trial. He further submitted that petitioners have also aided, abetted in the commission of offence under POCSO Act. Thus, prayed for dismissal of this petition.

4. Heard the submissions of the learned counsel appearing for the parties and perused the records. The gist of the First Information Report allegations are that *de-facto* complainant's daughter Priyadarshini and his brother's daughter Arunthathi are being sexually harassed by accused Sundarapandian, through their cell phone. He was informed by Priyadarshini and Arunthathi that Sundarapandian threatened them that he would morph their photographs and upload in the internet. When *de-facto* complainant's wife enquired this with Sundarapandian, Kumar and Thayammal, they have scolded her in filthy language. Accused Sundarapandian repeatedly made call to the cellphone used by Priyadarshini and Arunthathi. On one such occasion, when *de-facto* complainant's wife found them talking with the accused, she made a call to that number and when enquired, that person informed her that he made a wrong call. Again, these girls received call from difference cellphone number and when enquired, he revealed is identity as



Sundarapandian to her. Then he said to have threatened them to morph their photographs and upload in the Internet. *De-facto* complainant and his wife went to the house of the accused Sundarapandian and informed them about the conduct of the accused. Accused Kumar and Thayammal had scolded the *de-facto* complainant and his wife in filthy language and made criminal intimidation with death threat. Therefore, on the basis of the complaint given by the *de-facto* complainant, First Information Report was registered for the offences under Sections 294(b), 507, 506(1) and 34 of IPC and Section 12 of the Protection of Children From Sexual Offence Act, 2012. After completion of investigation, respondent police filed final report against the petitioners for the offences under Sections 294(b), 506(i) r/w 34 of IPC and against 1st accused for the offences under Sections 294(b), 506(i), 507 r/w 34 of IPC and Section 12 of POCSO Act, 2012. Learned Special Judge POCSO Act, Puducherry framed charges against 1st accused for the offences under Sections 12 of POCSO Act, 2012 and under Sections 294(b), 506(i), 507 r/w 34 of IPC and against A2 and A3 under Sections 294(b), 507, 506(1) and 34 of IPC.

5. It is the submission of the learned counsel for the petitioners that petitioners have no connection whatsoever with regard to the alleged offence



Crl.O.P.No.5507 of 2023

committed by the 1st accused under POCSO Act. Therefore, separate final report should have been filed against the petitioners and thus, the case has to be tried before the learned Judicial Magistrate and not before the learned Special Judge.

6. However, reading of the First Information Report complaint allegations shows that the incident had not occurred on one day. Series of incidents that had happened starting with harassment of victim minor girl through cellphone by accused Sundarapandian. Despite his criminal act was informed to the petitioners, it appears that they scolded the *de-facto* complainant and his wife in filthy language. Even thereafter, 1st accused continued with his sexual assault through cellphone to the victim girls. When his criminal act was brought to the notice of the petitioners, they had again scolded the *de-facto* complainant and his wife and also made criminal intimidation with death threat. The petitioners are relatives of the 1st accused, criminal acts committed in this case are interconnected with each other and therefore, they cannot be tried separately. Petitioners are charged only for the offences under Indian Penal Code and not for offence under POCSO Act, 2012.



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7. Section 28(2) of the POCSO Act, 2012 reads as follows:-

“ 28(2). While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in subsection (1)], with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.”

It is relevant to refer to Section 223(d) of Cr.P.C., with regard to charging of persons jointly. Section 223(d) of Cr.P.C. reads as follows:-

“223 (d) persons accused of different offences committed in the course of the same transaction; ”

Section 28(2) of the POCSO Act, 2012 makes it clear that Special Court shall try the offences other than the offence under POCSO Act with which the accused may, under the Code of Criminal procedure, 1973 be charged at the same trial. Section 223 (d) of Cr.P.C., permits charging of persons accused of different offence committed in the course of same transaction. Therefore, charging the petitioners along with 1st accused for the offences committed in the course of same transaction, though for a different offence is permissible under law.



Crl.O.P.No.5507 of 2023

8. In this view of the matter, there is no merits in this petition.

Therefore, this Criminal Original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

13.03.2023

Internet: Yes

Index: Yes/No

mpl



Crl.O.P.No.5507 of 2023

G.CHANDRASEKHARAN, J.
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To

1.The Station House Office,
Reddiarpalayam Police Station,
Puducherry.

2.The Public Prosecutor,
High Court of Madras.

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&
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