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*Crl.O.P No.8931 of 2021
& Crl.M.P No.5810 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM

THE HONOURABLE Ms. JUSTICE **R.N.MANJULA**

Crl.O.P No.8931 of 2021

and

Crl.M.P No.5810 of 2021

N.Barathi

... Petitioner

Vs.

1. The Inspector of Police,
All Women Police Station,
Mettur, Salem District.
(Crime No.03/2019)

2. Latha

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records and quash the further proceedings in Spl.SC.No.12 of 2021 on the file of the Special Court POCSO Act, Salem.

For Petitioner : Mr.P.Muthamizh Selvakumar

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side) for R1



*Crl.O.P No.8931 of 2021
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WEB COPY

ORDER

This Criminal Original Petition has been filed to call for the records in Spl.SC.No.12 of 2021 on the file of Special Court for POCSO cases, Salem and quash the same.

2. The petitioner is the sole accused against whom the second respondent/*defacto* complainant gave a complaint on 16.07.2019 stating that her daughter was kidnapped by the petitioner. The petitioner is the neighbor of the second respondent's sister's house. On 14.07.2019 when the *defacto* complainant was staying with the victim at her sister's house, the petitioner had forced the victim that she should come along with him. By stating so, he kidnapped her and taken her to Chinna Thirupathi Kovil and married her on 16.07.2019 knowing well that she was a minor. On the same day night, he also committed penetrative sexual assault on the victim at Cow Shed of Garden belonging to one Aandi. After concluding the investigation, charge sheet has been filed against the petitioner for the offences under Sections 363, 366, 343, 346, 506(i) IPC, Section 9 of Prohibition of Child Marriage Act, 2006 and Section 6 of POCSO Act, 2012.



WEB COPY



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3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent. Perused the entire materials available on record.

4. The learned counsel for the petitioner submitted that when the victim was secured, she had given a statement before the learned Magistrate under Section 161 Cr.P.C, but in total contradiction to the above statement, after 1 ½ years she has given a statement imputing the petitioner and that it is abuse of process of law. The statement under Section 164 Cr.P.C given by the victim would prevail over the statement under Section 161 Cr.P.C. Even when the victim was produced before the Doctor, she has not stated anything about the alleged occurrence. Since the materials available on record will not make out any case against the petitioner, the proceedings in Spl.SC.No.12 of 2021 should be quashed.

5. The learned Government Advocate (Crl.Side) appearing for the first respondent submitted that the victim has given the statement about the sexual abuse caused by the petitioner. The statement of other witnesses would show that the victim was abducted by the petitioner and she was taken away from the lawful custody of her parents. Since the victim was a minor at the time of



*Crl.O.P No.8931 of 2021
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occurrence and she herself has stated about the sexual abuse caused to her, a clear case against the petitioner is made out to frame charges under various provisions of law including Section 6 of POCSO Act. The *defacto* complainant, who is the mother of the victim has given a complaint on 16.07.2019 by stating that her daughter was missing and according to her, it is the petitioner, who had kidnapped her from the house. The petitioner is said to be residing near the *defacto* complainant's sister's house. During the course of investigation, the victim girl was secured and it came to be known that the petitioner had married the victim girl, despite knowing that she was a minor and subjected her to penetrative sexual assault on the alleged day of the illegal marriage.

6. The learned counsel for the petitioner submitted that the statement under Section 164 Cr.P.C given by the victim would prevail over her statement under Section 161 Cr.P.C before the police and the police ought not to have recorded any statement from the victim subsequent to her statement before the learned Magistrate. The statement of the witnesses are being given by them voluntarily before the Court and before the police.

7. It has been already settled that the statement given under Section 164



*Crl.O.P No.8931 of 2021
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Cr.P.C cannot be considered as a substantive evidence. However, it can be used for both corroboration and contradiction. But the statement given under Section 161 Cr.P.C can be used for contradiction alone. The evidentiary value of the statements given by the witnesses under Section 164 Cr.P.C or under Section 161 Cr.P.C cannot be the sole ground to quash the proceedings without even subjecting the petitioner to undergo trial. If the victim had given contradictory statement i.e., her statement before the Court and before the police is completely in contradiction to each other, then the accused can get the advantage of bringing out the said contradictions and claim that as a rebuttal piece from his side. Basing upon the contradictory statement alone, it cannot be concluded that one statement of the victim is completely true and other statement of the victim is a complete falsehood.

8. The offence of penetrative sexual assault committed on the minor girl is a serious one. The age of the victim at the time of the occurrence was 16 years and the accused at the time of the occurrence was 20 years. It might be possible that there might be some affair between the petitioner and the victim. But that cannot be presumed without any materials on record, since the victim is a minor, the case of sexual offence against her, the contradiction in her



*Crl.O.P No.8931 of 2021
& Crl.M.P No.5810 of 2021*

statement cannot be the reason to quash the proceedings. In fact, the statement under Section 164 Cr.P.C was not produced before this Court in order to appreciate the grounds submitted by the learned counsel for the petitioner. But whatever may be the contention of the statement given under Section 164 Cr.P.C or under Section 161 Cr.P.C, the veracity has to be tested only during the trial.

9. The learned Government Advocate (Crl. Side) submitted that the charges have already been framed against the accused and trial has already commenced and three witnesses have already been examined. At this stage, the proceedings cannot be quashed for the reason stated by the petitioner. However, the petitioner is at liberty to raise all the contentions as his defence during the trial.

10. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

01.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation : Yes/No



*Crl.O.P No.8931 of 2021
& Crl.M.P No.5810 of 2021*

WEB COPY



*Crl.O.P No.8931 of 2021
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To

1. The Judge,
Special Court for POCSO cases,
Salem.
2. The Inspector of Police,
All Women Police Station,
Mettur, Salem District.
3. The Public Prosecutor
High Court of Madras.



WEB COPY



*Crl.O.P No.8931 of 2021
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R.N.MANJULA, J

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Crl.O.P No.8931 of 2021
& Crl.M.P No.5810 of 2021

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