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H.C.P.No.623 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

H.C.P.No.623 of 2023

S.Devi

.. Petitioner

Vs

1.The Commissioner of Police,
Veppery, Chennai District.

2.The Inspector of Police,
Basin Bridge Police Station,
Chennai District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the 2nd respondent to produce body or person of petitioner's minor daughter XXX, daughter of Sasikumar, aged about 17 years, before this Court and handover to the petitioner.

For Petitioner	:	Mr.S.Esakkimuthu
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.N.Nakeeran

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ORDER

[Order of the Court was made by **M.NIRMAL KUMAR, J.,**]

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Petitioner, who is the mother of XXX (we are masking the name for obvious reasons and we shall be referring to the petitioner's daughter as 'absentee') lodged a complaint on 28.03.2023 with the second respondent police stating that the absentee who had completed 12th examination had gone to her friend's house for combined study but not returned home and on enquiry, she came to know that the absentee had not gone to her friend's house also.

2. Learned Additional Public Prosecutor submits that the absentee had gone out with her friend and she was dropped by her friend near her house. Thereafter, the petitioner had taken her to the second respondent and the second respondent forwarded the complaint to All Women Police Station, Pulianthope and the investigation is in progress.

3. Today, the petitioner and the absentee are present before this Court.



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4. We had interaction with the petitioner as well as the absentee. On enquiry, the absentee stated that due to misunderstanding, she had gone with her friend on her own. The petitioner informed that she is ready to take the absentee with her and she is not interested in pursuing the complaint further.

5. In view of the same, the respondent police is directed to follow the directions given in Circular Memorandum of Director General of Police dated 03.12.2023 bearing reference Rc.No.009464/Crime-4(3)/2022 and a scanned reproduction of the same is as follows:



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Rc.No.009464 /Crime-4(3)/2022

Office of the
Director General of Police,
Tamil Nadu,
Mylapore, Chennai-600 004

Dated: 03.12.2022

Circular Memorandum

Sub:- Police Department- Joint Meeting of the Hon'ble Juvenile Justice Committee and the Hon'ble POCSO Committee held, in pursuance of the State Level Consultation on POCSO Act, on 05.11.2022 - Discussed on the POCSO cases that are registered relating to mutual romantic relationships-Resolution Passed - Direction communicated to the Investigating Officers of POCSO cases - Regarding.

Ref:- Registrar General, High Court letter ROC.No.4020/2022/JJA& POCSO dated.01.12.2022

The Chairman of the Hon'ble Juvenile Justice Committee and the Hon'ble POCSO Committee of the High Court convened a State Level Consultation Meeting for the Stakeholders of Tamil Nadu and Puducherry in the Tamil Nadu State Judicial Academy, Chennai, on implementation of POCSO Act, 2012, on 05.11.2022, as was directed by the Hon'ble Mr. Justice S. Ravindra Bhat, Chairman of the Hon'ble JJC and Judge, Hon'ble Supreme Court of India. In pursuance of the State Consultation, the Discussions and the Resolutions passed in the Meeting are extracted as follows:-

***Discussion No.7**

Statistics clearly show that 60% of the POCSO cases that are registered relate to mutual romantic relationships on account of which for the sin of falling in love with a girl below 18 years of age, the male is criminalised by arrest and prosecution in view of the stringent provisions of the POCSO Act as they obtain today. This is more so in cases of youths in tribal communities in hilly areas.



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*In several Adivasi and Tribal cultures, it is not a taboo for a male to marry a girl who is less than 18 years of age. The State is encouraging the tribals to use the facilities in Government Hospitals for delivery for good reasons. When a 17 year old tribal wife goes for delivery to a Government Hospital, information is sent to the police, a case under the POCSO Act is registered against her husband and he is arrested. If this continues, tribal women will not go for delivery to hospitals and would instead, avail the services of tribal midwives. That apart, Adivasis and Tribals will get more and more alienated from the main stream society, which is not conducive for the State. Superadded, very recently when school boy tied thali (mangal sutra) around the neck of his friend in a bus stand, a criminal case was registered against the boy and the girl was lodged in the Children's Home, thereby, bringing great shame to the already distraught families, due to which, the boy and the girl stood stigmatised for their playful act. In **Joginder Kumar v State of Uttar Pradesh ((1994) 4 SCC 260)**, the Supreme Court has held, in no uncertain terms, that the power to arrest need not necessarily mean that the same should be exercised mechanically. Therefore, as a policy, police can refrain from arresting the accused in such cases. Notice under Section 41-A Cr.P.C can be issued in lieu of arrest.*

Furthermore, most of these cases end up in acquittal either on account of marriage between the survivor and the accused or on account of the survivor turning hostile. Criminalising youths will have a deleterious effect on their career, life and future, as they would have to live with a stigma forever. This is a pan India phenomenon and therefore, an amendment to the POCSO Act is essential. Special Judges dealing with POCSO cases are fairly senior Judges in the cadre of District and Sessions Judges and ergo, they can be entrusted with the responsibility of compounding the offence in deserving cases, which option is not now available in the POCSO Act. An amendment to the POCSO Act accordingly would go a long way to address this issue legally and socially.

Resolution

It is resolved to direct the Registrar General to address a communication to the Director General of Police to issue a circular to the Investigating Officers of POCSO cases;



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- a) not to show haste in effecting arrest of the accused in mutual romantic cases;
- b) instead issue a notice under Section 41-A Cr.P.C to the person concerned for enquiry;
- c) record in the case diary, the decision for not arresting the accused, along with the reasons therefor; and
- d) resort to arrest only with the permission of the Superintendent of Police / Deputy Commissioner of Police, as the case may be."

"Discussion No.9

It is brought to our notice that because of the pressure given by the superior officers, the Investigating Officers invariably file positive charge sheets in all POCSO cases, even if the truth is otherwise. The Investigating Officers do not want to take risk in such type of cases, as they fear that non filing of positive charge sheet will place them in trouble. This kind of false positive charge sheets not only take away the precious time of the Court, but also make an innocent person face the trial and its related risks. If the progress of the case is monitored by the supervisory officers and they shoulder the responsibility for taking decisions at some challenging point of investigation, the Investigating Officers will be confident enough to take right action for the right case.

Resolution

It is resolved to direct the Registrar General to address a communication to the Director General of Police to issue a circular to the supervisory officers to monitor the progress of each of the POCSO cases, put a check on delay and countersign in the case diary whenever certain important or challenging decisions are taken, especially while filing a negative charge sheet so that the Investigating Officers conduct the investigation in a free and fair manner confidently."



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(M.S.,J.) (M.N.K.,J.)
28.04.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Commissioner of Police,
Veppery, Chennai District.
- 2.The Inspector of Police,
Basin Bridge Police Station,
Chennai District.
- 3.The Public Prosecutor,
High Court, Madras.

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**M.SUNDAR, J.,
and
M.NIRMAL KUMAR , J.,**

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