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Crl.R.C.No.1596 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2023  
PRONOUNCED ON : 18.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1596 of 2023 and  
Crl.M.P.No.14834 of 2023

Prabakaran

... Petitioner

-Vs-

The State Rep. By,  
Inspector of Police,  
All Women Police Station,  
Vellore District.  
(Crime No.11 of 2016).

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the order dated 17.05.2023 made in Crl.M.P.No.1959 of 2022 in Spl.S.C.No.23 of 2017 passed by the learned Special Judge for Exclusive Trial of cases under POCSO Act, 2012, Vellore, Vellore District.

|                |   |                                                                       |
|----------------|---|-----------------------------------------------------------------------|
| For Petitioner | : | Mr.N.Muralikumaran,<br>Senior Counsel assisted by<br>Mr.S.Subramaniya |
| For Respondent | : | Mr.A.Damodaran,<br>Additional Public Prosecutor                       |

ORDER

The petitioner/A2 and A3 in Special S.C.No.23 of 2017 are charged  
and facing trial for offence under Sections 8, 10, 9(o), 9(k), 21(2) & 17 of



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the Protection of Children from Sexual Offences Act, 2012 (For short 'Act') filed a petition under Section 319 Cr.P.C., before the learned Sessions Judge, Special Court for exclusive trial of cases under POCSO Act, 2012, Vellore (Trial Court) in CrI.M.P.No.1959 of 2022 in Special S.C.No.23 of 2017 on the basis of the evidence that the real aggressor is Edwin who actually misbehaved with the victim children and threatened them not to disclose the fact and his wife Daisy who is the project incharge-cum-Warden of Anbu Illam in order to protect her husband, misused her power and threatened the petitioner and the victim children not to disclose the fact. The Trial Court dismissed the petition under Section 319 Cr.P.C., by order, dated 17.05.2023. Aggrieved over the same, the present Criminal Revision Case is filed by the petitioner/A2.

2.The learned Senior Counsel appearing for the petitioner submitted that the dismissal of the petition under Section 319 Cr.P.C., by the Trial Court is not in accordance with law and without appreciation of law and facts. It is not in dispute that PW3, PW16 & PW17 are the victim children in this case, who have categorically deposed against Edwin and his wife Daisy. PW3 during cross examination by A4 and A5



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specifically stated that one Emanuvel Arulraj (PW8) who acted as Translator and during that time, PW3 informed that it was PW9, who tutored her to implicate the petitioner and other accused. During cross examination of PW16 by A4 and A5, PW16 stated that PW1 Nishanthini enquired and videographed her statement, at that time, she stated Edwin, husband of Daisy made improper touch on her and caused harassment. Likewise, PW17 during her cross examination by A2 and A3 deposed about Daisy threatening her not to disclose the act of her husband to anyone. Thus, the witnesses PW3, PW16 & PW17 were forced and tutored not to disclose the criminal act of Daisy as well as her husband Edwin. Despite *prima facie* case made out against the proposed accused, the Trial Court without appreciation and not considering the evidence of the victim children dismissed the petition under Section 319 Cr.P.C., giving erroneous reasons despite the evidence of victim children are cogent.

3.He further submitted that the evidence of the victim children will establish the real perpetrators, namely, Daisy and her husband Edwin. PW1, District Child Protection Officer and the respondent Police acted in



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a perfunctory manner saving the real offenders and made the accused as scapegoat to face trial. The Trial Court erred in holding that the deposition of witnesses PW3, PW16 & PW17 are only replies to the suggestion and queries made during cross examination. Hence, the same cannot be construed as cogent evidence which is not in accordance with law. The Hon'ble Apex Court issued several guidelines under what circumstances the petition under Section 319 Cr.P.C., to be invoked and the case in hand would squarely fall under the guidelines of the Hon'ble Apex Court. In support of his submissions, the learned Senior Counsel referred to the FIR, charge sheet, evidence of the witnesses PW1 to PW18 and also the decisions of the Hon'ble Apex Court in the cases of ***“Hardeep Singh Versus State of Punjab and others*** reported in (2014) 3 ***Supreme Court Cases 92, Sukhpal Singh Khaira Versus State of Punjab*** reported in (2023) 1 ***Supreme Court Cases 289 and Yashodhan Singh and others Versus State of Uttar Pradesh and another*** reported in ***2023 SCC OnLine SC 890.***”

4.The learned Additional Public Prosecutor appearing for the



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respondent Police filed counter and vehemently opposed this Criminal Revision Case stating that the trial is at the penultimate stage, only two more witnesses to be examined that too official witnesses. At this stage, the petitioner filed this revision only to drag on the case and to stall the progress of trial in Special S.C.No.23 of 2017. He further submitted that this case came to be registered in the year 2016 on the complaint of PW1, District Child Protection Officer, Vellore against A1 for offence under Section 8 of the Act, thereafter, on completion of investigation, charge sheet filed in the year 2017 and the same was taken on file as Special S.C.No.23 of 2017 against five person viz., A1-Jabamani, Driver of the van, A2-Prabhakaran, Manager, A3-Dhanam, a Maid taking care of children, A4-Moses, Clerk and A5-Usha Unnatha Priya, Therapist of Anbu Illam.

5.The complaint is that Anbu Illam was inspected by PW1 District Child Protection Officer where 16 female children are staying along with other male children. The children were shuttling to the Ooris Higher Secondary School, Agragaram Higher Secondary by omni van of the institution in which A1 is the Driver. PW1 on 27.07.2016 along with her



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officials PW7, PW13 and others visited the institution for awareness program to educate the inmate children about the bad and improper touch and also to find out whether the institution is registered under the Juvenile Justice Act. At that time, the inmates namely PW2, PW3, PW4, PW16, PW17 and PW18 made complaint to PW1 about the improper touch of A1, the van Driver when they were shifted from van to the class room and back. Though informed about this, no action taken, on the other hand, A1 threatened the victim children not to disclose the same to anyone and A1's act allowed to continue. PW1 coming to know about the same, informed the District Collector about the complaint and after getting permission and informing her superiors, PW1 along with the team, visited the school next day, recorded the statement of the children in the mobile phone and also received the complaint from them, appraised the District Collector about the same, thereafter lodged the complaint with the respondent Police. PW10, Sub Inspector of Police received the complaint, registered FIR (Ex.P11), collected recordings MO1/Compact Disc (CD) and thereafter, informed PW11/Inspector of Police.

6.PW11 took up investigation, visited the scene of occurrence and enquired the victim children with the aid of translator/PW8, who is also



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running similar school in the name of Bethlehem for more than 15 years who is well conversant with the child behaviour. Thereafter, the victim children were produced before the learned Judicial Magistrate, their statements recorded under Section 164 Cr.P.C. The complicity of the accused revealed and confirmed. After recording the statement of twenty witnesses and collecting documents, charge sheet filed before the trial Court. Now, eighteen witnesses examined, only two more witnesses to be examined, that too official witnesses. The case is at the penultimate stage. In this case, the children PW2 to PW5, PW12, PW16, PW17 and PW18 all stated about the act of the accused in this case and in the cross examination, certain suggestions put to PW3, PW16, PW17 which has been blown out of context as though PW9 Daisy and her husband Edwin had threatened and forced the victim children not to disclose about the act of Edwin. The said Edwin is a person with almost blindness which is not disputed. The specific evidence collected is that Edwin cannot move without aid of anyone and he has got visual impediment. Some yes answers obtained with the children attributing the same in isolation against Daisy and Edwin is not proper. The Trial Court had considered the evidence in total and rightly dismissed the petition. He further



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submitted that in this case, PW1, PW5, PW6, PW7 and PW14 are from the District Child Protection Office and Anbu Illam. Hence, the Trial Court order is proper, which needs no interference.

7.He further submitted that there is a direction to complete the trial in the Act within a period of one year from the date of taking cognizance of offence as per Section 35(2) of the Act. In this case, due to frequent absence of one or other accused, the trial is yet to be completed. Now, A1 is no more. The impugned order of the trial Court is well reasoned one, needs no interference. The decisions relied upon by the petitioner is not relevant to the facts and circumstances of the case. Hence, prayed for dismissal of the Criminal Revision Case.

8.This Court considered the submissions and perused the materials available on records.

9.It is seen that in this case, eighteen witnesses examined so far, only two more left to be examined, that too official witnesses. In this



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case, PW2, PW4, PW12, PW16, PW17 and PW18 are the victim children. The petitioner filed a petition under Section 319 Cr.P.C., placing reliance on the evidence of PW3, PW16 and PW17. On close scrutiny of the evidence of three witnesses, it is seen that PW3 identified A1, A2, A4 and A5 who are present and also identified A3 who was not present on that day.

10.PW3 in her evidence stated about the overtact of each accused who are facing trial and also in statement under Section 164 Cr.P.C., she had given before the learned Magistrate. During cross examination of A4 and A5, she denies the suggestion that at the instance of Daisy/PW9, improper touch was made on her by A1 and not stated nothing more.

11.Likewise, PW16 in her evidence stated about all the accused and PW2 was being her next room inmate. For the question that PW2 was subjected to improper touch, PW16 is aware of the same. As far as PW16 is concerned, she was not subjected to any bad touch. Later, she confirms in her statement 164 Cr.P.C., about improper touch of A1. During the cross examination by A4 and A5, PW16 stated about the



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statement given to PW1 about Edwin husband of PW9/Daisy. From the evidence of PW1, it is seen that there is no such statement of PW16. Further, recording of oral complaint has been made and produced as CD (MO1) in which there is no such averment.

12.As regards PW17 is concerned, she states that she gave statement by force. PW17 informed that she was also subjected to similar touch, but PW17 not stated anything in this regard. Further, she states that PW2 and PW9 forced her not to disclose the entire facts. This witness appears to be Yes witness. During cross examination of A2 and A3, further questions with regard to Edwin had been put. This witness to a specific question with regard to Edwin, husband of Daisy/PW9 was staying in the quarters inside Anbu Illam, she was defiant and kept silent. From these evidences, the petitioner attempted to make out a case under Section 319 Cr.P.C., which the trial Court rightly rejected.

13.In this case, the other victims namely PW2, PW4, PW12 and PW18 have not stated anything and no cross examination or suggestions



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put to these facts. Apart from it, in this case, PW5 is a Warden, PW6 is the Assistant Teacher employed in Anbu Illam. To these witnesses, no cross examination about PW9 or her husband Edwin made. The other person PW15/Dobi declared as hostile. To this witness also, nothing has been put on these aspects. PW7 is the another District Child Protection Officer, PW13 is an Out Reach Worker attached to the District Child Protection Office, PW14 is the Assistant to the District Child Protection Office who are also part of the inspection team who had come along with PW1, District Child Protection Officer. They were not cross examined with regard to the manner of examination of the victim children and recording of statements in a doctored manner. PW8/Emanuvel, Correspondent of Bethlehem Special School, Katpadi was running a disabled school for the past 15 years and he was acted as Translator. PW10 is the Sub Inspector of Police attached to the respondent Police received the complaint and registered the FIR. PW11 is the Inspector who commenced the investigation.

14.Thus, on careful perusal of evidence of above said witnesses, it is seen that there is no evidence or material except for a defence taken by



the petitioner, which the Trial Court has rightly rejected dismissing the petition under Section 319 Cr.P.C.

15.The learned Senior Counsel appearing for the petitioner relied on **Hardeep Singh** case (cited above) wherein guidelines have been given as to the stage of invoking Section 319 Cr.P.C., and with regard to the evidence used in Section 319(1) Cr.P.C., and the degree of satisfaction in invoking the power Section 319 of Cr.P.C. On the facts and evidence available in the case, none of the guidelines would get attracted. As regards the decision of **Sukhpal Singh Khaira** (cited above) is concerned, the issue decided therein is that whether the summoning order can be issued after pronouncement of judgment but before sentencing order issued. In yet another decision **Yashodhan Singh** case (cited above), the Apex Court held that the principle of hearing a person who is summoned cannot be read into Section 319 Cr.P.C., and such a procedure is not at all contemplated and principles of natural justice within the scope of Section 319 Cr.P.C., does not arise.

16.The Hon'ble Apex Court in the case of “**Guriya alias Tabassum Tauquir and others Versus State of Bihar and another** reported in



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**(2007) 8 Supreme Court Cases 224**” several judgments have been referred and held that *'Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including the accused already before it. If it is satisfied that any person other than the accused has committed the offence and he is to be tried together with the accused.'* The Apex Court in the case of **“Michael Machado Versus CBI** reported in **(2000) 3 SCC 262**” observed that *'the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.'* It had also held that *'A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against the other persons.'* Further, it had also held that *'Unless the court is hopeful that there is a reasonable prospect of*



*the case as against the newly brought accused ending in being convicted of the offence concerned we would say that the Court should refrain from adopting such a course of action'. Further, it had held that 'for exercise of discretion under Section 319 Cr.P.C., all relevant factors have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.'* In the case of “**Krishnappa Versus State of Karnataka** reported in (2004) 7 **SCC 792**” the Hon'ble Apex Court had held that '*the power to summon an accused is an extraordinary power conferred on the court and should be used very sparingly and only if compelling reasons exists for taking cognizance against the other persons against whom action has not been taken.*' In the case of “**MCD Versus Ram Kishan Rohtagi** reported in **1983 SCC (Cri) 115**”, the Hon'ble Apex Court had held that '*the power under Section 319 Cr.P.C., is an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exists for taking cognizance against the person against whom action has not been taken.*'



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17.Thus, from the facts and circumstances of the case and also from the consistent dictum of the Hon'ble Apex Court, this Court is of the view that this extraordinary power under Section 319 Cr.P.C., to be used sparingly and only under compelling reasons. In this case, this Court finds that no such compelling reason is available in the evidence of PW3, PW16 and PW17. Hence, the impugned order of the trial Court order is a detailed one which needs no interference.

18.In the result, this Criminal Revision Case stands dismissed confirming the impugned order of the Trial Court, dated 17.05.2023. Consequently, the connected Miscellaneous Petition is closed.

18.12.2023

Speaking Order/Non-Speaking Order

Internet: Yes/No

Index: Yes/No

Neutral Citation: Yes/No

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To

1.The Special Judge for Exclusive Trial of  
cases under POCSO Act, 2012,  
Vellore, Vellore District.



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M.NIRMAL KUMAR,, J.

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2.The Inspector of Police,  
All Women Police Station,  
Vellore District.

3.The Public Prosecutor,  
High Court, Madras.

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