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Crl.O.P.No.23301 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.23301 of 2023
and
Crl. M.P. Nos.16302 & 16303 of 2023

Vijayan

... Petitioner

-VS-

1.The Deputy Superintendent of Police,
District Crime Branch,
Maduranthagam Taluk,
Chengalpet District.

2.State by Inspector of Police,
All Women Police Station,
Melmaruvathur,
Chengalpattu District.
(Crime No.4/2021)

3.Kaveri
...Respondents

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in Spl.S.C. No.12 of 2023 pending on the file of the learned Special Court-Sessions Judge- POCSO Act, Chengalpattu and quash the same.



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Crl.O.P.No.23301 of 2022



For Petitioner : Mr.T.R.Ravi
For Respondents 1 & 2 : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)

ORDER

The petitioner is arrayed as second accused in Spl.SC.No.12 of 2022 on the file of the learned Special Judge, POCSO cases, Chengalpattu stating that a false complaint implicating him was given by the mother of victim girl and inspite of scientific proof that A1 was the perpetrator of the crime and biological father of the child born to the victim girl, but still the police had filed final report implicating him as second accused.

2. The learned counsel appearing for the petitioner submitted that the First Information Report implicating the petitioner was registered by the respondent police on 26.06.2021, on the complaint given by the victim girl herself who was at that time about 9 months pregnant alleging that the petitioner was the cause for her pregnancy. The petitioner was arrested and later released on bail and thereafter, the DNA mapping was done, which reported that this accused is not the biological father, then the prosecution has taken the second statement under Section 164 Cr.P.C from the victim girl roping the first accused and the DNA test conducted comparing the samples drawn from the first accused and confirmed that he is the biological father.



While so, the petitioner is innocent and nothing to do with the pregnancy, or any offence as alleged in the final report and is bound to be exonerated and case against him has to be quashed.

3 The learned Government Advocate (Crl.Side) appearing for the State, per contra, submitted that though the victim girl had initially mentioned only the petitioner as the perpetrator of the crime and cause for her pregnancy and later on, she has disclosed the name of the first accused and from the investigation, it is found that both the first and second accused had been exploiting the victim girl and therefore, the petitioner is also liable for offence under Section 363, 366, 376(3), 372(2) (n) and 506(i) IPC and 4(2), 6(1) of POCSO Act 2019 and 3(1) (s), 3(1)(w)(i) and 3(2)(5)(5a) of SC/ST POA Act, 2016.

4. The complaint dated 26.06.2021 is only against this petitioner and the defacto complainant/minor girl had pointed a finger against this petitioner as the cause for her pregnancy and she has narrated how she was sexually exploited. After the DNA test conducted, comparing the samples of this accused and found that he is not the biological father of the child born to the defacto complainant, the prosecution story has taken a different turn. The defacto complainant has now disclosed the real culprit and the DNA examination was also has confirmed that he is the biological father.



5. In such circumstances, in all fairness for malicious prosecution implicating this petitioner and screening the real culprit, the prosecution ought to have taken necessary action against the defacto complainant and the person who has supported her to give false complaint. Instead, along with the real culprit, this innocent man has also roped as second accused and to shoot the convenience, the case records and evidence been tinkered by the Investigation Officer. The conduct of the Investigation Officer is apart from satisfaction. The material indicates that the allegation made by the defacto complainant against this petitioner is totally false and imaginary one for reasons best known.

6. This Court is of the view that there cannot be any prosecution in the absence of medical proof in favour of the petitioner regarding the pregnancy and which directly exposes falsehood of the victim girl made in her First Information Report and first statement to the learned Judicial Magistrate. Hence, the petition is allowed. The complaint against the petitioner is quashed. Connected Miscellaneous Petitions are closed.

06.11.2023

Internet : Yes/No
Index : Yes/No
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To



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1. The Special Court-Special Judge (POCSO Act),
Chengalpattu.
2. The Deputy Superintendent of Police,
District Crime Branch,
Maduranthagam Taluk,
Chengalpet District.
3. The Inspector of Police,
All Women Police Station,
Melmaruvathur,
Chengalpattu District.
4. The Public Prosecutor,
Madras High Court, Madras.

Dr.G.JAYACHANDRAN, J.



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