



Crl.O.P.No.6294 of 2023

In the High Court of Judicature at Madras

Dated : 05.9.2023

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.6294 of 2023
& Crl.M.P.Nos.3966 & 3967 of 2023

D.Jayapal

...Petitioner

Vs

1.State by the Inspector of
Police, W9 All Women
Police Station, Villivakkam
Police Station, Chennai.

2.Mrs.J.Lalitha

...Respondents

PETITION under Section 482 of the Criminal Procedure Code
praying to call for the records pertaining to Spl.C.C.No.110 of 2021 on
the file of the learned Special Court for Exclusive Trial of Cases under
the POCSO Act, Chennai and quash the same.

For Petitioner : Mr.M.Mohamed Muzammil

For Respondent-1 : Mr.A.Gopinath,
Government Advocate (Crl.Side)

Respondent-2 : appearing-in-person



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ORDER

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This is a petition filed by the petitioner seeking to quash the proceedings pending in Spl.C.C.No.110 of 2021 on the file of the learned Special Court for Exclusive Trial of Cases under the Protection of Children from Sexual Offences Act, 2012 (for short, the POCSO Act), Chennai.

2. The background of this case has been captured in the earlier order passed by this Court on 28.8.2023 and for proper appreciation, the same is extracted as hereunder :

"This is an unfortunate case where the second respondent, who is the wife of the petitioner has given a complaint before the first respondent to the effect that the petitioner had committed sexual assault against their daughter and based on this complaint, the first respondent has registered a First Information Report in Crime No.2 of 2021 on 04.05.2021. Pursuant to this complaint, the petitioner was arrested and remanded to judicial custody and ultimately, he was granted statutory bail u/s.167(2) Cr.P.C. This petition has been filed on the ground that there has been a compromise between the parties.

2. It is brought to the notice of this Court that the brother of the second respondent named Santhosh was the one who instigated the second respondent to give a complaint against the petitioner and based on the



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same, the compensation will be paid to their daughter by the Government and that can be utilized for running the family. As planned, the compensation amount was also paid by the Government to the tune of Rs.5,00,000/-. This amount was deposited in the bank account of the victim girl. It seems that the said Santhosh had taken away the entire amount from the bank and nothing was paid to the second respondent. The second respondent therefore gave a complaint before the first respondent against Santhosh and a First Information Report came to be registered in Crime No.30 of 2022.

3. The first respondent in the course of investigation arrested the said Santhosh and he was produced before the Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai, for remand on 15.11.2022. Learned Magistrate without properly appreciating the background facts, did not remand the said Santhosh to judicial custody on the ground that he was willing to pay to the second respondent a sum of Rs.2,10,000/-. Learned Magistrate acted upon the same and did not remand the said Santhosh.

4. This Court called for the CD file and Section 161 Cr.P.C. statement that was recorded by the respondent police reveals the entire story. It is seen that the said Santhosh with the help of the second respondent have orchestrated a false complaint against the petitioner as if he committed sexual assault against his daughter. Based on this complaint, the compensation was also taken from the State Government and the said Santhosh had happily taken away the entire amount. In the entire incident, the petitioner and the daughter, who



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is said to be mentally unstable are the actual victims.

5. There shall be a direction to the petitioner, second respondent and their daughter to be present before this Court during the next date of hearing.

Post this case under the same caption on 05.09.2023 at 05.00 p.m. at Chambers."

3. Pursuant to the above order, the petitioner, the second respondent and their daughter Jacqueline are present and the matter is heard in the chambers.

4. On developing a conversation with the second respondent, it is seen that she is a lady, who is incapable of taking any decision of her own. That apart, it is also brought to the notice of this Court that she is under psychiatric medication. The manner, in which, the second respondent expresses herself shows that she is not mentally stable and she is repeatedly complaining against her brother one Mr.Santhosh, who was instrumental for the entire happenings in this case.

5. The victim girl is also present and it is further seen that she is not mentally stable. It is again brought to the notice of this Court that



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she is under constant medication since she suffers from bouts of fits on a regular basis. She has categorically stated that she is taken care by her father and that she has absolutely no complaints against her father.

6. The petitioner, who is also present before this Court, has stated that he was working in the Southern Railways as a Khalasi and that he retired from service in the year 2021.

7. The facts of this case portray a sorry picture as to how the POCSO Act is being misused. In the instant case, the petitioner, the second respondent and their daughter are the collective victims for the manipulation done by the brother of the second respondent to make use of the situation and to unlawfully gain himself. He has knocked off a sum of Rs.5 lakhs that was given by the State Government and when he was arrested in Crime No.30 of 2022, he had paid a sum of Rs.2 lakhs to the second respondent. The Court concerned took the same into consideration, but did not even remand the said Mr.Santhosh. Probably, the Court concerned, to which, the said Mr.Santhosh was taken for remand, was not apprised of the true facts of the case.



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8. In the light of the above discussions, the continuation of the criminal proceedings as against the petitioner will result in abuse of process of court. Hence, this Court has absolutely no hesitation to quash the impugned proceedings.

9. Accordingly, the above criminal original petition is allowed and the proceedings pending in Spl.C.C.No.110 of 2021 on the file of the learned Special Court for Exclusive Trial of Cases under the POCSO Act, Chennai are quashed. Consequently, the connected Crl.M.Ps. are closed.

10. Before drawing the curtains, there shall be a direction to the first respondent namely the Inspector of Police, W9 All Women Police Station, Villivakkam, Chennai, who was investigating the first information report in Crime No.30 of 2022 to alter the offences against the said Mr.Santhosh and add appropriate offences under the POCSO Act for having made his sister, who is an illiterate, give a false complaint as if the petitioner had committed sexual assault on his own daughter. After the alteration report is filed, the accused person shall be secured and produced before the concerned Court for remand. This



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order shall form part of the case diary in Crime No.30 of 2022 and the remanding Court shall take into consideration the order passed in this criminal original petition. The concerned Court shall also ensure that the accused person - the said Mr.Santhosh deposits the balance of Rs.3 lakhs to the credit of Crime No.30 of 2022 on the file of the first respondent and the said amount shall be repaid back to the State Government. Similarly, the second respondent herein is also directed to refund the sum of Rs.2 lakhs to the State Government within a period of four weeks from the date of receipt of a copy of this order. Thus, the first respondent - police shall ensure that the total compensation of Rs.5 lakhs that was paid by the State Government is repaid.

05.9.2023

To

- 1.The Special Court for Exclusive Trial of Cases under the POCSO Act, Chennai.
- 2.The Inspector of Police, W9 All Women Police Station, Villivakkam Police Station, Chennai.
- 3.The Public Prosecutor, High Court, Madras.

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N.ANAND VENKATESH,J

RS

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