



Crl.O.P.No.6626 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.03.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.6626 of 2023
and
Crl.M.P.Nos.4158 and 4161 of 2023

Ayyasamy

...Petitioner

Vs.

1. The State of Tamilnadu,
represented by the Inspector of Police,
All Women Police Station,
Nagapattinam.

2. Senthil Kumar

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the proceeding in Special Sessions Case No.38 of 2020, on the file of the Special Court under POCSO Act, Nagapattinam.

For Petitioner : Mr.M.Madhuprakash
For R1 : Mr.S.Santhosh
Government Advocate (Criminal side)



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ORDER

WEB COPY This Criminal Original Petition has been filed calling for the records and quash the proceeding in Special Sessions Case No.38 of 2020, on the file of the Special Court under POCSO Act, Nagapattinam.

2. The learned counsel for the petitioner submitted that though the final report was filed against the petitioner for the offences under Section 452 of IPC, Sections 9(a)(iii), 9(a)(iv), 9(c) and 10 of POCSO Act, the material witnesses in this case, namely, the victim, her father and her brother have not supported the case of the prosecution. They turned hostile and therefore, continuation of the Trial proceedings will be an abuse of process of law and he prayed for quashment of Special Sessions Case No.38 of 2020, on the file of the Special Court under POCSO Act, Nagapattinam.

3. In response, the learned Government Advocate (Criminal side) submitted that all the witnesses had been examined in this case. When that be the case, the prayer for quashing the proceeding cannot be entertained.



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4. Considered the rival submissions and perused the records.

5. The FIR allegations and the final report show the case of the prosecution is that the defacto complainant's wife had left him leaving the minor daughter and minor son in custody of the defacto complainant. Two months back, the defacto complainant gave a petition before the Tiruvarur Court for restitution of conjugal right. Thereafter, four persons way laid the defacto complainant and threatened him to withdraw the case. In this regard, he gave a complaint at Nannilam Police Station. The petitioner, who is a Police Constable at Nannilam Police Station, came to enquire the defacto complainant. Since he was not at home, he enquired the house owner and left. Again, he came to his house at about 03.30 p.m, on 21.12.2019. Defacto complainant was not there at home. When his minor daughter informed the petitioner that her father is not at home, he gave Rs.10/- to the son of the defacto complainant and asked him to buy bubblegum for him and chocolate to the son of the defacto complainant. Thereafter, he entered into the house and committed sexual assault on his minor daughter. Minor daughter escaped from him and informed the house owner. House owner told the petitioner to come and enquire the defacto complainant after he returns home. On the basis of the



complaint, FIR in Crime No.20 of 2019 for the offences under Section 450 of IPC, Sections 9(a)(iii) and 10 of POCSO Act was registered and after the investigation, final report was filed for the offences under Section 452 of IPC, Sections 9(a)(iii), 9(a)(iv), 9(c) and 10 of POCSO Act.

6. It is the submission of the learned counsel for the petitioner that the prosecution witnesses, especially the victim girl P.W.1, her father (defacto complainant) and her brother P.W.3 have all turned hostile and not supported the case of the prosecution.

7. This Court on going through the records finds that the victim girl and her brother had been examined as P.W.1 and P.W.3 respectively. They gave their statements under Section 164 Cr.P.C before the learned Judicial Magistrate and supported the prosecution case. It is not known under what circumstances they have not supported the case of the prosecution and turned hostile. Witnesses turning hostile is not the ground for quashing the criminal proceedings. If the Court comes to the conclusion that the witnesses are giving false evidence, the Court can initiate proceedings against the witnesses for giving false evidence.



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8. In this view of the matter and also the fact that the materials filed along with the final report supports the prosecution case, this Court is not inclined to entertain this petition for quashing the proceeding in Special Sessions Case No.38 of 2020, on the file of the Special Court under POCSO Act, Nagapattinam.

9. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

27.03.2023

mn

Index: Yes/No

Speaking Order: Yes/No



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G.CHANDRASEKHARAN.J.,

mn

To

1. The Special Court under POCSO Act, Nagapattinam.
2. The Inspector of Police,
All Women Police Station,
Nagapattinam.
3. The Public Prosecutor,
High Court of Madras.

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and
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