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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/06/2023

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The Hon'ble Mr. Justice **G. ILANGO VAN**

Cr1.OP(MD)No.6495 of 2023

and

Cr1.MP(MD)Nos.5689 and 5691 of 2023

1.P.Kannan
2.K.Perumal
3.P.Mariyammal
4.A.Palpandi
5.P.Nagajothi : Petitioners/A1 to A5

Vs.

1.State rep. by
The Inspector of Police,
Peraiyur Police Station,
Madurai District.
(Crime No.223 of 2021) : R1/Complainant
2.Radhamani : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in connection with Special SC No.207 of 2021 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, in connection with Crime No.233 of 2021 on the file of the Inspector of Police, Peraiyur Police Station, Madurai District and quash the same in respect of petitioners, devoid of merits and illegal.



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2

For Petitioners : Mr.C.Prithviraj

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking quashment of the case in Special SC No.207 of 2021 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, in connection with Crime No.233 of 2021 on the file of the Inspector of Police, Peraiyur Police station, Madurai District.

2.The case of the prosecution in brief:-

A1 was working as Driver and the victim was studying in 10th standard at the time of the occurrence. A1 started loving her and he is the aunt's son of the victim. The above said love affair was brought to the notice of the parents of A1 namely A4 and A5. They warned his son namely A1. So he went to Coimbatore and working there. Three months prior to the occurrence and complaint, he came down to the village and took the victim to Coimbatore, promising to marry her. She was



staying in one Manoharan's house. Knowing fully well that the victim was below 18 years, the marriage was performed in that house itself. They were living for about two months and during that period, he had sexual intercourse with the victim. Because of Covid-19 spread, both of them returned to A.Paraipatti, started staying in another aunt's house. Again, marriage was performed on 23/05/2021 before Elumalai Subramanian Temple, started living in Al's house as husband and wife. Because of the joint living, the victim become pregnant. The above said incident was brought to the notice of the de-facto complainant, over which, a complaint was given and the case was registered in Crime No.233 of 2021 for the offences under sections 5(1), 6, 4(2), 5(j)(ii), 5(n), 16 and 17 of POCSO Act, 2012, sections 366, 344 and 376(3) IPC and sections 9 and 10 of the Child Marriage Restraint Act, 1929. After completing the formalities of investigation, final report was filed and it was taken cognizance in Special SC No.207 of 2021 by the Special Court for Exclusive Trial of POCSO Act cases, Madurai.



3.Now seeking quashment of the same, all the accused are before this court on the ground that it was love affair between A1 and the victim; Now the victim attained major. On that account, quashment is sought for stating that a child is also born to them.

4.Heard both sides.

5.The allegation of child marriage. It is not in dispute that the victim was born, on 15/07/2006. As per the school records, the date of occurrence stated to be on 23/05/2021 and it is the second time marriage and the date of occurrence namely the taking of the victim to Coimbatore is not mentioned in the final report. We can take the second occurrence as the date of the marriage. So, on 23/05/2021, she was only 14 +.

6.Even though, it has been stated by her during the course of investigation that she was in love with A1 and also went along with him, later, married, age of 14 + is not the age, either for selecting the partner or for having conjugal relationship. Even now, she has not attained majority, but delivered a child.



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7.It is not the case of the petitioners that without knowing the correct age of the victim girl, A1 married the victim girl for the first time and second time marriage was also arranged. No doubt that the victim and A1 are very close relatives. They ought to have waited till the victim attains majority. Even before attaining the majority, the above said wrong is performed. It is an admitted one. Simply because, the child was born to them, no purpose is going to be served cannot be a matter for consideration by this court.

8.The illegality committed cannot be a ground to quash the petition, even though the victim does not support the prosecution. The fact remains that the victim is a minor and the trial must be taken to its conclusion. This nature of offence cannot be quashed on the ground that they are living as husband and wife and having a child. So this ground is not at all available and cannot be taken into account. So, I find no reason to quash the petition.



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9. In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

12/06/2023

Index:Yes/No
Internet:Yes/No

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To,

1. The Special Court for Exclusive trial of cases under POCSO Act, Madurai.
2. The Inspector of Police, Peraiyur Police Station, Madurai District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.



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7

G.ILANGOVAN, J

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12/06/2023



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