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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13/06/2023

CORAM

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

Cr1.OP(MD)No.19544 of 2022

and

Cr1.MP(MD)No.13335 of 2022

1.Sathis Kumar
2.Mahesh
3.Antony
4.Rani
5.Navis

: Petitioners/A1 to A5

Vs.

1.State represented by
The Sub Inspector of Police,
AWPS Police Station,
Thoothukudi District.
(In Crime No.16 of 2019)

: R1/Complainant

2.XXXXX
XXXXX

Thoothukudi District.

: R2/De-facto Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the impugned records of charge sheet in Special SC No.68 of 2021 on the file of the Special Court for exclusive trial of cases under POCSO Act, Thoothukudi and quash the same against the petitioner as illegal and pass such further or other orders.



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2

For Petitioners : Mr.S.M.A.Jinnah
For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor
For 2nd Respondent : No appearance

O R D E R

This criminal original petition has been filed seeking quashment of the case in Special SC No.68 of 2021 on the file of the Special Court for exclusive trial of cases under POCSO Act, Thoothukudi.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that when she was studying in a school, the first accused following her stating that he is love with her. When the above said proposal was not accepted by her, he started threatening to commit suicide. So, she fell in love with him. In the meantime, in the month of May-2018, when she was alone in the house, he tried to come there. But she refused. Under threat, she agreed for visiting during night hours and under the promise of marriage, she was subjected to sexual intercourse. Later, he started making threat that he will commit suicide after killing her. So, she did not disclose the same to any one. The



above said affair continued for sometime. She was under continuous threat by the accused persons. When the affair came to the knowledge of the parents, they warned her stating that the first accused is not having good conduct. On one occasion, she was compelled to leave the house. She was taken to Thiruvananthapuram, staying there for three days and she was subjected to intercourse. On 20/01/2019, she was taken to a Church and performed marriage, after, she became pregnant. As per the medical advise, he avoided the physical relationship and that was not liked by the first accused. But she was subjected to forcible intercourse. Because of that, abortion occurred. On 11/06/2019, she saw the picture of the first accused, wherein she found some girls photos. When she was making enquiry, she was abused and also assaulted by the accused persons. The above said incident was informed to her parents. They also came there. They were also threatened and abused. She was taken to her parental home. But however, the accused persons continued the threat. On the basis of the occurrence, a case was registered in Crime No.16 of 2019 for the offences under section 5(1), 6 of POCSO Act and sections 366(A), 493 and 506(i) IPC and section 9, 10 & 11 of the Prohibition of Child Marriage



Act, 2006. After completing the formalities of investigation, charge sheet was filed and it was taken cognizance in Special SC No.68 of 2021 by the Special Court for exclusive trial of cases under POCSO Act, Thoothukudi.

3. Seeking quashment of the same, this petition has been filed on the ground that on the date of the alleged occurrence, the victim was major and what happened was, only consensual relationship and also performed the marriage. Now after the marriage, they are jointly living together as husband and wife.

4. Even though, the second respondent was served, she has not chosen to appear.

5. The marriage photographs of the victim and this petitioner is enclosed in the typed set of papers. Even in the complaint itself, the de-facto complainant stated that they performed the marriage in a Church.

6. To know the correct date of birth of the victim girl, the petitioners were directed to produce the birth



certificate, wherein, we see that the date of birth of the victim is mentioned as 23/07/2001. The date of occurrence is stated to be 20/01/2019. On the date of the alleged occurrence I.e., on 20/01/2019, she was 18+. So, she was major at that time. But without verifying the occurrence date and the date of birth of the victim, final report has been filed as if she was below 18 years at the time of the occurrence. Even, the final report does not indicate the date of birth of the victim. So, the filing of FIR and final report under the provisions of Prohibition of Child Marriage Act, 2006 and sections 5(1) and 6 of the Protection of Child from Sexual Offences Act, 2012, *prima facie* illegal and not proper.

7.Now, it has been stated that both are living as husband and wife. They have no difference of opinion. So nothing more is required to be tried and subjecting the petitioners to undergo the trial process, will be making an exercise in futility. On that score, this petition is liable to be allowed.



8. In the result, this criminal Original Petition is **allowed**. The case in Special SC No.68 of 2021 on the file of the Special Court for exclusive trial of cases under POCSO Act, Thoothukudi is herein quashed as against the petitioners. Consequently connected Miscellaneous Petition is closed.

13/06/2023

Index:Yes/No
Internet:Yes/No

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To,

1. The Special Court for exclusive trial of cases under POCSO Act, Thoothukudi.
2. The Sub Inspector of Police, AWPS Police Station, Thoothukudi 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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