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CrI.O.P.(MD)No.19797 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/12/2023

CORAM

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

CrI.OP (MD)No.19797 of 2023

and

CrI.MP (MD)No.15520 of 2023

Balasubramaniyan : Petitioner/Accused

Vs.

1.The State represented by
The Inspector of Police,
Ayyapuram Police Station,
Tirunelveli District.
(Crime No.13 of 2019) : R1/Complainant

2.Karpagaselvi : R2/De-facto Complainant

PRAYER:-Criminal Original Petition has been filed under section 407 of the Criminal Procedure Code, to withdraw the case in Special CC No.275 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act cases, Tirunelveli, Tirunelveli District and to transfer the same to the Mahila Court, Tirunelveli.

For Petitioner : Mr.V.Kathirvelu
Senior counsel
for Mr.K.Prabhu

For 1st Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



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O R D E R

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This criminal original petition has been filed seeking withdrawal of the case in Special CC No.275 of 2019 on the file of the Sessions Judge, Special Court for POCSO Act cases, Tirunelveli, Tirunelveli District and to transfer the same to the Mahila Court, Tirunelveli.

2.The case of the prosecution is that the petitioner herein is the accused. The de-facto complainant/2nd respondent in his complaint has stated that she is the mother of victim. Her daughter and the petitioner were in love with each other. And on 01.02.2019 at about 11.00 pm in the farmland, the petitioner had sexual intercourse with the victim and thereafter, the parents of the victim has condemned the acts of the petitioner as well as the victim. On 26.02.2019 at about 23.00 hours, the petitioner kidnapped the victim girl and taken her to Kalugumalai, Nattukottai and they came back to their native place on 01.03.2019. On basis of the complaint given by the de-facto complainant, a case in Crime No.13 of 2019 was registered for the offences under sections 366(A), 376 IPC and sections 4 and 5(s) of Protection of Child from Sexual Offences Act, 2012 and section 3(1)(w) (i) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. After



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completing the investigation, final report was filed and it was taken cognizance in Spl. CC No.275 of 2019 by the Sessions Judge, Special Court for POCSO Act cases, Tiruvenlveli and some of the witnesses were also examined.

3.The case of the petitioner is that, in the meanwhile POCSO Committee meeting was held and a Circular was issued to all the Sessions Judges of Special Courts. As per the Circular in Roc.No.68177/2019/G4 dated 16.9.2022, the Special Courts have to transfer all the non-serious POCSO Act cases like love affairs, elopement, etc., to the Mahila Courts/Fast Track Mahila Courts(Additional Special Courts) and directed them to concentrate in quick disposal. But even after that, the case of the petitioner was not transferred and hence, the petitioner filed transfer application before this court in Crl.O.P(MD) (SR)No.5159 of 2023 and the same was returned with endorsement to approach the concerned Principal Sessions Judge. And thereafter the petitioner had filed the transfer application before the Principal Sessions Judge, Tirunelveli in Crl.M.P.No.2664 of 2023. It was dismissed with liberty to approach the concerned POCSO court. Hence, the petitioner again filed a transfer petition before the Sessions Judge, Special Court for



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POCSO Act, cases Tirunelveli and the same was dismissed in Crl.MP No.1763 of 2023 dated 30.08.2023 on untenable grounds. Since this case comes under the love affairs, the present petition has been filed.

4.Heard both sides.

5.As stated in the preamble portion of this order, this petitioner was an auto driver and the victim girl was a student, used to go to school in the auto.

6.It is stated by the prosecution that this petitioner misbehaved with the victim girl several times and had subjected her to sexual intercourse; Later, she was kidnapped to various places and dropped, on 01/03/2019; So *prima facie*, it is seen that the victim girl was subjected to frequent sexual penetrative assault by this petitioner.

7.Now it has been stated that the victim and this petitioner fell in love with each other. After completing the investigation, final report has been filed, taken cognizance in Spl.CC No.275 of 2019. Now the trial is about to be completed before the trial court, posted for the defence side evidence.



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8.At that time, this petition came to be filed by this petitioner by relying upon the Circular issued by the POSCO Committee attached to High Court in ROC No. 68177/2019/G4, dated 16/09/2022. The Circular reads as follows:-

"Pursuant to the Order issued by the Government in the reference eight cited, and as Ordered, the Special Court for exclusive trial of cases under POCSO Act, At Chennai/Coimbatore/Cuddalore/Kancheepuram at Chengalpattu/Kanniyakumari at Nagercoil/Madurai/Nagapattinam/Salem/Sivagangai/Thanjavur/Tirunelveli/Tiruvannamalai/Thoothukudi/Vellore/Villupuram/Virudhunagar @ Srivilliputhur will be the Principal Special Courts for exclusive trial of cases under POCSO Act, and the existing Mahila Courts/Fast Track Mahila Courts in these Districts will be the Additional Special Courts for trial of POCSO Act cases.

2.Consequently, the Sessions Judge, of the Principal Special Courts, Chennai/Coimbatore/Cuddalore/Kancheepuram at Chengalpattu/Kanniyakumar at Nagercoil/Madurai/Nagapattinam/Salem/Sivagangai/Thanjavur/Tirunelveli/Tiruvannaalai/Thoothukudi/Vellore/Villupuram/Virudhunagar @ Srivilliputhur are hereby directed to transfer non-serious POCSO Act cases like love affair, elopement, etc., to the Mahila Courts, Fast Track Mahila Courts (Additional Special Courts) and concentrate in quick disposal of serious POCSO offence.

3.The receipt of this Official Memorandum is required to be acknowledged."



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9. When this case was moved, at the time of admission, a question was raised with the learned Senior counsel for the petitioner as to why they reluctant to face the prosecution before the trial court. At that time, it was informed to this court that it is purely a love affair. The trial court ought to have complied the Official Memorandum issued by the High Court in ROC No.68177/2019/G4, dated 16/09/2022. They wanted to invoke the RCO or to be complied by the trial court.

10. This court is completely at loss to understand the reasoning given by the petitioner. The accused cannot choose the forum on his own. More particularly, when the petitioner is ready to face the prosecution before the some other Judge, why he is hesitating to face the trial court is completely not understandable.

11. Circulars are being issued from time to time for regulating the proceedings before the trial courts. Almost the Circulars are being issued on the basis of the situation prevails at a particular time. The main reason for such a circular is evident from the reasoning given, wherein it has been stated that the Special Courts can transfer non-serious POCSO Act cases like love affairs, elopement, etc., to the Mahila Courts, for the purpose of



avoiding concentration of more cases under the Special Act. For the purpose of concentrating on serious POCSO offence by the Special Court, such a Memorandum is issued. So this must be construed as advise given to the Special Courts to concentrate on the more specified serious offence. Whether it is purely a love affair or a case of elopement left to the power of the Special Court to assess the situation on the materials placed.

12.Two attempts have made by the petitioner to get the case transferred to the Mahila Court. One to the Principal Sessions Judge and another before the trial court itself. I am not going into the merits of the orders passed by the two Courts. But the idea behind the petitioner makes this court to be more cautious, when exercising the power under section 407 Cr.P.C.

13.Reading of the order passed by the Special Court does indicate that the prosecution is completed and posted for defence side evidence. At that time, without leading the defence side evidence, this petitioner indulged in filing repeated applications for transfer. This is the third attempt on the part of the petitioner.



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14.As mentioned above, he cannot choose the forum. If such sort of exercise is allowed to be excised by the petitioner, then no trial will be completed in a fair and just manner. Internal circulars are issued by the High Court from time to time is to facilitate the smooth functioning of the Courts. Nor meant to help the accused or the complainant as the case may. The attempt on the part of the petitioner to invoke the jurisdiction of this court by relying upon the internal circular in ROC No. 68177/2019/G4, dated 16/09/2022 is completely out of place and cannot be encouraged at all.

15.When the case is posted for defence side evidence, the petitioner ought to have co-operated with the trial court to complete the process of trial by producing the defence side evidence so far. Even. So this sort of attitude cannot be and should not be encouraged.

16.The maintainability of this petition on the basis of the official memorandum, itself is totally untenable. I find no reason to transfer the trial process.



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17.In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal Sessions Judge,
Tirunelveli District.
- 2.The Sessions Judge,
Special Court for POCSO Act Cases,
Tirunelveli.
- 3.The Inspector of Police,
Ayyapuram Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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