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Crl.R.C.No.677 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2023

PRONOUNCED ON : 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.677 of 2023 and
Crl.M.P.Nos.5113 & 5121 of 2023

1.Parimala
2.Revathy
3.Rathinam

... Petitioners

Vs.

1.The State, Rep. By,
Inspector of Police,
Karumathampatty Police Station,
Coimbatore District.
Crime No.207/2017.

2.Ramya

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order of dismissal dated 20.03.2023 in Crl.M.P.No.1176 of 2022 in Spl.C.C.No.11 of 2019 on the file of the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore by allowing the present Criminal Revision Case.

For Petitioners : Mr.R.Prabhakaran

For R1 : Mr.S.Sugendran,
Additional Public Prosecutor

For R2 : Ms.B.S.Ajeetha, Legal Aid Counsel



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ORDER

The petitioners/A4, A5 & A7 have filed a petition under Section 227 of Cr.P.C., in Crl.M.P.No.1176 of 2022 in Special C.C.No.11 of 2019 before the learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore (trial Court). The trial Court *vide* order, dated 20.03.2023 dismissed the same, against which, the present Criminal Revision Case has been filed.

2.The case of the prosecution is that the defacto complainant/2nd respondent/victim girl is a deaf and dumb by birth and she joined deaf and dumb school in Athupalayam and another victim girl/LW2 joined school at Murugapalayam at Tirupur district. They studied up to 7th std. A1 is the Correspondence of the school, who is also a deaf and dumb. A2 is the Treasurer and A3 is the Supervisor. A4 is the hostel warden. A5 and A6 are deaf and dumb studied in the school and closely associated with A1. A7 is the Physical Education Teacher. A2 to A4 threatened and forced the students studying in the school to give in to the lust of A1. When the 2nd respondent aged about 13 years, A1 called her to his room, made her to sit on his lap, kissed and molested her. Since the 2nd respondent hailing from poor family, she



was in need and support of the school. Taking advantage of the position, A1 committed penetrative sexual assault on her. The 2nd respondent transferred to another school from Athupalayam to Murugapalayam school. While she was studying there, A1 through A2 called the 2nd respondent's mother and informed that the 2nd respondent unable to study further and she can be used as domestic help for A1. The 2nd respondent's mother insisted that her daughter to continue her study and get computer training, so that she can sustain herself independently in future. The 2nd respondent was forced to stay in the school and asked to do domestic works of washing clothes and vessels.

3.In the year 2007, A1's wife Jayanthi delivered a baby and the 2nd respondent was asked to be a help for her. During that period, A1 forcibly took the 2nd respondent to bedroom and committed penetrative sexual assault. Further, she was threatened that her relationship with Sathivel would be exposed and thereby, retained her forcibly in his custody. A4 and A5 forcibly administered liquor to 2nd respondent. When she was in semi-conscious stage, taking advantage of it, A1 continued his sexual assault on her. Due to which, the 2nd respondent became pregnant and she was forcibly given juice and horlicks to ensure forcible abortion. Further, A1 and A4 questioned the pregnancy of the 2nd respondent. A5 and A6 forcibly aborted the foetus by



administering pills. Since the abortion not complete, she was taken to Doctor Sumathi Rajan at Pollachi and DNC done. On the complaint, a case in Crime No.207 of 2017 was registered for offence under Sections 376(2), 376(2)(d), 376(2)(n), 376(2)(l), 376C, 313, 109 & 506(i) of IPC on 09.05.2017 against six accused. On conclusion of investigation, charge sheet filed for offence under Sections 313, 109 & 506(i) of IPC and Sections 5(f), 5(l), 5(k), 6, 16 & 17 of the Protection of Children from Sexual Offence Act, 2012 citing 26 witnesses as LW1 to LW26 and documents before the learned Judge, Mahila Court, Coimbatore in C.C.No.03 of 2018 and thereafter, the same was transferred to the file of the Principal Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore and renumbered as Special C.C.No.11 of 2019. During the pendency of trial, the petitioners/A4, A5 & A7 filed a petition under Section 227 of Cr.P.C., in Crl.M.P.No.1176 of 2022 in Special C.C.No.11 of 2019 before the learned Sessions Judge, Principal Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore (trial Court). The trial Court *vide* order, dated 20.03.2023 dismissed the discharge petition, against which, the present Criminal Revision Case filed.



4.The learned counsel for the petitioner submitted that the petitioners are the students of Deaf and Dumb school at Murugapalayam and Kothapalayam and they are known to the 2nd respondent, all studied in the same school and stayed in hostel. The petitioners not involved in any offence as projected against them. With malafide intention and ulterior motive, they arrayed as accused in this case along with other accused. The petitioners herein never abetted any offence as projected against them. The trial Court mechanically took cognizance of the charge sheet without any supporting materials. Earlier, the petitioner approached this Court and filed Crl.O.P.No.27961 of 2019 seeking to quash C.C.No.3 of 2018. This Court initially granted stay of the proceedings and later, on 13.07.2022 dismissed the same with a direction to the trial Court to complete the trial within a reasonable period of 90 days from the date of receipt of the order.

5.He further submitted that trial Court passed the impugned order in hast, mechanical manner in view of the directions issued by this Court in Crl.O.P.No.27961 of 2019, hence, failed to follow established principles laid by the Hon'ble Apex Court in the case of “***P.Ramachandra Rao Versus State of Karnataka reported in (2002) 4 SCC 578***” wherein it is held, the Courts cannot prescribe any specific time limit for the conclusion of a criminal trial. Further



failed to sift the evidence to find out whether there is *prima facie* materials thereto proceed against the petitioners.

6.He further submitted that the FIR in this case registered on 09.05.2017 in which the occurrence period is between 2002 and 2012. During that period, the petitioners were minor. The 1st petitioner born in the year 1989, the 2nd petitioner born in the year 1992 and the 3rd petitioner born in the year 1987. The 2nd respondent herein was born in the year 1988 and they were on the same age group, grew up together in the school and hostel. When the 2nd respondent was a minor, it is confirmed that the petitioners are also minors and they ought to be proceeded under relevant provisions of the Juvenile Justice Act. If taking the case to be true, then also the petitioners cannot be prosecuted in the above case before the POCSO Act. They have to be tried separately in the Juvenile Justice Board. Referring to the judgment of the Hon'ble Apex Court in the case of “*State of Rajasthan Versus Bhanwar Singh* reported in (2004) 13 SCC 147” the learned counsel submitted that the delay in lodging the FIR affects the credibility of the prosecution case. In this case, the alleged occurrence is during the period between 2002 and 2012, but FIR registered only in the year 2017, no reason given for the inordinate delay.



7.It was further submitted that A1's wife Jayanthi developed extramarital affair with one Pandiyan, opposed by A1 and for that reason, the 2nd respondent used Jayanthi to foist case with ulterior motive. After registration of the case the said Jayanthi took over the administration of the Deaf and Dumb school from A1. For this reason, the petitioners are also arrayed as accused, as though they abetted and committed the offence. In this case, the 2nd respondent's husband is none other than the 2nd petitioner's brother. Having such close relationship, why the facts not disclosed earlier and for what reason lodging the complaint belatedly against the petitioners, no reasons given. The Investigating Officer not considered these aspects but merely gone by the statement of the 2nd respondent/LW1 and LW2. It is to be seen that Jayanthi filed W.P.No.15877 of 2017 claiming herself as a Correspondent of the school and obtained various orders against A1. In this case, no preliminary assessment done by the Board under the Juvenile Justice Act when it clear that the petitioners were also juvenile as of 2nd respondent. No reasons available to entertain the 2nd respondent's complaint.

8.He further submitted that for offence under Section 313 Cr.P.C., the prosecution submitted the statement of the Doctor Sumathi Rajan, which is a bald one. The Doctor not identified the accused are the person who



accompanied the 2nd respondent and not identified the 2nd respondent. The

Doctor admission is that five years before one person came for DNC treatment and she is unable to identity the persons and give details. In the 164 Cr.P.C., statement, the 2nd respondent/victim girl stated that she was forced to throw the girl baby which is contradictory to the medical evidence collected in this case. The 2nd respondent being the Deaf and Dumb girl, it would not be possible for Deaf and Dumb person to read or write like a normal person, hence, the 2nd respondent lodging the complaint on her own is not possible. When the foundational facts of the case gets demolished, the other facts based on the complaint is nothing but a figment of imagination woven by the Investigating agency. In this case, the trial Court ought to have invoked Section 2(13), 2(14) & 2(15) of the Juvenile Justice Act but the trial Court merely gone on by the dismissal of the quash petition by this Court and not considered the materials and documents produced in this case. Hence, he prayed for setting aside the impugned order.

9.In support of his submissions, the learned counsel for the petitioners relied on the following decisions:

- State Versus A.H.Bhiwandiwalla reported in 1954 SCC OnLine Bom 101.



- Bhagirath Kanoria and others Versus State of M.P., reported in (1984) 4 SCC 222.
- Hardeep Singh Versus State of Punjab and others reported in (2014) 3 SCC 92.
- Adjudicating Officer, Securities and Exchange Board of India Versus Bhavesh Pabari reported in (2019) 5 SCC 90.
- P.Ramachandra Rao Versus State of Karnataka reported in (2002) 4 SCC 578.
- Rajeev Kourav Versus Baisahab and Ors., in Criminal Appeal No.232 of 2020.
- Indresh Kumar Versus the State of Uttar Pradesh & Anr., reported in 2022 LiveLaw (SC) 610.
- Placed reliance on the Protection of Deaf Suspects' Right to Understand Criminal Proceedings.
- For the maintainability of the discharge petition and the revision petition after dismissal of the quash petition, the learned counsel for the petitioner placed reliance in the case of “*Kuldeepshingh and Ors., Versus State of Madhya Pradesh* reported in *1989 MPLJ 343.*”

10.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that the 2nd respondent/victim girl was sexually abused over a period of time by A1 with active aid and support of the other accused. Taking advantage of the 2nd respondent's health, poverty and position, A1 forced her and had penetrative sexual assault on many occasions. Due to



which, the 2nd respondent got pregnant and later, she was administered pills for abortion. Thereafter, the petitioners took her for DNC to a private hospital for clearing the remaining foetus. On the complaint of the 2nd respondent, a case in Crime No.207 of 2017 was registered for offence under Sections 376(2), 376(2)(d), 376(2)(n), 376(2)(l), 376C, 313, 109 & 506(i) of IPC. A1 arrested on 09.05.2017 and immediately, the 164 Cr.P.C., statement of the 2nd respondent/LW1 and other victim/LW2 recorded. On conclusion of the investigation, the 1st respondent filed charge sheet before the learned Judge, Mahila Court, Coimbatore in C.C.No.3 of 2018 and thereafter, it was transferred to the Principal Special Court for Exclusive Trial of cases under POCSO Act, Coimbatore and renumbered as Special C.C.No.11 of 2019 arraying A1 to A7 as accused listing LW1 to LW26 and documents. The role played by each of the accused with relevant statement of witnesses correlated in the final report. A1 successfully dragging on the case from the year 2018 to 2021 by not appearing before the trial court and thereafter, NBW was issued on 16.08.2021. Later it was recalled during April 2021. The petitioners herein earlier filed quash application in Crl.O.P.No.27961 of 2019 and the same was dismissed on 13.07.2021 with a direction to the trial Court to complete the trial within a reasonable period of 90 days. Challenging the same, the petitioners approached the Hon'ble Apex Court by filing Special Leave Petition (Criminal)



Diary No.37974 of 2022 and the same was dismissed on 20.01.2023. The 1st

respondent filed final report before the trial Court against A1 to A7 and the charges against the accused is as follows:

S.No.	Rank of the Accused	Charges
1	A1	Section 5(f)(l)(k) r/w 6 of POCSO Act and Section 313 and 506(i) of IPC
2	A2	Section 6 r/w 16 r/w 17 of POCSO Act r/w 109 and 506(i) of IPC
3	A3	Section 6 r/w 16 r/w 17 of POCSO Act and Section 313 r/w 109 and 506(i) of IPC
4	A4	Section 6 r/w 16 r/w 17 of POCSO Act and Section 313 r/w 109 and 506(i) of IPC
5	A5	Section 6 r/w 16 r/w 17 of POCSO Act and Section 313 r/w 109 and 506(i) of IPC
6	A6	313 and 506(i) of IPC
7	A7	16 r/w 17 of POCSO Act

11.He further submitted that the petitioner filed Crl.M.P.No.1176 of 2022 to transfer the case from POCSO Court to Juvenile Justice Board claiming that they are juvenile and aged about 13 years, 10 years and 15 years at the time of first incident in the year 2002. The age of the victim and the petitioners and their date of majority as per their birth certificate and school transfer certificate are as follows:



Name	Date of Birth	Date of Majority (18 years completed)
VICTIM	24.04.1988	25.04.2006
A4 Pramila	29.05.1989	30.05.2007
A5 Revathy	09.07.1986	10.07.2004
A7 Rathinam	11.05.1989	12.05.2007

12.He further submitted that the final report made ready as early as on 08.08.2017. By filing one petition or other, the petitioner successfully dragging on the case. The juvenility of the petitioner cannot be considered in this case in view of Section 472 Cr.P.C. The points raised by the petitioners already raised in the quash application and this Court dismissed the quash petition by a detailed order which was confirmed by the Hon'ble Apex Court. Thereafter, on the similar grounds, discharge petition filed and the same dismissed by the trial Court. The filing of discharge petition is yet another instant to drag on the proceedings before the trial Court. Hence, this revision to be dismissed with a direction to complete the trial within a specified period.

13.The learned counsel appearing for the 2nd respondent narrated the sufferings of LW1, LW2 and how A1 in this case with the aid and active participation of other accused including the petitioners committed the penetrative sexual assault on the victim girl over a period of time. She further



submitted that taking advantage of the 2nd respondent's poverty and health condition, A1 forcibly made the 2nd respondent to stay in the hostel of the school and continued penetrative sexual assault. The 2nd respondent got pregnant and she was forced to take liquor, made her semi-conscious and A1 committed penetrative sexual assault. Due to such acts, the 2nd respondent became pregnant, which was aborted by indigenous method and also by administering pills by the petitioners. Due to which, the 2nd respondent underwent unbearable stomach pain, cried and she was taken to the Doctor Sumathi Rajan. The Doctor in her statement confirmed that a deaf and dumb girl was brought to her and the Doctor gave DNC treatment to the 2nd respondent. Due to passage of time, the Doctor was unable to put a face to the persons who brought the victim, but she is categorical that a deaf and dumb girl was brought to her and she gave treatment.

14.It is further submitted that the 2nd respondent/LW1 narrated the sexual assault of the accused in her complaint as well as 164 Cr.P.C., statement confirmed that it was Doctor Sumathi Rajan treated her for DNC. As per Section 472 Cr.P.C., it is a continuing offence and the last day of occurrence has to be considered as the reckoning date. Hence, the petitioners cannot claim any juvenility and benefits of the Juvenile Justice Act. In this case, 25



witnesses cited of which LW1 and LW2 are the victims, LW3 and LW4 are the husband of the victims. LW3 and LW4 confirmed the victims' suffering and they subjected to the penetrative sexual assault at the hands of the accused. In this case, the 2nd respondent/victim girl was examined with assistance of interpreter for deaf and dumb. During investigation, the accused arrested, confession statements recorded and inmates of the school and hostel examined, collected medical records, school certificate and age certificates collected from LW18 & LW23. On completion of investigation, charge sheet filed before the trial Court. Though the charge sheet filed as early as on 08.08.2017, the petitioners and other accused by filing one petition or other successfully dragged on the proceedings. This Court dismissed the quash petition filed by the petitioners in Crl.O.P.No.27961 of 2019 on 13.07.2022 with a direction to the trial Court to complete the trial within a reasonable period of 90 days from the date of receipt of the order. After dismissal of the same, the petitioners filed Special Leave Petition (Criminal) Diary No.37974 of 2022 and the same was dismissed on 20.01.2023. In view of the same, the petitioners discharge petition ought to have been dismissed in *limine* but the trial Court gave opportunity, heard the petitioners, victim, Public Prosecutor and thereafter, by a detailed and well reasoned order, dismissed the discharge petition, which needs no interference.



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15. In support of her submissions, the learned counsel for the 2nd respondent relied on the following decisions:

- State of Madhya Pradesh Versus Deepak reported in (2019) 13 SCC 62 for the principles initiated in considering the discharge petition.
- Vikas Chaudhary Versus State (NCT of Delhi) and another reported in (2010) 8 SCC 508 for the point of continuing offence under Section 472 Cr.P.C.

16. Considering the submissions and on perusal of the materials, it is seen that the petitioners earlier filed quash petition in Crl.O.P.No.27961 of 2019 before this Court to quash the proceedings in C.C.No.3 of 2018 and this Court by order, dated 13.07.2022 dismissed the same with a direction to the trial Court to complete the trial within a reasonable period of 90 days. Challenging the same, the petitioners preferred an appeal before the Apex Court in Special Leave Petition (Criminal) Diary No.37974 of 2022 and the same was dismissed on 20.01.2023. The learned counsel for the petitioners not raised any fresh grounds other than which were raised earlier in quash petition. This Court had considered the same and rejected the contention of the learned counsel for the petitioners. The consideration of the quash application is on a wider compass,



but as regards the discharge petition is concerned, it has to be seen whether the statements and materials produced in the charge sheet makes a *prima facie* case to proceed with the trial and not to see whether it might lead to conviction.

17.In this case, on perusal of the charge sheet, it is seen that LW1 and LW2 are the victims and the complaint is a detailed one. The statement of the victim girl under Section 164 of Cr.P.C., *prima facie* confirms the overtact of the accused. The Doctor who treated the victims confirms the penetrative sexual assault committed. The witnesses from the school and hostel confirmed the statements of the victims and others. The victims are minors during the commission of offence is proved by the school certificate. The medical records also collected. The statements and materials are sufficient to prove prima facie case made out against the petitioners and other accused to proceed with the case. The contention of the petitioners are factual which can be considered only during trial and not in the discharge petition.

18.In view of the above, this Court finds no reason to interfere with the detailed and well reasoned impugned order of the trial Court.

19.In the result, this Criminal Revision Case stands dismissed confirming



Crl.R.C.No.677 of 2023

the impugned order, dated 20.03.2023 in Crl.M.P.No.1176 of 2022 in Spl.C.C.No.11 of 2019 passed by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases under POCSO Act, Coimbatore.

20.The trial Court is to give top priority to conclude the trial in Spl.C.C.No.11 of 2019 within a stipulated time. The trial Court is reminded that in Crl.O.P.No.27961 of 2019, this Court had earlier directed the trial Court to conclude the trial preferably within 90 days. The trial Court shall proceed with the trial uninfluenced with the order of this Court and shall proceed with the case on merits. Consequently, the connected Miscellaneous Petitions are closed.

14.03.2024

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

Neutral Citation: Yes/No

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To

1.The Sessions Judge,
Principal Special Court for Exclusive Trial of cases under POCSO Act,
Coimbatore.



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CrI.R.C.No.677 of 2023

M.NIRMAL KUMAR., J.

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2.The Inspector of Police,
Karumathampatty Police Station,
Coimbatore District.

3.The Public Prosecutor,
High Court, Madras.

PRE-DELIVERY ORDER IN
CrI.R.C.No.677 of 2023

14.03.2024