



CrI.A.No.918 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

CrI.A.No.918 of 2024

R.Rajesh

... Appellant

Vs.

The Inspector of Police,
Puthur Police Station
Cuddalore
(Crime No.91 of 2018)

... Respondent

Prayer: Criminal Appeal filed u/s.415 (2) of the B.N.S.S Act 2023, seeking to set aside the conviction and sentence imposed on the appellant herein by the judgment dated 09.07.2024 passed by the Special Sessions Court for Exclusive Trial Cases under POCSO Act, Cuddalore in Spl. S.C No.61 of 2019.

For Appellant : Mr.S.Vijayaraghavan

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

JUDGEMENT

This Criminal Appeal has been filed by the appellant seeking to set aside the conviction and sentence imposed on the appellant vide judgement



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dated 09.07.2024 passed by the Special Sessions Court for Exclusive Trial of Cases under POCSO Act, Cuddalore in Spl. S.C No.61 of 2019.

2. Initially, the mother of the victim girl made a complaint of "girl missing" and subsequently, she came to know that the marriage was performed between the appellant/accused and the victim girl. Based on the complaint given by the mother of the victim girl, a case was registered against the appellant/accused for the offences under Sections 366, 376(3) IPC and 5(L)(Q) r/w 6 POCSO Act 2012, Section 9 of Tamil Nadu Prohibition of Child Marriage Act 2006 and after trial, the appellant was convicted and sentenced to imprisonment for the said offence against which the present appeal has been filed.

3. When the case is taken up for hearing today, learned counsel appearing for the appellant submitted that the appellant and the victim girl are married and living happily and, therefore, this Court may consider the said aspect while considering the appeal filed by the appellant.

4. The appellant/accused and the victim girl namely, R.Sarumathi



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are present today before this Court and the victim girl was identified by Public Prosecutor and the appellant/accused was identified by Mr.Winterraj, Special Sub Inspector of Police, H-2, Puthur Police Station, Cuddalore District (Cell No.9498155018). To establish their identity, the respective parties have also produced the copies of the Aadhaar Cards, which were examined.

5. The victim girl appeared along with her child and she stated that since the appellant/accused is in jail, she had suffered great difficulty and her husband had alone taken care of her. She further stated that neither the victim girl's family nor her husband's family have taken care of the appellant and the victim girl. The incarceration of the appellant is causing great hardship to the running of life of the victim girl and her child. Accordingly, she requested this Court to acquit the appellant so as to enable them to lead a happy matrimonial life.

6. The learned Additional Public Prosecutor appearing on behalf of the 1st respondent submitted that merely because the appellant and the victim girl have married pending the case before this Court, this Court,



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taking into account the seriousness of the offence has to consider the issue as to whether an offence of this nature can be quashed on the ground of compromise between parties.

7. This Court gave its anxious consideration to the submissions placed before it by the victim as also the learned Addl. Public Prosecutor and also went through the materials available on record.

8. Similar issue was considered by a learned single Judge of this Court in **Karthik - Vs - State & Anr. (Crl. O.P. No.14458/2022 - Dated : 8.7.2022)**, wherein, this Court observed as order :-

*"6.In this regard, it is relevant to refer the judgment of the learned Single Judge of this Court in **Sabari v. Inspector of Police** reported in 2019 (3) MLJ Crl 110, wherein the learned single Judge had discussed in detail about the cases in which persons of the age group of 16 to 18 years are involved in love affairs and how in some cases ultimately end up in a criminal case booked for an offence under the POSCO Act. The relevant portions of the judgment are extracted hereunder for proper appreciation:-*

"21.When this case was taken up for hearing,



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this Court became concerned about the growing incidence of offences under the POCSO Act on one side and also the Rigorous Imprisonment envisaged in the Act. Sometimes it happens that such offences are slapped against teenagers, who fall victim of the application of the POCSO Act at an young age without understanding the implication of the severity of the enactment.

26.In addition to the above, this Court is of the view that 'warning' of attraction of POCSO Act must be displayed before screening of any film, which have teenage characters suggesting relationship between boy and girl.

27.Apart from the above, this Court is of the view that as per the 3rd respondent's report, majority of cases are due to relationship between adolescent boys and girls. Though under Section 2(d) of the Act, 'Child' is defined as a person below the age of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the school final or entering the college, the relationship invariably assumes the penal character by subjecting the boy to the rigorous of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure



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to be sentenced 7 years or 10 years as minimum imprisonment, as the case may be.

28. When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.

29. Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the



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POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence”.

*9.The main issue that requires the consideration of this Court is as to whether this Court can quash the criminal proceedings involving noncompoundable offences pending against the petitioner. The Hon'ble Supreme Court in the case of **Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath**, reported in 2017 9 SCC 641 and in case of **The State of Madhya Pradesh Vs. Dhruv Gurjar and Another** reported in (2019) 2 MLJ CrI 10, has given sufficient guidelines that must be taken into consideration by this Court while exercising its jurisdiction under Section 482 of Cr.P.C, to quash non-compoundable offences. One very important test that has been laid down is that the Court must*



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necessarily examine if the crime in question is purely individual in nature or a crime against the society with overriding public interest. The Hon'ble Supreme Court has held that offences against the society with overriding public interest even if it gets settled between the parties, cannot be quashed by this Court."

9. In the present case, the offences in question are purely individual/personal as it involves the appellant and the victim girl as even their respective families have not taken care of the victim girl when the appellant is under incarceration. It involves the future of two young persons who are still in their early lives. Quashing the proceedings will not affect any overriding public interest in this case and it will in fact pave way for the appellant and the victim girl to settle down in their life and look for better future prospects. No useful purpose will be served in continuing with the criminal proceedings and keeping the proceedings pending will only swell the mental agony of the appellant and the victim girl and the child born from the said wedlock.

10. In view of the above, the conviction and sentence imposed on



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the appellant vide judgment dated 09.07.2024 passed in Special S.C.No.61 of 2019 by the Special Sessions Court for Exclusive Trial of Cases under POCSO Act, Cuddalore is set aside and the appeal is allowed. It is stated that the appellant is in jail in connection with this case. The appellant is directed to be released forthwith unless his presence is required in connection with any other case.

31.07.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
Uma/GLN

To

- 1.The Special Sessions Court for Exclusive Trial Cases under POCSO Act, Cuddalore.
2. The Central Prison, Cuddalore.
- 3.The Public Prosecutor, Madras High Court, Chennai.



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M.DHANDAPANI, J.

uma/GLN

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