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Crl.O.P.Nos.17060 & 18284 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.17060 & 18284 of 2024
& Crl.M.P.Nos.10258 & 10260 of 2024
& Crl.M.P.Nos.10802 & 10804 of 2024

Crl.O.P.No.17060 of 2024

Dr.Swaramya.

... Petitioner/Accused No.4

-VS-

1. The State represented by,
The Inspector of Police,
Odiansalai Police Station,
Puducherry.

... Respondent/Complainant

2. Mrs.Senthamarai.

... Respondent/defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Special Sessions Case No.15 of 2024 pending on the file of the Learned Fast Track Court Exclusively to deal with offences under the POCSO Act, Puducherry, quash all further proceedings in the said case in Special Sessions Case No.15/2024 as against her and other suitable appropriate orders.

For Petitioner : Mr.Swami Subramanian

For Respondent : Mr.M.V.Ramachandramurthy
Additional Public Prosecutor (Pondy).
Assisted by Mr.A.Alexandar, G.A.

Crl.O.P.No.18284 of 2024



Crl.O.P.Nos.17060 & 18284 of 2024

Dr.K.M.Jothiraj.
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.... Petitioner/Accused No.3

-VS-

1. The State represented by,
The Inspector of Police,
Odiansalai Police Station,
Puducherry.

... 1st Respondent/Complainant

2. Senthamarai.

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records on the file of the Hon'ble Special Judge for POCSO Act, Puducherry in Spl.S.C.No.15 of 2024 and quash the final report in the said SPL.S.C.No.15/2024 as against the petitioner/3rd accused.

For Petitioner : Mr.J.P.Rajesh

For Respondent : Mr.M.V.Ramachandramurthy
Additional Public Prosecutor (Pondy).
Assisted by Mr.A.Alexandar, G.A.

COMMON ORDER

A minor girl aged about 15 years was noticed sick and vomiting by her mother on 20.01.2024 and she was taken to New Medical Centre where the family Gynaecologists Dr.Nithya practise. Since the said Doctor was not there, a duty doctor K.Swaramya examined her physically and advised the patient to take blood test and urine test, to verify whether the minor girl is pregnant.



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Thereafter, the minor girl was taken to one Dr.Shanthy Michael on 23.01.2024

who had directed the mother of the minor girl to taken the child for scan and get the report. Accordingly, the child was take to one Dr.K.M.Jothiraj, who had taken the scan and given the report to the mother of the minor girl. On seeing the scan report, Dr.Shanthy Michael, has referred the patient to Ashwin Hospital. The Doctor Chitra Banu of Ashwin Hospital had intimated the matter to the Police and National Child Welfare Authorities in compliance with Section 19 of POCSO Act.

2. The police had filed final report against one M.Sakthi Bala, the perpetrator of the crime as well as the Doctors who had examined the child when the mother took her to those doctors for treatment. Earlier, when the quash petition filed by Dr.Shanthy Michael, this Court, on perusing the record finds that when the patient was examined by her, she was not aware whether she was pregnant and she had referred the patient to the Ashwin Hospital. The doctor in the Ashwin Hospital rightly and duly intimated about the offence to the police and therefore, quashed the case against Dr.Shanthy Michael.

3. Citing the said judgment, Dr.Swaramya who was the first person



who examined the victim at New Medical Centre as well as Dr.Jothi Raj, the owner of the Sono Scan Centre are before this Court to quash the case against them.

4. The statement of witnesses and the sequence of event clearly show that the offence of penetrative sexual offence on a minor child been confirmed only after the scan of fetus by Dr.Jothi Raji, Proprietor of the Sona Scan Centre. He is the person who should have first intimated to the police or other authorities as per Section 19 of POCSO Act but has failed to do so. Only after the victim child taken to Ashwin Hospital, the Doctor in the Ashwin Hospital along with the scan report had reported the matter to the Police.

5. In the chain of event, this Court finds that Dr.Swaramya, who examined the child on 20.01.2024 had no specific knowledge about the penetrative sexual offence. She had asked the patient to undergo blood test, urine test and UPT test, it was only suspicion but not concrete opinion. Therefore, Dr.Swaramya cannot be fixed for the offence under Section 19 of POCSO Act for not intimating the crime.



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6. Whereas, Dr.Jothi Raj, who is the petitioner in

Crl.O.P.No.18284 of 2024 after taking scan of the fetus, had clear knowledge about the pregnancy and about the age of the victim. In the said circumstances, Dr.Jothi Raj, should not have hesitated to inform the matter to the Police or concern authorities. Failure to intimate the matter to the concern authorities, attract offence under Section 19 of POCSO Act.

7. Accordingly, the ***Criminal Original Petition No.17060 of 2024 is Allowed.*** The complaint in Spl.S.C.No.15/2024 filed by Dr.Swarnya is hereby set aside and the ***Criminal Original Petition No.18284 of 2024 filed by Dr.Jothi Raj stands dismissed.*** Consequently, connected Miscellaneous Petitions are closed.

26.09.2024

Index : Yes/No.
Interest :Yes/No.
bsm

To:-

1. The Special Judge (POCSO Cases), Puducherry.
2. The Inspector of Police, Odiansalai Police Station, Puducherry.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN,J.



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