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Crl. O.P. No. 18723 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl. O.P. No. 18723 of 2024

and

Crl. M.P. Nos. 11057 & 11058 of 2024

G. Godwin

... Petitioner

Vs.

1.State Rep., by
The Inspector of Police,
All Women Police Station,
Coonoor, The Nilgiris.

2.Kala

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings pending as against the petitioner in Spl.C.C.No. 52 of 2023, pending on the file of Magalir Neethimandram, (FTMC), Udhagamandalam, as far as the petitioner is concerned.

For Petitioner : Mr. K. Balasubramaniam

For Respondents : Mr. S. Udayakumar, for R1
Government Advocate (Crl.Side)
for R1



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ORDER

The petitioner herein is the first accused in Spl.S.C.No.52 of 2023 pending on the file of Magalir Neethimandram, (FTMC) Udhagamandalam.

2. The case under Section 5 and 6 of POCSO Act been registered against the petitioner and the petitioner is facing trial. The victim girl was implicated this petitioner for the cause of her pregnancy. However, after the child birth, since the DNA of the accused did not match with the child.

3. The respondent police has conducted further investigation and at that time, the victim girl has disclosed that another person by name Kamalesh also had sexual intercourse with her and she being her own brother, she did not disclose his name initially, fearing her parents do something undesirable. The respondent police has now arrayed the said Kamalesh as A2 in this case and the same is pending.



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4. The learned counsel appearing for the petitioner submits that the crime came into light when the girl was tested positive for a pregnancy, at that time, the girl implicated this petitioner as a cause for pregnancy. Later, having found that the petitioner is not biological parent of the child, she has come out with truth and disclose the two real perpetrators of the crime. Therefore, the petitioner is bound to be exonerated from the ordeal of criminal prosecution.

5. The learned Government Advocate (Crl.Side) submits that no doubt the parentage of the child born to the victim girl been fixed with Kamalesh/A2. He will not exonerate the petitioner herein who has been charged for penetrative sexual offence of a minor. The victim girl in a further statement has not exonerated the petitioner, but had only added yet another perpetrator of the crime.

6. The learned counsel for the petitioner in turn submits that even if it is so, the victim girl cannot be a reliable witness and she has to be prosecuted for suppressing the truth.



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WEB COPY 7. This Court without expressing any opinion about the contentions made by the learned counsel for the petitioner regarding the alleged suppression of truth by the victim girl, leaving it open for the trial Court to take decision on it.

8. As far as the quash petition is concerned, since the materials collected during the course of investigation has led to filing of final report and because the biological father of the child born to the victim girl is not the petitioner herein. The charge for penetrative sexual offence cannot be ruled out, unless the witnesses are put to test. Therefore, the defence taken by the petitioner herein has to be agitated and established in the course of trial and at the end of the trial, the Court can decide whether any ground to proceed under Section 21 of POCSO Act.

9. With this observation, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petitions are closed.

06.08.2024

Vv



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To

- 1.The Magalir Neethimandram, (FTMC),
Udhagamandalam.
- 2.The Inspector of Police,
All Women Police Station,
Coonoor, The Nilgiris.
- 3.The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

Vv

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Crl. M.P. Nos. 11057 & 11058 of 2024

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