



Crl.O.P.No.25355 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.25355 of 2024

Senhilkumar

... Petitioner

Vs.

1.State by

The Inspector of Police
Arumbavoor Police Station
Perambalur
(Crime No.14 of 2020)

2. Annakili

... Respondents

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to call for the records and quash the proceedings/charge sheet in Special S.C.No.29 of 2020 for the offences under Section 341 of IPC and Sections 7 and 8 of POCSO Act pending on the file of the Mahila Court at Perambalur.

For Petitioner	: Mr.D.Ashok Kumar
For 1 st Respondent	: Mr.S.Vinoth Kumar Government Advocate (Crl. Side)
For 2 nd Respondent	: No Appearance



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ORDER

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This Criminal Original Petition has been filed by the petitioner to quash the proceedings/charge sheet in Special S.C.No.29 of 2020 for the offences under Section 341 of IPC and Sections 7 and 8 of POCSO Act pending on the file of the Mahila Court at Perambalur.

2. The case of the petitioner is that the mother of the victim girl had lodged a complaint against the petitioner stating that the petitioner forced her daughter to love the petitioner and thereafter, the petitioner committed sexual assault on the victim girl, based on which, the case in Crime No.14 of 2020 was registered against the petitioner for the offences under Section 341 of IPC and Sections 7 and 8 of POCSO Act. The contention of the petitioner is that the petitioner thereafter married the victim girl and now she is in advanced stage of pregnancy. Hence, the continuation of the prosecution will affect the life of the petitioner as well as the victim and also the unborn child. Hence, it is just and necessary to quash the charge sheet against the petitioner.



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3. The learned Additional Public Prosecutor appearing for the respondent

police submitted that in this case, entire witnesses have been examined and the case is posted for arguments.

4. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the 1st respondent police and perused the materials available on record.

5. Admittedly, at the time of sexual assault, the age of the victim was below 18 years and the provisions of POCSO Act make it very clear that a person aged below 18 years either male or female is defined as child and there is no word mentioned regarding consent in the POCSO Act and hence, consent is immaterial. Even otherwise the victim, who was below 18 years at the time of occurrence, had no authority to give consent and there is no waiver against law and there is no estoppel against the law. Once it is found that at the time of physical relationship/sexual assault, the victim is under 18 years, POCSO Act would attract. If the victim subsequently attained majority and give up her



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right, it cannot be accepted. Considering the offence, which is grave in nature

and object of POCSO Act, this Court cannot invoke Section 482 Cr.P.C./528

B.N.S.S. 2023, ignoring the intention of the legislature and the purpose of enactment of the Act.

6. In this regard the Hon'ble Supreme Court rendered a decision reported in **2024 SC Online SC 2055**. Further in the recent judgment of the Hon'ble Supreme Court reported in **CDJ 2024 SC 953 in the case of Ramji Lal Bairwa & Another Vs.State of Rajasthan & Ors**, it was held as follows:

"In the decision relied on by the High Court to quash the proceedings viz., Gian Singh's case and the decision in Laxmi Narayan's case in unambiguous terms the Apex Court held that the power under Section 482, Cr.P.C. could not be used to quash proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the society. Cases of this nature, the fact that in view of compromise entered into between the parties, the chance of a conviction is remote and bleak also cannot be a ground to abruptly terminate the investigation, by quashing FIR and all further proceedings pursuant thereto, by invoking the power under Section 482, Cr.P.C."



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7. As held by the Ho'ble Supreme Court in the above decisions, in this case the charged offences under Sections 341 IPC and Sections 7 and 8 of the POCSO Act, are not private in nature and have a serious impact on the society. Therefore, power under Section 482 Cr.P.C./528 of B.N.S.S. could not be used to quash the criminal proceedings under POCSO Act, only based on the compromise entered into between the parties.

8. Under these circumstances, this Court is not inclined to entertain the petition filed under Section 482 Cr.P.C./Section 528 of B.N.S.S. and quash the proceedings in Special S.C.No.29 of 2020 pending on the file of the Mahila Court at Perambalur. Hence, this Criminal Original Petition is dismissed. However the petitioner can very well establish all his defence before the trial Court.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No
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To
WEB COPY

1. The Inspector of Police
Arumbavoor Police Station
Perambalur
2. The Public Prosecutor,
High Court of Madras.



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P.VELMURUGAN. J.

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