



CrI.O.P.No.27695 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.O.P.No.27695 of 2024

Deva

... Petitioner

Vs.

1. The Inspector of Police,
W-20, All Women Police Station,
Saidapet, Chennai – 600 015.

2. Velankanni

3. XXXXXX
YYYYYY
No.19/45, Jayaram Street,
Saidapet, Chennai.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C
pleaded to call for the records and quash the proceedings in
Spl.S.C.No.56 of 2024 pending on the file of the learned Sessions Judge,
Magalir Neethimandram (Mahila Court) Chennai.

For Petitioner : Mr.P.Muthamizh Selvakumar

For Respondents : Mr.S.Sugendran
Additional Public Prosecutor
for R1



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ORDER

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The petitioner is the accused in Spl.S.C.No.56 of 2024 on the file of the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Chennai.

2. The case of the prosecution is that there was love affair between the petitioner and the victim/the third respondent herein. Since the victim girl was missing from 10.02.2024, her mother/second respondent preferred a complaint before the first respondent police station and a case was registered in Crime No.37 of 2024 for Girl Missing. During investigation, it came to light that the victim eloped with the petitioner and both got married and she became pregnant. Since the victim is a minor, the case was subsequently altered into Sections 366 IPC and Section 5(1) r/w 6 of POCSO Act,2012. After investigation, final report was filed and the same was taken on file in Spl.S.C.No.56 of 2024 on the file of Sessions Judge, Mahila Court, Chennai.

3. Learned counsel for the petitioner submits that there was love affair between the petitioner and the victim and with her consent, they had physical relationship due to which, the victim became pregnant.



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Learned counsel also submits that since the petitioner and the victim are living under one roof as husband and wife, she does not want to prosecute the case. Therefore, the proceedings against the petitioner in Spl.S.C.No.56 of 2024 may be quashed.

4. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the first respondent and perused the materials available on record.

5. Admittedly, at the time of physical relationship, 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, the victim is under 18 years, POCSO Act would attract. If the victim subsequently attained majority and give up her right, it cannot be accepted. Considering the offence, which is grave in nature and object of



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WEB COURT

POCSO Act, this Court cannot invoke Section 482 Cr.P.C./ 528 BNSS, 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."

7. As held by the Ho'ble Supreme Court in the above decisions, in this case the charged offences under Sections 366 IPC and 5(l) r/w 6 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. could not be used



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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. or Section 528 of BNSS and quash the proceedings in Spl.S.C.No.56 of 2024 pending on the file of the learned Sessions Judge, Magalir Neethimandram (Mahila Court), Chennai. Hence, this Criminal Original Petition is dismissed. However the petitioner can very well establish all his defence before the trial Court.

06.11.2024

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

1. The Sessions Judge,
Magalir Neethimandram (Mahila Court)
Chennai.
2. The Inspector of Police,
W-20, All Women Police Station,
Saidapet, Chennai – 600 015.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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