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CrI.O.P.No.28132 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.O.P.No.28132 of 2024

S.Murugesan

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep.by its Inspector of Police,
All Women Police Station,
Pennagaram, Dharmapuri District,
Crime No.06 of 2020.

2. Vijayalakshmi

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 of BNSS Act, 20203, to call for entire records in proceedings in Spl.S.C.No.39 of 2020, on the file of the Mahila Court (FTC), Dharmapuri and quash the same.

For Petitioner : Mr.M.Senthamizh Selvan

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



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ORDER

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This Criminal Original Petition is filed to quash the proceedings in Spl.S.C.No.39 of 2020, on the file of the Mahila Court (FTC), Dharmapuri.

2. Learned counsel for the petitioner submits that there was love affair between the petitioner and the second respondent/*de-facto* complainant and with her consent they had physical relationship due to which, she became pregnant. Initially the petitioner denied to marry the *de-facto* complainant and that she had lodged a complaint before the first respondent police and a case was registered in Crime No.06 of 2020 under Sections 294(b) and 323 IPC and Sections 5(j)(ii), 5(l) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as 'POCSO Act'] and he was arrested and remanded to judicial custody and later he was released on bail. He further submitted that since the *de-facto* complainant was blessed with a child, the petitioner married her with the consent of their parents. Now both are living happily under one roof with their three children. He further submitted that now the second respondent does not want to prosecute the case and she is ready



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to withdraw the case in Spl.S.C.No.39 of 2020 pending on the file of the Mahila Court, Dharmapuri. Therefore, the proceedings against the petitioner may be quashed.

3. It is seen from the records that due to love affair between the petitioner and second respondent/victim, she became pregnant. Since the petitioner refused to marry her, she preferred the complaint against him. At the time of preferring the complaint, the victim was a minor and she was six months pregnant and that the first respondent police registered the case in Crime No.06 of 2020 under Sections 294(b) and 323 IPC and Sections 5(j)(ii), 5(l) r/w 6 of POCSO Act. After investigation, final report was filed and the same was taken on file in Spl.S.C.No.39 of 2020 on the file of the Mahila Court, Dharmapuri. According to the petitioner, now the petitioner and the second respondent/victim got married and they begotten children, therefore, the victim wants to withdraw the complaint.

4. Admittedly, at the time of preferring the complaint, 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. Once it is found that at the time of physical relationship,



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the victim is below 18 years, POCSO Act would attract. If the victim subsequently attained majority and give up her right, it cannot be accepted. It is well known fact that the POCSO Act came into existence after much deliberation meet out with bad experiences. The scope and object of the Act cannot be simply ignored. Considering the heinous offence, which are not private in nature and have a serious impact on the society, the Court cannot invoke Section 482 Cr.P.C, ignoring the intention of the legislature and the purpose of the enactment of the Act.

5. 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,



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Cr.P.C."

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6. As held by the Ho'ble Supreme Court in the above decisions, in the case on hand the charged offences under Sections 294(b) and 323 IPC and Sections 5(j)(ii), 5(l) r/w 6 of 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 to quash the criminal proceedings under POCSO Act, merely because compromise has been entered into between the parties.

7. 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.39 of 2020 pending on the file of the learned Sessions Judge, Mahila Court (FTC), Dharmapuri. Hence, this Criminal Original Petition is dismissed. However the petitioner can very well establish all his defence before the trial Court.

12.11.2024

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

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To

1. The Mahila Court (FTC),
Dharmapuri.
2. The Inspector of Police,
All Women Police Station,
Pennagaram,
Dharmapuri District.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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