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HCP.No.2505 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.2505 of 2023

Dharani

...Petitioner

Vs.

- 1.The State represented by
The Inspector of Police,
J-6, AWPS, Thiruvanmiyur,
Neelankarai, Chennai.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai – 600 007.
- 3.Vijayabharathi
- 4.Thangamani
- 5.The Chief Welfare Committee,
Kellys, Chennai.
(R5 suo motu impleaded as per order
dated 10.01.2024 in HCP.No.2505 of 2023)

...Respondents



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PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to direct the respondents to produce the body of the petitioner's minor daughter Navambikaa, aged about 5½ years, before this Court and hand over to the petitioner forthwith.

For Petitioner : Mr.Abudu Kumar Rajarathinam,
Senior Counsel
for Mr.M.Suresh

For R1, R2 & R5 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For R3 & R4 : Mr.S.Prabakaran,
Senior Counsel
for Ms.C.Uma

ORDER

(Order of the Court was made by *M.S.RAMESH, J.*)

Heard Mr.Abudu Kumar Rajarathinam, learned senior counsel, appearing for the petitioner, Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, appearing for the respondents 1, 2 and 5 and Mr.S.Prabakaran, learned senior counsel, appearing for the 3rd and 4th respondents.



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2. The petitioner herein is the mother of a 5½ years old minor girl child, born through her husband K.Subramani. While the 3rd respondent herein is the elder sister of the petitioner, who ordinarily resides at Singapore, the 4th respondent is her mother, who resides at Mannargudi, Tamil Nadu.

3. When the petitioner got an employment at Chennai and was not able to locate a residential accommodation in time and also since both herself and her husband were employed, she had temporarily left her minor daughter in the custody of her mother/4th respondent herein on 14.10.2023 at Mannargudi. Thereafter, she used to visit her child every weekend. On 30.11.2023, when the petitioner was informed that her daughter was brought to Chennai, she had visited her in the presence of both the 3rd and 4th respondents. On the next day, i.e., on 01.12.2023, the petitioner's husband was arrested by the 1st respondent Police in connection with Crime No.477/2023 for the offences under Sections 5(m)(n)(l) and 6(1) of the Protection of Child from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act') and remanded to judicial custody, based on the 3rd



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respondent's complaint that he had sexually assaulted his daughter. After this incident, both 3rd and 4th respondents had retained custody of the child and refused to hand her over to the petitioner. In this connection, the petitioner had given a written complaint dated 08.12.2023 to the Deputy Commissioner of Police, Adyar, for retrieving her child and for taking action against the 3rd and 4th respondents. Since there was no response to the complaint given, she has filed the present Habeas Corpus Petition (HCP), seeking for securing her child and handing over the custody to her.

4. When the HCP was listed before this Court on 10.01.2024, the learned counsel for the 4th respondent undertook to produce the minor child before us and accordingly, the minor child was produced on 12.01.2024. The 3rd and 4th respondents, accompanied by the 1st respondent Police, were also present before us. We had interacted with the petitioner, respondents 3 and 4, as well as the minor child, in our Chambers.

5. While the petitioner/mother informed us that the 3rd respondent herein is a divorcee and has no children and since she is emotionally



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attached to the petitioner's daughter, she had colluded with the 4th respondent and gave a false complaint against her husband, in order to retain the custody of the child. However, the 3rd and 4th respondents stated that the child had clearly narrated the incident to them that her father had sexually assaulted her by touching her private parts, which prompted the 3rd respondent to give a complaint before the jurisdictional Police. They further stated that it is only under the orders passed by the Child Welfare Committee, the custody of the child was handed over to them and that it is unsafe to hand over the custody to the petitioner, who was aware of the crime committed by her husband and has not reported the same to anyone.

6. We interacted with the petitioner's minor daughter, who was aged about 5½ years. Though very young, she had interacted with us with much clarity and maturity. As per her version, she intends to live under the care and protection of her mother/petitioner only, although she likes the 3rd and 4th respondents. She also stated that she likes her father and that after her bath, he used to dry her roughly with a towel, which she did not like. Thereafter, when a choice was given to the minor child as to under whose care and



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protection she would like to be, she opted for her mother in very clear terms.

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7. Accordingly, on 12.01.2024, as a temporary measure, we had handed over the custody of the minor child to the petitioner/mother and granted liberty to the 3rd and 4th respondents to visit the petitioner's daughter, with a further direction to the petitioner to permit the 3rd and 4th respondents to interact with her minor daughter during such visits, without any disturbance.

8. In order to take a final decision on the permanent custody of the child, we had kept the HCP pending and had been listing it periodically thereafter. During one such hearing on 01.03.2024, when we had adjourned the case to 18.03.2024 for filing of the counter affidavit by the 3rd and 4th respondents, the learned counsel for the petitioner had mentioned before us in between that the 1st respondent Police had hurriedly filed a final report, which was taken on file as Spl.S.C.No.70 of 2024, accusing the petitioner of having abetted the offence under POCSO Act committed by her husband and requested for an earlier hearing. Accordingly, we listed the matter on



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14.03.2024. During that hearing, the learned Additional Public Prosecutor confirmed the fact that a final report has been filed by including the petitioner herein as the 2nd accused and altering the offences to Sections 5(m), 5(l), 5(n) read with 16 and 21 of the POCSO Act and also produced a copy of the final report dated 21.02.2024 before us.

9. When we had examined the materials in support of the final report, we found that apart from the statements of the witnesses under Section 161 Cr.P.C., the child was also produced before a Metropolitan Magistrate and her statement was recorded under Section 164 Cr.P.C. When we perused this statement before the Magistrate, there was not a single sentence uttered by the child to implicate the petitioner of either abetting her husband to commit the offence or any other statement to even remotely indicate that she had knowledge of the offence alleged to have been committed by her husband.

10. At this point of time, we had expressed our discontentment to the manner in which the 1st respondent Police had hastily filed the final report, more particularly, when we were in the midst of regulating the custody and



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visitation rights of the child in the present petition. Thus, on being *prima facie* convinced that the charges against the petitioner appears to be an afterthought, which are far from legal, we had, in exercise of our powers under Article 226 of the Constitution of India, granted an order of interim stay of further proceedings in Spl.S.C.No.70 of 2024. Our interim order dated 14.03.2024 in this regard, reads as follows:-

“The mother of the detainee has filed this Habeas Corpus Petition, seeking the custody of her minor daughter aged about 5½ years.

2. It is the case of the petitioner that she and her husband were employed and hence, she had left her minor daughter/detainee in the care and custody of the 4th respondent/petitioner's mother; that the 3rd respondent who is the petitioner's elder sister had instituted a case in Cr.No.477 of 2023 against petitioner's husband alleging that the petitioner's husband had committed certain offences under the POCSO Act, against the detainee herein; that the petitioner's husband was arrested in connection with the said crime number on 01.12.2023; that the 3rd and 4th respondents thereafter denied access to her minor daughter and hence, she was constrained to filed this



petition.

3. After this Court issued notice to the respondents, the child was produced before us on 12.01.2024. We interacted with the child and found that the child was very happy in the company of the petitioner and she expressed her wish in clear terms that she would like to go with the petitioner. Therefore, considering the interest and welfare of the child, we directed the 4th respondent to handover custody to the petitioner and the child is in the custody of the petitioner ever since then.

4. We had adjourned the case to 01.03.2024 and thereafter, adjourned to 18.03.2024 for the counter of the 3rd and 4th respondents.

5. In the meanwhile, the learned counsel for the petitioner mentioned before us that the 1st respondent had hurriedly filed a final report accusing the petitioner of abetment of the offence said to have been committed by her husband and requested for an early hearing. Hence, we listed the matter today i.e., on 14.03.2024.

6. Today, when the matter was called, the learned Additional Public Prosecutor confirmed the



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fact that a final report has been filed accusing the petitioner of the offence of abetment of the offence committed by her husband under the POCSO Act and he also produced a copy of the final report before us.

7. When we examined the materials against the petitioner, we found that the child in her Section 164 Cr.P.C., statement before the learned Magistrate, has not implicated the petitioner and in any case the offence of abetment would not be made out against the petitioner. We have also noticed with discontentment that on 10.01.2024, the 3rd and 4th respondents herein were directed to produce the child before us on 12.01.2024, on which day, we had interacted with the child. Though the child was aged about 5½ years, she had, with a clarity and clear terms, expressed that she wanted to be with the petitioner herein. Accordingly, we had adjourned the case. In spite of the knowledge that we have been deliberating on the criminal complaint involving the child and had also regulated the custody and visitation rights of the child, the 1st respondent Police had hastily filed the final report on 12.01.2024 itself. Therefore, we are of the prima facie view that the final report filed by the respondents



against the petitioner is classic example of misuse of the provisions of the POCSO Act as against the petitioner. We are convinced that the prosecution against the petitioner appears to be an afterthought for considerations which are far from legal.

8. Mr.S.Prabakaran, learned senior counsel appearing for the 3rd and 4th respondents pointed out that the petitioner was aware of the offences committed by her husband and she did not complain and read out certain statements recorded by the investigating officer. We are surprised to note that the Inspector of Police, Neelangarai, All Women Police Station has furnished the copies of the statements of the victim, besides the medical records, to the 3rd respondent under the Right to Information Act.

9. Prima facie, we are satisfied that the statements of hearsay witnesses would have no value in the light of the categorical statement of the victim found in her Section 164 Cr.P.C., statement. The inclusion of the petitioner in the final report is a clear abuse of process of law. In this case as stated earlier, since we interacted with the child we are convinced that the petitioner's inclusion in the final report is on



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the face of it unlawful, amounting to abuse of the process leading to injustice. We cannot permit such an injustice to continue. Therefore, in exercise of our powers, under Article 226 of the Constitution of India, we are inclined to grant an order of interim stay of all further proceedings in Spl.S.C.No.70 of 2024 against the petitioner alone until further orders. It is made clear that the trial Court shall proceed against the first accused in accordance with law. We are not expressing any opinion on the merits of the allegations against the first accused.

10. In order to further deliberate on this issue, we call upon the official respondents and also the 3rd and 4th respondents, to file their counter.

11. The custody of the minor child shall remain with the petitioner until further orders.

12. Call the matter on 22.03.2024.”

11. In this background, we had taken up the present HCP for final hearing today.

12. The learned senior counsel appearing for the petitioner submitted



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that the petitioner, being the mother and natural guardian of the minor child, is legally entitled to have the custody of her child and that the 3rd and 4th respondents cannot legally assume custodial rights in preference to the petitioner. He also submitted that the allegation of sexual assault on the child is only as against the petitioner's husband and there is no material to implicate that the petitioner had knowledge of the alleged assault and therefore, there is absolutely no reason or justification to deprive the custody to the petitioner. According to him, the petitioner had given a written complaint on 08.12.2023 to the Deputy Commissioner of Police, Adyar, for retrieving her minor child and for taking action against the 3rd and 4th respondents for illegally retaining the custody and since no action was taken, she was constrained to file the present HCP. Apart from such submissions, the learned senior counsel further submitted that the 3rd and 4th respondents had, with an ulterior motive, had falsely implicated the petitioner of having knowledge of the alleged sexual assault and had failed to report the same to the Police and therefore, inclusion of her name in the final report made in Crime No.477/2023, by altering the offences, cannot be legally sustained. Accordingly, the learned senior counsel sought our indulgence to quash the



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final report, insofar as it implicates the petitioner in the case. With regard to the powers of this Court to intervene and quash the final report, in exercise of its powers under Article 226 of the Constitution of India, the learned senior counsel placed reliance on a decision of the Hon'ble Supreme Court in the case of *Salib alias Shalu alias Salim Vs. State of U.P. and Others* reported in **2023 SCC OnLine SC 947** and a decision of the Hon'ble Division Bench of Delhi High Court in the case of *Ravi Kumar Vs. State and Another* reported in **ILR (2005) 2 Del 764**.

13. The learned senior counsel appearing on behalf of the 3rd and 4th respondents, on the contrary, submitted that owing to the sexual assault by her father, the child was under mental trauma and after her custody was retained by the 3rd and 4th respondents, her mental condition was eased and she was happily living with these respondents. He further submitted that it would not be safe to restore custody of the child to the petitioner, since her husband was already enlarged on bail. This apart, the respondent Police had conducted a detailed investigation and from the statements and other materials collected, had concluded that the petitioner had abetted her



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husband to commit the offences and had also failed to report about the commission of offence under the POCSO Act and accordingly submitted that restoration of the custody of the child to the 3rd and 4th respondents, in the interest and welfare of the child, would be ideal.

14. The learned Additional Public Prosecutor submitted that after registration of the FIR, the Investigating Officer had facilitated for recording of the statements of the child before the Metropolitan Magistrate under Section 164 Cr.P.C., apart from recording the statements of several witnesses under Section 161 Cr.P.C. and based on their statements, had come to the conclusion that the petitioner herein had abetted her husband to commit the offence and also failed to report about the sexual assault by her husband and therefore, the Investigating Officer had altered the sentences and had arrayed the petitioner as the 2nd accused.

15. We have given our anxious consideration to the submissions made by the respective counsels.



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16. When the petitioner was living with her husband and the child, she got an employment with Standard Chartered Bank, Chennai, in the month of March, 2023. Since both herself and her husband were busy with their office works during day time, they had decided to send their daughter to the house of the petitioner's mother/4th respondent and accordingly, had left the child at Mannagrudi on 14.10.2023 with the 4th respondent and was visiting her every weekends. On 13.11.2023, when the petitioner had called her mother, she was informed that they had brought the child to Chennai, wherein she visited the child at a hotel in the presence of the 3rd and 4th respondents. However, on the next day, her husband was arrested in connection with a criminal case, based on the 3rd respondent's complaint.

17. In this background, the custody of the child was retained by the 3rd and 4th respondents and their whereabouts were also not known. Ultimately, she had given a complaint before the Deputy Commissioner of Police, Adyar, on 08.12.2023 in person and through a registered post on 16.12.2023 and consequently had preferred this HCP.



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18. As narrated in the preceding portions of our order, pending the HCP, we had made an interim arrangement by taking into account the best interest and welfare of the minor child and her wishes to be under the care and protection of her mother/petitioner, the custody of the child was handed over to the petitioner, with visitation rights to the 4th respondent. It is now reported that the child is living happily under the protection of her mother.

19. The learned senior counsel appearing for the 3rd and 4th respondents submitted that the petitioner's father, who is accused of sexually assaulting his daughter, has now been let out on bail. After the petitioner's husband was granted bail through an order dated 01.03.2023 in CrI.M.P.No.238 of 2024 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, the 3rd respondent had filed a petition in CrI.M.P.No.552 of 2024, seeking for cancellation of the bail. The trial Court had obtained an affidavit of undertaking dated 15.05.2024 from the petitioner's husband, wherein he had undertaken not to see his child at any point of time during the bail period and that he will not visit her house at any cost. The relevant portion of the undertaking reads as follows:-



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“I submit that all the statements made by me in my counter was informed by my wife over phone. I have not violated any condition imposed by this Hon'ble Court at any point of time and I have no intention also. I never visited the child on 09.03.2024 or on subsequent days as alleged by the petitioner. I hereby undertake that I won't try to see the child at any point of time and I will not visit my home at any cost till the disposal of the above case and I will not violate the conditions imposed by this Hon'ble Court.”

20. Recording the undertaking, the petition seeking for cancellation of the bail was closed on 16.05.2024 by the trial Court. Thus, the apprehension of the 3rd respondent that it would not be safe for the child to be with her mother, in view of the bail granted to the petitioner's husband, has been redressed through the orders of the trial Court, refraining him from meeting or seeing his child.

21. We had also, in the preceding portions of the order, observed that there were no incriminating statements of the child made before the



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Metropolitan Magistrate under Section 164 Cr.P.C. to even remotely indicate that the petitioner had knowledge of the alleged sexual assault by her husband or that she had failed to report about the offence. While that being so, we see no reason as to why the child's custody should be denied to her mother. Thus, we are of the view that the petitioner would be entitled to succeed in the present HCP and the custody of the child be ordered to be retained with the petitioner/mother.

22. *Albeit* this final decision, we could not conclude this order, after certain disturbing factors with regard to the petitioner's allegation of an ulterior motive on the part of the 3rd and 4th respondents to retain her child and thereafter, the implication of the petitioner herself as an accused for the offences under the POCSO Act, on the basis of the statements made by both these respondents. The allegation of such ulterior motive is reflected in the petitioner's detailed complaint dated 08.12.2023 given to the Deputy Commissioner of Police, Adyar, Chennai. The gist of the complaint, touching upon these aspects, are summed up as follows:-

That her elder sister/3rd respondent herein, who is employed at



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Singapore, had divorced her husband in the year 2000 and does not have children; that when the petitioner had married her husband in the year 2014, both her elder sister and mother did not like her husband and always had a grudge towards him; that her sister developed immense love and affection towards the petitioner's child, whose facial resemblance matched with that of her sister; that she had been repeatedly asking the petitioner to send the child along with her to Singapore, where she would provide her with education, to which she refused; that when the petitioner had temporarily left the child in the custody of her mother at Mannargudi due to some inconvenience in finding a house near her place of job and was visiting the child during weekends, her sister and mother had brought the child from Mannargudi to Chennai without the petitioner's knowledge, after giving a complaint of sexual assault against the petitioner's husband; that her elder sister had given a false complaint against her husband of having committed sexual assault on her child and had him imprisoned; that after the petitioner's husband was arrested and remanded, her sister and mother had abducted her child and kept her in some undisclosed location and did not answer any of her phone calls.



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23. After the aforesaid complaint, the petitioner's husband was released on bail, at which point of time, her sister had filed an application to cancel his bail. When her request to have the petitioner's husband kept in confinement turned futile, she, along with her mother, had given further statements to the Police, alleging that the petitioner had knowledge of the sexual assault committed by her husband on the child and had failed to report, based on which, the Police had also altered the offences in Crime No.477/2023 and had arrayed the petitioner as the 2nd accused therein.

24. It is the submission of the learned senior counsel for the petitioner that the entire episode of bringing in the petitioner as an accused in the criminal case for the offences under the POCSO Act, was with an ulterior motive of having both the biological parents of the child under imprisonment, in order to gain custody of the child by the petitioner's sister.

25. Before we address the grievance of the petitioner in this regard, we express our discontentment to the manner in which the Investigating



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Officer in this case had hurriedly proceeded with the investigation and a final report was filed, when the issue of custody of the child was being adjudicated by us. We do not intend to be a mute spectator to this gross irregularity in the conduct of the Investigating Officer in totally disregarding the pendency of the HCP before us and file a final report, which, if accepted on its face value, would defeat the entire case of the petitioner before this Court in the HCP.

26. Though we are conscious of the fact that the petitioner's allegations against her sister and mother are only statements extracted from one of her complaints to the Deputy Commissioner of Police, the possibility of an ulterior motive attached to such statements cannot be ruled out. We hasten to add here that we have not formed any final opinion on the veracity of such statements made in the complaint. Nevertheless, on the aspect of the possibility of an ulterior motive of gaining custody over the child by the 3rd respondent herein, we are reminded of the rigors of the provisions of POCSO Act and the imminent possibility of both the parents of the child being taken into custody during the trial, as well as after the decision,



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subject to the prosecution substantiating their case during the course of trial.

In such event, it is the 3rd or 4th respondents, who may stand to gain custody of the child, in exclusion of her parents.

27. With this thought in mind, we would now explore our powers to interfere with the final report, insofar as it implicates the petitioner to the alleged offences under the POCSO Act. We are fortified with few judgments of the Hon'ble Supreme Court in this regard.

28. In *Salib's case (supra)*, the Hon'ble Supreme Court had observed that when the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, encounters criminal proceedings that may have been instituted with an ulterior motive for wreaking vengeance, the High Court owes a duty to look into the attending circumstances emerging from the records of the case and try to read in between the lines and quash the proceedings, if required. The relevant portion of the judgment reads as follows:-

“28. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers



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under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the



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record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

(emphasis supplied)

29. Our intention to interfere with the altered criminal case, implicating the petitioner herein as an accused, stands substantiated by the observations made in the aforesaid extract of the judgment of the Hon'ble Supreme Court, which are self explanatory.



30. The consequential question that may arise is whether this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, should entertain a prayer for quashing of the criminal proceedings, which issue is answered in the affirmative in the observations made by the Hon'ble Supreme Court in the case of ***State of Haryana and Others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) SCC 335***, wherein it was held that such jurisdiction could be exercised under Article 226 of the Constitution of India to prevent either abuse of process of any Court or otherwise to secure the ends of justice. In the said judgment, 7 circumstances were formulated as guidelines empowering the High Courts to exercise its powers under Article 226 of the Constitution of India, apart from Section 482 Cr.P.C., to interfere and prevent abuse of the process of any Court or otherwise to secure the ends of justice, by placing reliance on several of its earlier decisions. The relevant portion of the judgment reads as follows:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226



or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.



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(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.



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(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

31. Among the 7 circumstances referred above, except Clause 6, all the other clauses would squarely apply to the case in hand, insofar as it implicates the petitioner in the criminal case, through the final report. By placing reliance on ***Bhajan Lal's case (supra)***, the Hon'ble Supreme Court, in the case of ***Pepsi Foods Limited and Another Vs. Special Judicial Magistrate and Others*** reported in ***(1998) 5 SCC 749***, had dealt with the nature and scope of powers of the High Court under Article 226 and ratified the principles laid down in ***Bhajan Lal's case (supra)***.

32. The aforesaid decisions of the Hon'ble Supreme Court were further relied upon by the Hon'ble Division Bench of the Delhi High Court in ***Ravi Kumar's case (supra)***, in which the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India in a Habeas



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Corpus Petition, was extended for quashing the incidental criminal proceedings.

33. On an overall appraisal of the development of the criminal complaint before the Investigating Officer, leading to alterations of the offences and incriminating the petitioner as an accused and in the light of the judicial pronouncement of the Hon'ble Supreme Court, as well as the Hon'ble Division Bench of the Delhi High Court, we have no hesitation to hold that there was absolutely no iota of legally permissible evidences before the Investigating Officer, to rope in the mother of the child as an accused for the offences under the POCSO Act, especially when the victim in her statement under Section 164 Cr.P.C. has not relied about the alleged abetment or attributed knowledge to the petitioner. This apart, there also arises a strong suspicion that a scheming attempt may have been made by the 3rd and 4th respondents to appropriate the custody of the child, by roping in the petitioner as an accused for the offences under the POCSO Act, which would be gross abuse of the due process of law. In these circumstances and in order to secure the ends of justice, we are constrained to invoke our powers under



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Article 226 of the Constitution of India to quash the criminal proceedings, as against the petitioner herein.

34. Accordingly, in exercise of our powers under Article 226 of the Constitution of India, the proceedings in Spl.S.C.No.70 of 2024 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, insofar as it implicates the petitioner, namely Mrs.Dharani, Wife of Mr.K.Subramani, stands quashed. The quashing of the present proceedings, as against the petitioner/2nd accused, will not however prevent the trial Court to proceed against the 1st accused.

35. Furthermore, in the light of our earlier observations and findings rendered in the preceding portions of this order, the custody of the petitioner's minor daughter shall be retained by the petitioner herein and the 4th respondent/ grand mother of the child, will be at liberty to visit her granddaughter, if she wishes to do so, on the 1st Saturday of every month between 11.00 A.M. and 01.00 P.M. at the Family Court, Child Centre, Chennai, after giving prior intimation to the petitioner informing about her intended visit.



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36. The Habeas Corpus Petition stands allowed in the above terms.

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[M.S.R.,J.] [S.M.,J.]
01.08.2024

Index:Yes
Neutral Citation:Yes
Speaking order
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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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To

- 1.The Inspector of Police,
J-6, AWPS, Thiruvanmiyur,
Neelankarai, Chennai.
- 2.The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
Vepery, Chennai – 600 007.
- 3.The Chief Welfare Committee,
Kellys, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

H.C.P.No.2505 of 2023

01.08.2024