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Crl.R.C.No.2240 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2024

DELIVERED ON : 03.09.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.R.C.No.2240 of 2023

and

Crl.M.P.Nos.428, 429 & 5128 of 2024

1.P.M.Thomas

2.B.Muthiah

3.E.Mariraj

... Petitioners/Accused 1 to 3

Vs.

1.State rep. by

The Inspector of Police,
W-9, All Women Police Station,
Villivakkam, Chennai – 600 049.

2.Lourdhu Sagaya Mary

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed against the revision petitioners in Crl.M.P.No.1111 of 2023 in Spl.S.C.No.188 of 2023 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Chennai dated 07.12.2023 passed against the revision petitioners.



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For Petitioners : Mr.R.C.Paul Kanagaraj

For Respondent-1 : Mr.S.Raja Kumar
Additional Public Prosecutor

For Respondent-2 : Mr.S.Senthilnathan

ORDER

This revision has been filed challenging the order passed in Crl.M.P.No.1111 of 2023 in Spl.S.C.No.188 of 2023 on the file of Special Court for Exclusive Trial of Cases under POCSO Act, Chennai dated 07.12.2023 against the petitioners.

2.The petitioners, who are the accused 1 to 3 in Spl.S.C.No.188 of 2023 facing trial for offence under Sections 452, 294(b), 506(ii) and 354-A of I.P.C. r/w 8 of Protection of Children from Sexual Offences Act, 2012 (herein after referred as 'POCSO Act'), filed a discharge petition in Crl.M.P.No.1111 of 2023, which came to be dismissed on 07.12.2023, against which, the present revision.



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3.The gist of the case is that the petitioners are General Manager, Administrative Manager and PRO of Virgo Polymers India Pvt. Ltd., in which, the de-facto complainant's husband was the Marketing Manager. The de-facto complainant's husband employed from the year 2009. In the year 2018, he associated in a new company in the name of M/s.Ashirwad Plastics. The accounts of the Virgo Polymers was verified and found de-facto complainant's husband misappropriated a sum of Rs.2 Crores, and the de-facto complainant and his husband were called to Virgo Polymers office at Shenoy Nagar and a letter admitting misappropriation forcibly obtained. The de-facto complainant has got two daughters. The elder daughter is studying 2nd year in Ethiraj College and her younger daughter is studying 8th standard in Danish Matriculation Higher Secondary School.

3.1.On 17.06.2021, the petitioners forcibly entered the house of de-facto complainant, demanded the alleged misappropriated amount and



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threatened them to be done with. They also used abusive words and picked up a big fight. The de-facto complainant's second daughter got scared and started crying. The petitioners to console the daughters took them to the bedroom, locked the door from inside. The petitioners sat in the cot, A3 pulled the top of the clothes of the daughters, A1 pulled the de-facto complainant's elder daughter, made her to sit on his lap, made improper touch on the daughters. Further they molested them and claimed that the de-facto complainant and her daughters looking beautiful, they can get into prostitution and earn money instead of cheating their company. A2 threatened to kill the daughters. They forced de-facto complainant and her husband to give the house property to settle the misappropriated amount.

3.2.The daughters immediately not informed their parents. Later on the complaint of Virgo Polymers, a case registered against the de-facto complainant's husband Vishal, her brother and others, Vishal, her husband was arrested on 22.03.2022. After three months, he came out on statutory



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bail, the children mentally affected. They were taken to the Psychiatrist for treatment. The Doctor treated and gave medicines, four of the family attempted suicide by taking pills, later took treatment and got discharged, Virgo Polymers, adopted all methods including third degree method to settle the alleged misappropriated amount including house property, their dwelling house. The petitioners took them to their Advocate's office and forcibly obtained certain undertaking and signatures. Thus the petitioners and their company Virgo Polymers, exerted pressure by lodging a complaint, arresting de-facto complainant's husband Vishal, took them to Advocate's office, threatened, obtained forcible settlement, by force visiting their home intimidating them.

3.3. Not stopping with the same, Virgo Polymers filed a petition seeking change of investigation from CCB police to CBCID. The elder daughter unable to face humiliation and threat cut her palm in the college, she was admitted in the Government Hospital, timely treatment saved her



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life. The classmates of the elder daughter finding behavioural change and always in a pensive mood, she was referred to Student Counsellor, who interacted with elder daughter and de-facto complainant's family members and gave a report. The report revealed petitioners molestation, improper touch and sexual assault. From the report, de-facto complainant came to know about the petitioners' act when they visited their house and she made a complaint to the Tamil Nadu State Commission of Women, who enquired, confirmed the report and forwarded the complaint along with the report to the respondent police, and the respondent police registered a case, conducted investigation. On completion of investigation, charge sheet filed against the petitioners/accused listing LW1 to LW14 and documents. The petitioners filed a discharge petition in Crl.M.P.No.1111 of 2023 and the same was dismissed, against which, the present revision has been filed.

4.The contention of the learned counsel for petitioners is that the de-facto complainant's husband Vishal employed as Marketing Manager in



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petitioners' company, was handling the accounts, sales and collection. During June, 2021, the company's clients informed from 10.06.2021, materials not supplied despite payments made. Thereafter, the internal investigation conducted and found Vishal had misappropriated company's funds to an extent of 3.04 Crores by diverting funds from clients to his brother-in-law Paul Francis Xavier's company, namely, Aashirwad Enterprises. The siphoned money was invested in many properties, constructing a house at Kolathur. Further, the company materials were removed without proper invoice. Later Vishal enquired, who admitted diversion of company fund gave a letter to repay the company, the de-facto complainant is a witness to this admission letter dated 18.06.2021. De-facto complainant and her husband Vishal agreed to register the house in Kolathur, GKM colony, for the companies claim of Rs.3.04 Crores, to verify the property, the petitioners gone there. Further it came to know that de-facto complainant's husband pledged the house with HDFC Bank, Adyar Branch. Vishal's brother-in-law



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Ramesh requested the Managing Director of Virgo Polymers to visit Vishal's house to discuss and sort out the issue. On their request Virgo Polymers deputed its employees, i.e., the petitioners to negotiate and to recover the misappropriated amount.

4.1. On behalf of the Managing Director, petitioners had gone to the house of Vishal on 17.06.2021. Inside the house relatives of Vishal were present but Vishal was not available, waited for half-an-hour petitioners came back. Later through social media the petitioners came to know that on 23.06.2021 Vishal, his wife and two daughters attempted suicide and a complaint was registered in CSR No.172 of 2021. The petitioners were enquired on 24.06.2021 and they explained the misappropriation committed by Vishal and the suicide attempt is a staged drama, on enquiry, CSR No.172 of 2021 closed. The petitioners company lodged a complaint on 23.06.2021, which was enquired and a case was registered in Crime No.94 of 2021 on 28.09.2021 for offence under Sections 408, 420, 467, 468, 471 r/w 109 of



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I.P.C. against the Vishal and one Alex @ Paul Fransis Xavier. Vishal was arrested on 20.03.2022 and after 93 days in prison, he came out on statutory bail. In the meanwhile, Alex approached this Court for anticipatory bail in Crl.O.P.No.7178 of 2022, Crl.O.P.No.11590 of 2022 and Crl.O.P.No.14923 of 2022 and the same were dismissed on 07.04.2022, 20.05.2022 and 05.07.2022. Despite dismissal of three anticipatory bail applications, the CCB failed to arrest the absconding accused. Hence, the company filed Crl.O.P.No.5497 of 2022 seeking transfer of the case to CBCID, Chennai and this Court by order dated 22.09.2022 transferred the case to CBCID and the case was re-registered in Crime No.8 of 2022 on 14.11.2022. Now investigation completed, charge sheet filed.

4.2.The petitioners' company filed a civil suit in C.S.No.83 of 2022 against the Vishal and others and filed an application in Appl.No.2100 of 2022 to attach the house property at GKM Nagar, Kolathur and the same was attached vide order dated 30.11.2022. Thereafter, to create a defence for the



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misappropriation and attachment of properties, the above case has been registered. The petitioners approached this Court in Crl.O.P.No.1722 and 3909 of 2023 seeking anticipatory bail and they were granted anticipatory bail. The de-facto complainant intervened objected for grant of anticipatory bail and thereafter only anticipatory bail granted. The de-facto complainant filed a petition for cancellation of anticipatory bail to the petitioners in Crl.M.P.No.3700 of 2023. Later it was withdrawn on 22.06.2023. The de-facto complainant using her two daughters lodged the above complaint. Further, the de-facto complainant through her sister-in-law Neeraja lodged a complaint as though witnesses were threatened and a case in Crime No.84 of 2023 for offence under Sections 294(b) and 506(i) of I.P.C. registered on 03.05.2023 and the same was closed as 'Mistake of Fact' on 29.05.2023. From the above, it is clear that the first respondent failed to consider the past events all created in defensive to escape from the misappropriation committed without proper investigation filed final report in this case. The de-



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facto complainant lodged a complaint with malafide and concocted version.

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The de-facto complainant using her daughters managed to register a complaint for the alleged occurrence on 17.06.2021, claiming incident was revealed only on 22.12.2022. After coming to know about the transfer of case from CCB to CBCID, finding that misappropriation noose getting tightened against Vishal and others, and the above case has been slapped against the petitioners.

4.3.The learned counsel for petitioners referring to the statement of LW12/Managing Director of Virgo Polymers Limited, who absolves any criminality against the petitioners, gives details about the action being taken against the de-facto complainant's husband and filing of civil suit for recovery of money. Thus from the statement of witnesses, it is seen that all witnesses closely related to the de-facto complainant and victim girls, who admit the registration of cases both civil and criminal against the de-facto complainant, her husband and family members but explanation recorded as



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though victims disclosed about the incident happened on 17.06.2021 only after 23.10.2022. Thus with a malafide the case registered against the petitioners. The trial Court without sifting the evidence to find out the truth, merely acted as a post office accepting the charge sheet and dismissed the discharge petition.

5.In support of his contention, the learned counsel relied upon the following judgments of Hon'ble Apex Court:

- (i) *Satish Mehra vs. Delhi Administration and another* reported in (1996) 9 SCC 766;
- (ii) *Rukmini Narvekar vs. Vijaya Satardekar and others* reported in MANU/SC/8100/2008;
- (iii) *Harshendra Kumar D. vs. Rebatilata Koley and others* reported in (2011) 3 SCC 351;
- (iv) *V.K.Sasikala vs. State Rep by Superintendent of Police* reported in (2012) 9 SCC 771; and
- (v) *Nitya Dharmananda alias K.Lenin and another vs. Gopal Sheelum Reddy and another* reported in (2018) 2 SCC 93.



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for the principle, when reliable materials are available at the stage of discharge, the same can be looked into. Further, if the materials convincingly establishes that the prosecution version is totally absurd or preposterous or concocted, accused can be discharged.

6.The learned Additional Public Prosecutor filed his counter and submitted that on 28.12.2022, the de-facto complainant lodged a complaint to the first respondent that she along with her husband and daughter living in GKM Colony, Jawahar Nagar, Kolathur. Her daughters studying college and school. Her husband was employed in Virgo Polymers from 2009 onwards, her brother-in-law in the year 2018 started a business in the name of Aashirwad Plastics, which became envious to the employees of the Virgo Polymers, who concocted a story that de-facto complainant's husband misappropriated huge sums of money around Rs.2.04 Crores. The first petitioner/General Manager, Second petitioner/Administrative Manager and third petitioner/PRO had gone to the house of the de-facto complainant on



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17.06.2021. They forced the de-facto complainant's husband Vishal to settle the house property to compensate the misappropriation committed. There was a shouting and abuse. Both the daughter became nervous, fearful and started crying. In the guise of consoling the two daughter the petitioners took them to the bed room, where A3 pulled the cloths of the daughters, A1 made the elder daughter to sit on his lap molested and improper touch made. They stated that two daughters and mother are beautiful. If they co-operate they can do prostitution business and pay the misappropriated amount. They also threatened that if they disclose they would be killed. After the incident, the de-facto complainant's daughters lost interest in their studies because of fear created. They were taken to Psychiatrist and at that time, the manhandling by the three staff/petitioners came to the knowledge. The Student Counsellor enquired, interacted with the de-facto complainant's family, gave a report confirming daughters psychologically affected due to the incident happened on 17.06.2021 and the petitioners are the reason.



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6.1.In the meanwhile, a case for misappropriation lodged by Virgo Polymers against the de-facto complainant's husband and her brother and a case registered but it is separate incident. The victims' father and uncle being an accused in a criminal case would not give license or authority to the petitioners to commit the above offence. Further, the civil suit and other related cases are independent proceedings. It is natural that the daughters were in a state of shock due to the act of the petitioners and for the other attendant circumstances. The victims parents, taken to the Advocate's office of Virgo Polymers, forced to execute documents, such action definitely affected the cordiality in the family and fear created by forcible act by the Virgo Polymers sending advocates and others to settle the issue. Finally, sexual assault made on the victims. These factors considered, victims enquired and their statement under Sections 161 and 164 Cr.P.C. considered along with statement of other witnesses, Psychiatrist report, Student



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Counsellor report and medical records. Thereafter, only charge sheet filed.

The contention of the petitioners are based on the documents, which are not relied upon documents by the prosecution. Further, the documents are disputed. If at all the petitioners seek justification or falsity of the case, it is for them to prove during trial. Further the grounds raised are factual which has to be necessarily considered only during trial. The trial Court on the charge sheet, statements and documents finding prima facie case made out took cognizance, took the case on file issued summons, the petitioner's discharge petition considered by the trial Court, which on extraneous materials not in the charge sheet and grounds raised are factual, dismissed the discharge petition.

7.The learned counsel for second respondent/de-facto complainant submitted that in this case the petitioners not disputed their entry to the de-facto complainant's house, which is the dwelling house, where de-facto



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complainant, her daughters and her husband are reside. The case of the Virgo Polymers is that on 17.06.2021, the de-facto complainant and her husband gave an undertaking letter to settle the alleged misappropriation amount. In such circumstances, what made the petitioners to visit the de-facto complainant's house. Their entry to the house clearly recorded in the CCTV camera. Further, it is not denied by the Managing Director of Virgo Polymers, sending the petitioners to the de-facto complainant's house, but gives a justification that to verify the property they were sent. In view of the admitted position, it is only the inmates, who can state about the happenings inside the house. The daughters/LW2 and LW3 taken to bedroom and molestation, improper touch, abuse and sexual assault made. The daughters initially not disclosed the same but it reflected in their behavioural change, which was noticed by her classmates in their educational institution. Daughters referred to Student Counsellor and to Psychiatrist, who confirmed behavioural change is due to the shock and act of the petitioners committed



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on 17.06.2021. In fact, entire family attempted to commit suicide but they could be saved. The aim of the Virgo Polymers is to somehow take away the property of the de-facto complainant and her husband to recover the alleged misappropriated amount. At one stretch filed civil suit, on the same breath, using a battery of Advocates to make recovery by all means. Despite complaints to the police, the police failed to register F.I.R. immediately, later crime number assigned and F.I.R. closed as 'Mistake of Fact'. This is the money, muscle power of the Virgo Polymers, in blunting steps taken by the de-facto complainant to address grievance seeking justice. Left with no other option, finally the de-facto complainant's family approached Tamil Nadu State Commission for Women. Thereafter, enquiry conducted and report forwarded to the respondent police and F.I.R. registered.

7.1.He further submitted that during investigation, statement of witnesses recorded, veracity of the complaint verified, victims appeared



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before learned Magistrate, statement under Section 164 Cr.P.C. recorded and after conclusion of investigation, charge sheet filed in this case. Petitioners' claim of citing civil case and closure of other cases is not a justification for the petitioners committing sexual assault on the minor daughters. Had the de-facto complainant was so inimical motivated to implead everyone of Virgo Polymers, the allegations could have been stretched to the Managing Director and other Directors but the complaint fair named the three persons, the petitioners herein, who committed sexual assault against the de-facto complainant's daughters. The petitioners' contention is based on the extraneous documents, which does not form part of the prosecution documents. In view of the same, the petitioners contention cannot be considered at this stage, which the trial Court rightly recorded and dismissed the petition. He further submitted that the citation referred by the petitioners shows that only documents of impeccable and sterling quality can be considered. In this case, the documents are disputed. Further, documents and



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cited cases are pending adjudication. Hence, the same cannot be said to be of sterile quality and prayed for dismissal of the above petition with a direction to complete the trial without further delay.

8.Considering the submissions made on either side and on perusal of the material, it is seen that the petitioners visiting to the house of de-facto complainant on 17.06.2021 on the direction of Managing Director Mr.Vivek Ramassaira is not seriously disputed. Even in their representation to the Commissioner of Police, Virgo Polymers admit these fact but gives a different version. What had happened inside the house is to be seen only from the statement of the inmates. In this case, LW1 to LW3 are the inmates of the house. LW2 and LW3 are the daughters. LW3 minor daughter, who had given a statement about the petitioners taking them to the bedroom, locking the door from inside and committing sexual assault, improper touch, using abusive words and threatening them. Though they have not disclosed the same to the parents immediately, on 23.06.2021 all the four attempted



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suicide, got admitted in the hospital and thereafter, CSR No.172 of 2021 filed but later closed on 28.06.2021. In the meanwhile, the Managing Director of Virgo Polymers lodged a complaint against the de-facto complainant's husband and brother-in-law and a case initially registered by CCB in Crime No.94 of 2021 on 28.09.2021, later Vishal, the de-facto complainant's husband and father of victims was arrested on 22.03.2022 in that case. Thereafter, the case was transferred to CBCID and registered in Crime No.8 of 2022 on 14.11.2022. The Virgo Polymers also filed a civil suit in C.S.No.83 of 2022 and an application in A.No.2100 of 2022. In both the suit and application, written statement filed by the Vishal and de-facto complainant. In none of these proceedings, the incident of sexual assault on 17.06.2021 not explicitly stated.

9.Be that at it may. These documents neither form part of the charge sheet nor collected during investigation. Admittedly, the civil suit and criminal case against the de-facto complainant's husband in Crime No.8 of



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2022 are pending adjudication. Hence, it cannot be termed as documents of impeccable and sterling quality. In this case, the victims had given statements under Sections 161 and 164 of Cr.P.C. Coupled with Psychiatrist report and Student Counsellor report, statement of other witnesses are in tune with the victim's statement. There might be a delay in lodging the complaint but all delays are not fatal, it might be a good defence for the petitioners, the contention that above case is in counter-blast to the earlier proceedings initiated by Virgo Polymers. But again it is a disputed facts, which cannot be gone into at this stage. The trial Court considering all these aspects relying upon the guidelines issued in *Sajan Kumar* case finding that the points raised by the petitioners can be appreciated only at the time of trial and not at the stage of framing charges had rightly dismissed the petition. In view of the same, this Court is not inclined to entertain this petition.



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10.Hence, the Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

11.It is made clear that the discussion and observation made in this case are only to the limited purpose of deciding the above case. The trial Court is directed to proceed with the case on its own merits uninfluenced by the observations made herein. Finding trial is kept pending due to the filing of discharge petition and revision petition before this Court, this Court directs the trial Court (Special Court for Exclusive Trial of Cases under POCSO Act, Chennai) to give preference and dispose of the trial in Spl.S.C.No.188 of 2023 as expeditiously as possible, without further delay.

03.09.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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M.NIRMAL KUMAR, J.

rsi

To

1.The Inspector of Police,
W-9, All Women Police Station,
Villivakkam, Chennai – 600 049.

2.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
Crl.R.C.No.2240 of 2023

and

Crl.M.P.Nos.428, 429 & 5128 of 2024

03.09.2024