



CrI.O.P.(MD) No.1936 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.02.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

**CRL.O.P(MD)No.1936 of 2024
and
CRL.M.P.(MD)Nos.1445 and 1446 of 2024**

1.Thirupathi
2.Thammayan
3.Vallaiyammal
4.Kumaravel
5.Mariammal

...Petitioners

VS

1.State represented by its
The Inspector of Police,
All Women Police Station,
Kamuthi, Ramanathapuram District.
(in Cr.No.2 of 2023)

2.T.Munipriya

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records in Spl.S.C.No.49 of 2023 on the file of the leaned Fast Track Mahila Court, Ramanathapuram District in Cr.No.2 of 2023 on the file of the first Respondent Police.



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For Petitioners : Mr.A.Uthayakumar
For R1 : Mr.B.Thanga Aravindh
Government Advocate (crl.side)

For R2 :Mr.M.Gandhirajan

ORDER

The Criminal Original Petition had been filed seeking to quash the final report in Spl.S.C.No.49 of 2023 on the file of the learned Fast Track Mahila Court, Ramanathapuram District.

2.This Petition had been filed by the Accused 1 to 5 in Spl.S.C.No.49 of 2023. A1 is the husband, A2 and A3 are the parents of A1 and A4 and A5 are the parents of the victim. As per the prosecution case, the victim was pregnant, when she attended the Government Hospital at Aruppukottai. At that time, the Doctor found that the victim had not attained the marriageable age. Therefore, a complaint was lodged. Based on the same, the case was registered in Cr.No.2 of 2023 on the file of the All Women Police Station, Kamudhi, Ramanadhapuram District, for offences punishable under Sections 5(j)(ii), 5(I) and 6 of POCSO Act and Sections 9, 10 and 11 of



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Prohibition of Child Marriage Act, 2006. Now, the case is pending before the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram.

3.It is the submission of the learned Counsel for the Petitioners as well as the learned Counsel for the second Respondent/*de-facto* Complainant that subsequent to the marriage, the accused and the victim are living as husband and wife and they are blessed with a female child aged eleven months. Further, it is mentioned by the learned Counsel for the victim that the Accused No.1 is the maternal uncle of the victim. As the practice in their traditional system in Tamil Nadu, the victim was married with her maternal uncle.

4.As per the case of the prosecution, A1 is the guilty of offences under the provisions of POCSO Act and the Prohibition of Child Marriage Act, 2006. A2 and A4, the parents of A1 and A4 and A5, the parents of the victim, are guilty of offences under the provisions of Prohibition of Child Marriage Act, 2006. Now, as per the statement of the learned Counsel for the Petitioners, A1 and the victim girl are living as husband and wife and they had blessed with a female child aged eleven months. If the trial



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concludes and ended in judgment, A1 to A5 have to be sentenced to imprisonment, whereby, A2 to A4 will have to undergo two years imprisonment for offences under the Prohibition of Child Marriage Act, 2006 and A1 has to be sentenced to imprisonment for a period of not less than 20 years under the provisions of POCSO Act and the Prohibition of Child Marriage Act, 2006. If the case ends in conviction, an appeal has to be taken up. It will also be delayed. By that time, the minor child aged eleven months will be denied the love, affection and care of the father and grandparents. It is a very shocking circumstance.

5.If the provisions of POCSO Act and the Prohibition of Child Marriage Act, 2006, are mechanically applied, for no fault of the minor child. The child had to live a cruel life without the love, affection and care of the parents and grand parents, as they will serve long sentence in imprisonment upto 20 years. Thereby, the minor child will be left as a destitute facing cruelty of the society. Therefore, this is a peculiar circumstance. The involvement of the parents of A1 and the parents of the victim in this crime cannot at all be denied. At the same time, it has resulted in more complication. Therefore, exercising the inherent power of the High



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Court under Section 482 of Cr.P.C., top most priority is given to the minor child for the mental and physical health and future of the minor child, who is too young. Under those circumstances, the application of law had to be averted. It is an extraordinary circumstance. This cannot be applied as a general rule.

6.Considering the welfare of the minor child, who is too young and also considering the social and educational status of the Accused, they have to be shown some lenient. Therefore, exercising the extraordinary power under Section 482 Cr.P.C., this Court is inclined to quash the case against the Petitioners herein in Spl.S.C.No.49 of 2023 on the file of the learned Judicial Magistrate, Fast Track Mahila Court, Ramanathapuram, in the light of the judgments of this Court in (a) **2021 (1) MWN (Cr.) 252 (Vijayalakshmi and another and State and (b) 2022 (1) LW CrI. 303 (Agavai vs the State) (c) 2019 SCC OnLine Mad 18850 (Sabari @ Sabarinathan @ Sabarivasan vs the Inspector of Police and others)** and in the light of the precedent of the Hon'ble Gujarat High Court in **2021 Scc Online Guj 2961 (Ashwinibhai vs State of Gujarat).**



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In the result, the ***Criminal Original Petition*** is allowed. The case in Spl.S.C.No.49 of 2023 on the file of the learned Judicial Magistrate, Fast Track Mahila Court, Ramanathapuram, is quashed. Consequently, connected Miscellaneous Petitions are closed.

Internet :Yes/No
NCC :Yes/No
cmr

28.02.2024

To

1.The Judicial Magistrate, Fast Track Mahila Court,
Ramanathapuram.

2.The Inspector of Police,
All Women Police Station,
Kamuthi, Ramanathapuram District.



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SATHI KUMAR SUKUMARA KURUP, J.

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