



CrI.O.P.(MD)No.5720 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **08.02.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CrI.O.P.(MD) No.5720 of 2022

and

CrI.M.P.(MD).No.4055 of 2022

1.Satheesh Kumar ... Petitioner/Sole Accused

Vs.

1.The State through
The Inspector of Police,
All Women Police Station,
Kanyakumari District.
In Crime No.26 of 2021 ... 1st Respondent/Complainant

2.Sivakami
The Rural Welfare Officer,
Agatheeswaram Block,
Kankakumari District. ...2nd Respondent/Defacto Complainant

3.Radhakani ... 3rd Respondent/Mother of the
Victim girl

4.Rajendran ... 4th Respondent/Father of the
Victim girl

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the Charge Sheet in Spl.S.C.No.5 of 2022 on the file of the Special Court for POCSO Act Cases, Kanyakumari District, for the offence under Sections 5(1), 6 and



Crl.O.P.(MD)No.5720 of 2022

11(4), 12 of Protection of Child from sexual Offences Act, 2012 and 366 of IPC and quash the same.

For petitioner	: Mr.K.Suyambulinga Bharathi
For R-1	: Mr.S.Manikandan Government Advocate (Crl.Side)
For R3 & R4	: Mr.R.Anandha Raj
For Victim	: Mr.R.Karunanithi for Mr.R.Tamilvanan

ORDER

This petition has been filed seeking to quash the charge sheet in Spl.S.C.No.5 of 2022 on the file of the Special Court for POCSO Act Cases, Kanyakumari District.

2. The allegation against the petitioner is that the defacto complainant, who is the Rural Welfare Officer, Agatheeswaram Block, Kanyakumari District, made a complaint before the Law Enforcing Agency stating that on 04.08.2021, at about 02.30 p.m, she was received information that the victim girl was abducted by the petitioner herein. Then, she along with one Megala, who is working in the same block as a Child Line Officer rushed to the house of the victim girl and made an enquiry. On enquiry, the victim girl disclosed the fact that she fell in love



with A1 and having good relationship for the past 1 year. On 30.07.2021, at about 09.00 p.m, when she was alone in her house, A1 went to the house of the victim girl and abducted her on the pretext of marriage. Subsequently, he had sexual relationship with the victim girl on several occasions. Hence, FIR has been registered against the petitioner in Crime No.26 of 2021 for the offences under Sections 5(1), 6, 11(4), 12 of Protection of Child from Sexual Offences Act, 2012 and 366 of IPC by the Law Enforcing Agency. Thereafter, the Law Enforcing Agency conducted enquiry. After completion of enquiry, final report was filed before the Special Court for POCSO Act Cases, Nagercoil, Kanyakumari District, and the same was taken on file in Spl.S.C.No.5 of 2022. Challenging the same, the petitioner filed this petition.

3.The learned counsel for the petitioner would submit that the petitioner is the sole accused. Though the criminal case was registered against the petitioner on 04.08.2021, subsequently, with the blessings of the elders of both the family, the marriage was performed in between the petitioner and the victim girl on 26.04.2023 in the Arulmighu Velmurugan Thirukovil, Murugan Kundam, Kanyakumari. The Temple Authorities also issued a Marriage Certificate in favour of the petitioner. Further, the marriage was registered before the Sub Registrar, Kottaram,



Crl.O.P.(MD)No.5720 of 2022

on 02.05.2023. Subsequently, the Aadhar Card also obtained in the name of the victim girl by mentioning the petitioner as her husband. Now, the victim girl is 9 months pregnancy. The Pregnant Certified was also issued by the National Rural Health Mission, Government of India. Both the victim girl and A1 are well settled in their life and living happily.

4.The learned counsel appearing for the petitioner would further submit that the issues arises in the present quash petition is no longer *res-integra*. The very same issue came up for consideration before this Court, in **Crl.OP.No.9691 of 2022**. This Court, after following the decisions rendered by this Court in **Sabari Vs. Inspector of Police** reported in **2019 (3) MLJ Crl. 110**, in **Crl.OP.No.232 of 2021 (Vijayalakshmi and Another Vs.State represented by the Inspector of Police, All Women Police Station, Erode and Another)** dated **27.01.2021**, further, the guidelines issued by the Hon'be Apex Court in the cases of **Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath** reported in **2017 9 SCC 641** and **The State of Madhya Pradesh Vs. Dhruv Gurjar and Another** reported in **2019 2 MLJ Crl. 10**, quashed the criminal proceedings against the accused.



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5. The learned counsel appearing for the petitioner would further submit that a memo of compromise has also been filed by the petitioner and the respondents 3 & 4, who are the mother and father of the victim girl on 07.02.2024 and the same was duly signed by the parties and their respective counsels. Accordingly, he seeks quashment of Spl.S.C.No.5 of 2022 by allowing this petition.

6. Apart from that, the family members of the victim girl as well as the petitioner appeared before this Court and submitted that the marriage was performed in between the petitioner and the victim girl after the victim girl attains majority. Now, the victim girl is 9 months pregnancy and she consented to quash this case as against the petitioner.

7. The learned Government Advocate (Crl.Side) appearing for the State has not disputed the facts submitted by the learned counsel for the petitioner.

8. In this regard, the similar issue was already came up for consideration before this Court in **Crl.OP.No.9691 of 2022**. The relevant paragraphs are as follows:-



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Crl.O.P.(MD)No.5720 of 2022

“7.In this regard, it is relevant to refer the judgment of the learned Single Judge of this Court, in Sabari v. Inspector of Police reported in 2019 (3) MLJ Crl 110, wherein the learned single Judge had discussed in detail about the cases in which persons of the age group of 16 to 18 years are involved in love affairs and how in some cases ultimately end up in a criminal case booked for an offence under the POSCO Act. The relevant portions of the judgment are extracted hereunder for proper appreciation:-

“21.When this case was taken up for hearing, this Court became concerned about the growing incidence of offences under the POCSO Act on one side and also the Rigorous Imprisonment envisaged in the Act. Sometimes it happens that such offences are slapped against teenagers, who fall victim of the application of the POCSO Act at a young age without understanding the implication of the severity of the enactment.

26.In addition to the above, this Court is of the view that 'warning' of attraction of POCSO Act must be displayed before screening of any film, which have teenage characters suggesting relationship between boy and girl.

27.Apart from the above, this Court is of the view that as per the 3rd respondent's report, majority of cases are due to relationship between adolescent boys and girls. Though under Section 2(d) of the Act, 'Child' is defined as a person below the age of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the



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CrI.O.P.(MD)No.5720 of 2022

school final or entering the college, the relationship invariably assumes the penal character by subjecting the boy to the rigorous of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure to be sentenced 7 years or 10 years as minimum imprisonment, as the case may be.

28. When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.

29. Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if



it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence”.

8.Following the above judgment, this Court has quashed the final report in Crl.O.P.No.232 of 2021 dated 27.01.2021 [Vijayalakshmi and another Vs. State Represented by the Inspector of Police, All Women Police Station, Erode and another].

9.In light of the above judgments, in the present case the petitioner and the daughter of the 2nd respondent got married and they are now having a child and the 2nd respondent also accepted them. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally in cities. After the parents or family lodge a complaint, the Police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. As a consequence of such a FIR being



registered, invariably the boy gets arrested and thereafter, his youthful life comes to a grinding halt. The provisions of the POCSO Act, as it stands today, will surely make the acts of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. It is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act.

10.The main issue that requires the consideration of this Court is as to whether this Court can quash the criminal proceedings involving noncompoundable offences pending against the petitioner. The Hon'ble Supreme Court in the case of Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath, reported in 2017 9 SCC 641 and in case of The



State of Madhya Pradesh Vs. Dhruv Gurjar and Another reported in (2019) 2 MLJ Crl 10, has given sufficient guidelines that must be taken into consideration by this Court while exercising its jurisdiction under Section 482 of Cr.P.C, to quash non-compoundable offences. One very important test that has been laid down is that the Court must necessarily examine if the crime in question is purely individual in nature or a crime against the society with overriding public interest. The Hon'ble Supreme Court has held that offences against the society with overriding public interest even if it gets settled between the parties, cannot be quashed by this Court.

11.In the present case, the offences in question are purely individual/personal in nature. It involves the petitioner and the victim girl and their respective families only. It involves the future of two young persons who are still in their early twenties. Quashing the proceedings, will not affect any overriding public interest in this case and it will in fact pave way for the petitioner and the victim girl to settle down in their life and look for better future prospects. No useful purpose will be served in continuing with the criminal proceedings and keeping these proceedings pending will only swell the mental agony of the petitioner, victim girl and their parents as well.



12.In view of the above, this Court is inclined to quash the criminal proceedings in Special S.C.No.1 of 2021 on the file of the Special Court for Exclusive Trial of Cases registered under POCSO Act, Cuddalore in exercise of its jurisdiction under Section 482 of the Criminal.

13.Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in Special S.C.No.1 of 2021 on the file of the Special Court for Exclusive Trial of Cases registered under POCSO Act, Cuddalore, is quashed. The connected Miscellaneous Petition is closed.”

9. The above decision rendered by this Court, dated 28.06.2022 is squarely applicable to the present case on hand. Further, in the present case, the offences in question are purely individual and personal in nature and it involves in between the respective families. Hence, continuation of the proceedings in Spl.S.C.No.5 of 2022 pending on the file of the Special Court for POCSO Act Cases, Kanyakumari District, against the petitioner, would be caused mental agony to the petitioner, the victim girl as well as their parents.

10.Considering the decision rendered by this Court dated 28.06.2022 and the joint compromise memo dated 07.02.2024, the



Crl.O.P.(MD)No.5720 of 2022

proceedings in Spl.S.C.No.5 of 2022 pending on the file of the Special Court for POSCO Act Cases, Kanyakumari District, is hereby quashed and the Criminal Original Petition is allowed and the terms of joint compromise memo shall form part and parcel of this order. Consequently, the connected miscellaneous petition is closed.

08.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Special Court for POSCO Act Cases,
Kanyakumari District.
- 2.The Inspector of Police,
All Women Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.5720 of 2022

M.DHANDAPANI. J.

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Crl.O.P.(MD) No.5720 of 2022
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Crl.M.P.(MD).No.4055 of 2022

08.02.2024