



CRL.A(MD).No.420 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 20.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.420 of 2023
and
CRL.MP(MD).No.7742 of 2023

Prasath @ Pandidurai

... Appellant/Sole Accused

Vs.

State Rep. By
The Inspector of Police,
All Women Police Station,
Pattukkottai,
Thanjavur District.
(Crime No.13 of 2028)

... Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the entire records connected to the judgement in Spl.S.C.No.49 of 2019 (Old SSC.38 of 2018) on the file of the Sessions Judge, Principal Special Court for Exclusive Trial of Cases Under POCSO Act, Thanjavur dated 27.12.2022 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor



CRL.A(MD).No.420 of 2023

JUDGMENT

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This appeal has been filed to set aside the judgment passed by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases Under POCSO Act, Thanjavur in Spl.S.C.No.49 of 2019 dated 27.12.2022.

2.The appellant who is the sole accused in Spl.S.C.No.49 of 2019 on the file of the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases Under POCSO Act, Thanjavur, has filed this appeal challenging the conviction and sentence imposed for the offences under Sections 366 of IPC and 3(a) r/w 4(2) of the prevention of children from Sexual Offences Act, by the impugned judgment dated 27.12.2022.

3. Prosecution Case:-

According to the prosecution, at the time of occurrence, the victim girl was a minor and her date of birth is 27.03.2002. The victim girl has informed her parents that she was in love with the petitioner/accused. When the parents of the victim girl reprimanded her, she informed the same to the appellant. Immediately, the appellant eloped with the victim girl promising to marry her and treat her as his wife. Thereafter, the case in



CRL.A(MD).No.420 of 2023

Crime No.13 of 2018 was registered for the offences under Sections 366 of IPC and 3(a) r/w 4(2) of the prevention of children from Sexual Offences Act. The investigating officer conducted the investigation and arrested the accused and collected the materials and filed the final report before the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases Under POCSO Act, Thanjavur. The same was taken on file in Special Spl.S.C.No.49 of 2019.

3.1.After taking cognizance, the learned trial Judge framed the charges against the appellant for the offences under Sections 366 of IPC and 3(a) r/w 4(2) of the prevention of children from Sexual Offences Act. On the basis of charges, he questioned the appellant and the appellant pleaded not guilty and hence, the trial was conducted and the prosecution adduced the evidence of P.W.1 to P.W.17 and marked the documents under Ex.P1 to Ex.P.12.

3.2. The learned trial Judge, considered the same, examined the appellant under Section 313 Cr.P.C., by putting the incriminating material available against him and he denied the same and hence, the case was posted for examination for the defence witness. On the side of defence, no witness was examined and no document was marked.



CRL.A(MD).No.420 of 2023

3.3. The learned trial Judge after considering the oral and documentary evidence, convicted the accused under Sections 366 of IPC and 3(a) r/w 4(2) of the prevention of children from Sexual Offences Act, by the impugned order dated 27.12.2022 and also sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) with three months rigorous imprisonment in case of default for the offence under Section 366 of IPC and to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) with one year rigorous imprisonment in case of default for the offence under Section 3(a) r/w. 4(2) of POCSO Act.

4. Aggrieved over the same, the appellant filed this appeal on the grounds stated in the memorandum of grounds of appeal.

5. While hearing the suspension of sentence, this Court granted the suspension of sentence to the petitioner and the relevant paragraphs are extracted as under:

" 6. Today, the victim girl appeared in person before this Court and stated that she is ready and willing to marry the petitioner. She also assured to register her marriage with



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the petitioner and file an affidavit to that effect. The learned counsel for the petitioner also submits that the petitioner is willing to marry the victim girl and he undertakes to file the same before this Court.

8. Considering the above facts and circumstances of the case, this Court finds force in the submission of the learned counsel for the petitioner and also taking into account the petitioner and the victim loved each other and they want to marry and register the marriage, this Court is of the considered view that the petitioner is entitled to the relief for grant of interim suspension of sentence for a period of one month for registering the marriage with the victim girl."

6. The learned Additional Public Prosecutor submitted that it is true that the victim married the appellant and they are inclined to compound the offence. But, there is no provision to compound the offence. He also submitted that the appellant committed the offence of aggravated penetrative sexual assault and hence, he did not deserve any sympathy.

7. This Court considered the rival submissions and also perused the materials and the impugned order and the precedents relied upon by both parties.



CRL.A(MD).No.420 of 2023

8. Now the question in this case is whether the conviction and sentence passed against the appellant by the Court below under Sections 366 of IPC and 3(a) r/w 4(2) of the prevention of children from Sexual Offences Act, is in accordance with law?

9. The appellant's specific case is that he loved the victim girl. The victim's mother and father refused to accept the affair. Therefore, the situation necessitated elopement with the victim girl. The appellant married the victim after attaining the majority on 11.04.2024 and registered the marriage also. To prove the same, they produced the marriage Registration Certificate and the photographs. Further, the victim girl and her mother and also the appellant's mother have filed their statements before this Court affirming the above marriage and assuring the peaceful married life. The appellant also filed an undertaking affidavit that he would be a good husband. Due to the conviction and confinement in prison from the date of the judgment, wife is not able to meet out her daily livelihood and hence, she seeks to accept the compromise memo and compound the offence. The appellant also submitted the affidavit before this Court, stating that he agreed to lead a happy matrimonial life along with the victim girl. He also stated that after the conviction, the victim frequently



CRL.A(MD).No.420 of 2023

visited the jail to see him. He also submitted that knowing the love affairs between the victim and himself, the parents of the victim refused to arrange the marriage between them. In the said circumstances, without any other option, both of them left the village and after realising the consequence of the child marriage, he did not marry the victim girl and they returned to their respective houses. Now, after she becoming major, he married her. Therefore, he pleaded that he acted with all *bona fides* and also undertakes to keep his wife safe all his life. The subsequent development that the appellant married the victim girl on attaining majority of the victim girl on 11.04.2024 has to be taken into consideration. In the said circumstances, this Court feels that there are *bonafides* in the submission of the both the victim and the appellant.

10. This Court is obliged to consider the interest of the victim girl's future. As per the affidavit of the victim girl, the appellant married the victim girl on 11.04.2024. Hence, this Court is duty bound to find a way to redress the grievance from all sides. Therefore, this Court feels that this is an extraordinary circumstance in the extraordinary situation of the case and the Constitutional Court has power to mould the Law so as to serve the needs of time in order to achieve a harmonious adjustment in human



CRL.A(MD).No.420 of 2023

relations by acquitting the appellant and further, prevent the vagrancy and destitution adopting the law laid down by the Hon'ble Supreme Court in the following cases:

<i>Lord Denning once said:</i>	<i>B.P.Achala Anand v. S. Appi Reddy, (2005) 3 SCC 313</i>	<i>Prithipal Singh v. State of Punjab: 2012(1)SCC10</i>
<i>“Law does not stand still; it moves continuously. Once this is recognised, then the task of a judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time.”</i>	<i>9.Further, the Hon'ble Supreme Court in held as follows: “Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice. The law does not remain static. It does not operate in a vacuum. As social norms and values change, laws too have to be reinterpreted, and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts.</i>	<i>“50.Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures.”</i>



11. This Court also considered and inclined to follow the judgment of this Court rendered in similar circumstances in Crl.A.(MD).No.247 of 2018 and the relevant paragraphs No.4 to 6 are extracted hereunder:

4. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of Ramgopal and others vs. The State of Madhya Pradesh reported in 2021 (6) CTC 240 and the relevant paragraphs are extracted hereunder:-

18. It is now a well crystalized axiom that the plenary jurisdiction of this Court to impart complete justice under Article 142 cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the



sublime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sum up and hold that as opposed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compoundable' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.

20. Having appraised the aforestated parameters and weighing upon the peculiar facts and circumstances of the two appeals before us,



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CRL.A(MD).No.420 of 2023

we are inclined to invoke powers under Article 142 and quash the criminal proceedings and consequently set aside the conviction in both the appeals. We say so for the reasons that: Firstly, the occurrence(s) involved in these appeals can be categorized as purely personal or having overtones of criminal proceedings of private nature; Secondly, the nature of injuries incurred, for which the Appellants have been convicted, do not appear to exhibit their mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest; Thirdly, given the nature of the offence and injuries, it is immaterial that the trial against the Appellants had been concluded or their appeal(s) against conviction stand dismissed; Fourthly, the parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s); Fifthly, the occurrence(s) in both the cases took place way back in the years 2000 and 1995, respectively. There is nothing on record to evince that either before or after the purported compromise, any untoward incident transpired between the parties; Sixthly, since the Appellants



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CRL.A(MD).No.420 of 2023

and the complainant(s) are residents of the same village(s) and/or work in close vicinity, the quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any illwill and have no vengeance against each other; and Seventhly, the cause of administration of criminal justice system would remain unaffected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the Appellants; more so looking at their present age.

5. In view of the aforesaid, the judgment in Spl.CC.No.45 of 2015 dated 19.02.2018 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal is set aside. The appellant/accused is acquitted of all charges in Spl.CC.No.45 of 2015 dated 19.02.2018 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

6. It is made clear that if the appellant leaves the victim anytime in lurch, the conviction and sentence imposed by the trial court shall stand automatically restored and the respondent



CRL.A(MD).No.420 of 2023

can secure the appellant to serve the remaining period of sentence.

12 .Accordingly, the appeal is allowed in the following terms:

12.1.The judgment passed by the learned Sessions Judge, Principal Special Court for Exclusive Trial of Cases Under POCSO Act, Thanjavur in Spl.S.C.No.49 of 2019 (Old SSC.38 of 2018) dated 27.12.2022 is set aside and the Superintendent of Police, Central Prison, Tricity, is directed to release the appellant forthwith, unless his confinement is necessary in other cases.

12.2.The appellant is acquitted from all the charges in Spl.S.C.No.49 of 2019 (Old SSC.38 of 2018), dated 27.12.2022 passed by the Sessions Judge, Principal Special Court for Exclusive Trial of Cases Under POCSO Act, Thanjavur.



CRL.A(MD).No.420 of 2023

12.3.Fine amount paid by the appellant

shall be refunded to the appellant forthwith.

12.4.Bail bond executed by the appellant

shall stand cancelled.

12.5.It is made clear that if the appellant

leaves the victim any time in lurch, the conviction

and sentence imposed by the trial Court shall

stand automatically restored and the respondent

can secure the appellant to serve the remaining

period of sentence.

Consequently, connected criminal miscellaneous petition is closed.

20.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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Note: Issue order copy on 27.06.2024



CRL.A(MD).No.420 of 2023

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To

1. The Principal Special Court
for Exclusive Trial of Cases Under POCSO Act,
Thanjavur.
2. The Superintendent,
Central Prison,
Trichy.
3. The Inspector of Police,
All Women Police Station,
Pattukkottai,
Thanjavur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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CRL.A(MD).No.420 of 2023

K.K.RAMAKRISHNAN,J.

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Order made in
CRL.A(MD).No.420 of 2023

20.06.2024