



Crl.O.P.(MD) No.11240 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.11240 of 2023

1.Parthiban
2.Shumugavel
3.Mariyappan
4.Vijay
5.Vijaya
6.Chithiraivadivu

...Petitioners

VS

1.The State represented by
The Inspector of Police,
All Women Police Station,
Srivaikundam, Tuticorin District.

2.XXX

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records pertaining to impugned charge sheet in Spl.S.C.No.11 of 2020 on the file of the Mahila Court, Tuticorin and quash the same.

For Petitioners
For R1

: Mr.S.Siva Thilakar
:Mr.M.Veeranthiran
Government Advocate (crl.side)



Crl.O.P.(MD) No.11240 of 2023

For R2

: Mr.M.Mathan Karthick

WEB COPY

ORDER

The Criminal Original Petition had been filed seeking to quash the charge sheet in Spl.S.C.No.11 of 2020 on the file of the Mahila Court, Tuticorin.

2.Mr.S.Siva Thilakar, learned Counsel [Enrl.No.799/1996], who filed vakalat on behalf of the Petitioners/Accused, Mr.M.Veeranthiran, learned Government Advocate (Crl.side) appearing on behalf of the first Respondent and Mr.M.Mathan Karthick, learned Counsel (Enrl.No. 2990/2019], who filed vakalat on behalf of the second Respondent are present in Court.

3.This Petition had been filed by the Accused in Spl.S.C.No.11 of 2020 on the file of the Mahila Court, Tuticorin. As per the prosecution case, the first Accused and the victim are in love with each other and the first Accused had sexual intercourse with the victim girl. At the relevant point of time, the victim was a minor. Therefore, a complaint was lodged. Based on the same, the case was registered in Cr.No.28 of 2018 on the file of All



Crl.O.P.(MD) No.11240 of 2023

Women Police Station, Srivaikundam, Tuticorin District, for offences punishable under Section 294(b) and 506(i) of IPC, Sections 5(I), 5(j)(ii) and 6 of POCSO Act. Now, the case is pending before the Mahila Court, Tuticorin.

4.The learned Counsel for the Petitioner submitted that after the victim girl attained the age of majority, the accused married the victim girl with custom of the family of the accused. Thereafter, their marriage was registered before the Marriage Registrar, Srivaikundam, dated 19.03.2024 in Marriage Sl.No.TMR/Srivaikundam/14/2024.

5.It is the submission of the learned Counsel for the Petitioners as well as the learned Counsel for the second Respondent that subsequent to the marriage, the accused and the victim are living as husband and wife and they are blessed with a male child aged five years.

6.If the trial concludes and ended in judgment, the first Accused/first Petitioner has to be sentenced to imprisonment for a period of not less than 20 years under the provisions of POCSO Act. If the case ends in conviction,



CrI.O.P.(MD) No.11240 of 2023

an appeal has to be taken up. It will also be delayed. By that time, the minor child will be denied the love, affection and care of the father. It is a very painful experience.

7.If the provisions of POCSO Act are mechanically applied, for no fault of the minor child, who is aged six years, had to live a cruel life and face cruelty of the society. This is a peculiar circumstance. Therefore, exercising the inherent power of the High 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 exemption to the Rule had to be invoked, the application of law had to be avoided. It is an extraordinary circumstance. This cannot be applied as a general rule.

8.Considering the welfare of the minor child, who is too young and also considering the social and educational status of the parties, they have to be shown some leniency. 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.11 of 2020 on the file of the Mahila



Crl.O.P.(MD) No.11240 of 2023

Court, Tuticorin, 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 Crl. 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)**.

In the result, the **Criminal Original Petition** is allowed. The case in Spl.S.C.No.11 of 2020 on the file of the Mahila Court, Tuticorin, is quashed.

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

26.03.2024

cmr

To

- 1.The Mahila Court, Tuticorin.
- 2.The Inspector of Police,
All Women Police Station,
Srivaikundam, Tuticorin District.

5/6



WEB COPY



Crl.O.P.(MD) No.11240 of 2023

SATHI KUMAR SUKUMARA KURUP, J.

cmr

CRL.O.P(MD)No.11240 of 2023

26.03.2024