



CrI.O.P.(MD)No.15304 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.07.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CrI.O.P.(MD)No.15304 of 2023

1. Murugan,
2. Arumugam,
3. Meenatchi,
4. Priya,
5. Vijayakrishnan,
6. Indra

... Petitioners

Vs

1. State rep. by
The Inspector of Police,
All Women Police Station, Manamadurai,
Sivagangai District.
(Crime No.29/2022)

2. Sathiyamoorthy,

3. xxxxx

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the Spl.S.C No.45 of 2023 on the file of the learned Sessions Judge, Special Court under POCSO Act, Sivagangai District, and quash the same as against the petitioner herein.



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For Petitioner : Mr.C.Suresh Kannan
For R1 : Mr.P.Kottai Chamy
Government Advocate (Crl. side)
For R2 : Mr.P.Banu Prasath

ORDER

The petitioner is an accused in Spl.S.C No.45 of 2023 on the file of the learned Sessions Judge, Special Court under POCSO Act, Sivagangai District, which is pending for the offence under Sections 5(1) r/w. 6 of POCSO Act, 2012 & 9 of Child Marriage Act. He has filed this petition to quash the proceedings pending against him.

2.The case of the prosecution is that the first petitioner had married the third respondent/victim, when she was 17 years old and the first petitioner also had sexual intercourse with the third respondent/victim. It came to the knowledge of the Child Welfare Officer/defacto complainant and he lodged a complaint.

3.The victim girl and the accused are present before this Court and they submitted that on the intervention of the elders, they have amicably resolved



their issue. A compromise memo, dated 02.11.2023 signed by the parties, is also filed before this Court.

4.Before entertaining this application on the ground of compromise, this court has also directed the investigation officer, the Inspector of Police, All Women Police Station, Manamadurai, Sivagangai District, in Crime No. 29 of 2022 to personally verify with the defacto complainant and to ascertain whether the compromise is a voluntary one, without any threat or coercion. The investigating officer after due verification, has filed her report as under:

This is to certify that, as directed by this Court in CrI.O.P.(MD)No.15304 of 2024, I personally verified the defacto complainant in Cr.No.29 of 2022, for the offence under Sections 5(1) r/w. 6 of POCSO Act, 2012 & 9 of Child Marriage Act and ascertained that the compromise arrived between the accused and the defacto complainant/victim in the above case is voluntary, without any threat or coercion.

5.This Court, while dealing with a similar situation, in the case reported in **(2021) 2 CTC 191**, in ***Vijayalakshmi and others Vs The Inspector of Police, All Women Police Station, Erode and others***, has held as follows:-

“17.This Court is not turning a blind eye to cases where the victim or survivor may, under the effect of trauma that they have undergone,



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studies on which show that they might tend to reconcile with the same by blaming themselves or convincing themselves that the element of consent was infact present. Nor is this Court scientifically justifying in toto, the genuineness or predicament of the accused in every case where it appears that the accused and victim child have been in a romantic relationship. That will depend on the facts and circumstances of each and every case.

18. In the present case, the 2nd Petitioner who was in a relationship with the 2nd Respondent who is also in his early twenties, has clearly stated that she was the one who insisted that the 2nd Respondent take her away from her home and marry her, due to the pressure exerted by her parents. The 2 nd Respondent, who was placed in a very precarious situation decided to concede to the demand of the 2 nd Petitioner. Thereafter, they eloped from their respective homes, got married and consummated the marriage. 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. An adolescent boy and girl who are in the grips of their hormones and biological changes and



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whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. 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.

19. 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 second respondent. The Hon'ble Supreme Court in the case of Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrat, 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.

20. In the present case, the offences in question are purely



individual/personal in nature. It involves the 2nd Petitioner and the 2nd Respondent and their respective families only. It involves the future of two young persons who are still in their early twenties. The second respondent is working as an Auto driver to eke his livelihood. Quashing the proceedings, will not affect any overriding public interest in this case and it will in fact pave way for the 2nd Petitioner and the 2nd Respondent 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 victim girl and her mother and not to forget the 2nd Respondent as well.”

6.This is also a similar case that of the above case. The victim who is present before this Court states that she had love affair with the accused. She also states that after she attained 18 age, she got married with the first petitioner and they are leading a peaceful life. The defacto complainant/Child Welfare Officer has also confirmed that he is not inclined to prosecute this case further, since the victim and the petitioner got married and also filed a memo to that effect.

7.In view of the above, by recording the compromise memo, dated 02.11.2023, this criminal original petition is allowed and the case in Spl.S.C.No.45 of 2023 pending on the file of the learned District and Sessions Judge, Special Court for POCSO Act cases, Sivagangai, is hereby quashed.



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The joint compromise, dated 02.11.2023, memo shall form part and parcel of this order.

15.07.2024

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



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B.PUGALENDHI,J

jbr

To

1.The learned Sessions Judge, Special Court under POCSO Act,
Sivagangai District

2.The Inspector of Police,
All Women Police Station, Manamadurai,
Sivagangai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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