



Crl.R.C.(MD).No.835 of 2024

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.10.2024

PRONOUNCED ON : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.835 of 2024

and

Crl.M.P.(MD)No.9069 of 2024

V.Boxer Suresh

... Petitioner/Sole Accused

Vs.

The State of Tamil Nadu,
represented by the Inspector of Police,
All Women Police Station,
Thiruverumbur,
Trichy District.
Crime No.13 of 2022

... Respondent / Complainant

PRAYER: Criminal Revision Petition has been filed under Section 438 r/w 442 of B.N.S.S., to call for the records before the Sessions Judge, Mahila Court, Trichy to set aside the orders passed on 23.07.2024 in Crl.M.P.No.235 of 2024 in Spl.S.C.No.61 of 2023 and to discharge the accused in Spl.S.C.No.61 of 2023.

For Petitioner : Mr.M.Shankarnath

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl.Side)



Crl.R.C.(MD).No.835 of 2024

WEB COPY

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 235 of 2024 in Spl.S.C.No.61 of 2023, dated 23.07.2024, on the file of the Mahila Court, Trichy, dismissing the petition filed for discharge under Section 227 Cr.P.C.

2. The petitioner is the accused in Spl.S.C.No.61 of 2023 for the alleged offences under Sections 5 and 6 Protection of Children from Sexual Offences Act (POCSO Act) and Section 506 I.P.C.

3. The case of the prosecution is that the defacto complainant / prosecutrix had completed 10th standard at Kanakampalayam Government High School and her date of birth as per the certificate issued by the Head Master of the said School was 24.06.1997, that the victim was subjected to sexual harassment by the petitioner/accused in the month of November 2012, that the victim was again subjected to sexual assault on 16.12.2013, when she was alone at her home, that the sexual harassment continued even after the victim had moved from her aunt's house to a rented house at Perumanallur along with her brother in the year 2016,



Crl.R.C.(MD).No.835 of 2024

that the petitioner/accused had threatened the victim not to reveal about the sexual harassment meted out to her, that the defacto complainant unable to bear his harassment and threatening, lodged a complaint before the Avinashi Police Station, Tiruppur District and on that basis, F.I.R., came to be registered in Cr.No.1 of 2012 under Sections 5 and 6 of POCSO Act and Section 506 I.P.C.

4. It is evident from the records that the Avinasshi Police, on the point of jurisdiction, has forwarded the said F.I.R., to Thiuverambur Police Station and that the jurisdictional police has then registered a case in Cr.No.13 of 2013. After completing the investigation, a charge sheet came to be filed and that the case was taken on file in Spl.S.C.No.61 of 2023, on the file of the Mahila Court, Trichy. When the case was pending for framing of charges, the petitioner/accused has filed an application under Section 227 Cr.P.C., seeking discharge from the above case and the said petition was taken on file in Crl.M.P.No.235 of 2024. The respondent police has filed a counter statement raising serious objections. The learned Sessions Judge, Mahilar Court, upon enquiry, has passed the impugned order dated 23.07.2024, dismissing the discharge petition. Aggrieved by the order of dismissal, the present Criminal Revision Case came to be filed.



Crl.R.C.(MD).No.835 of 2024

WEB COPY

5. The case of the petitioner is that the above said case was registered based upon the false and frivolous facts and evidence, that sole intention behind filing of this case is that the defacto complainant is none other than the fourth wife of the petitioner and the defacto complainant had personal grudges against the petitioner, who wanted to settle personal scores against him through this case, that there is no substantive evidence procured by the prosecution to support the accusations raised against the petitioner, that there is no prima facie case to continue the proceedings against the petitioner, that the allegation levelled by the defacto complainant is pre-motivated one which is based upon false facts and evidence, that the defacto complainant had not provided any reason or explanation for the inordinate delay in lodging the complaint against the petitioner where the alleged offence committed by the accused is said to be beyond 10 years, that the defacto complainant had suppressed her real age by claiming that she was being minor at the time of alleged offence committed by the petitioner/accused, that since the defacto complainant's brother had sexually misbehaved with the petitioner's second wife's minor child, a complaint was registered against the defacto complainant's brother and on that basis, a case came to be registered in Cr.No.13 of 2021 and that the defacto complainant had



Crl.R.C.(MD).No.835 of 2024

insisted the petitioner to withdraw the said complaint whereas the petitioner / accused was not inclined to do so and the result is, the defacto complainant had preferred a complaint by alleging sexual harassment to pressurise the petitioner to withdraw the case filed against his brother.

6. In the counter statement filed by the respondent, they have taken a stand that when the defacto complainant was residing with her relative Vijayalakshmi at Door No.12/36, Nesavalar Colony, Avyanpudur, Trichy during the year 2013, the accused who is alleged to be the third husband of her cousin Sudha had committed sexual assault against the victim girl at 10.11.2013 at about 06.00 p.m., and at the date of occurrence, the defacto complainant has not completed the age of 18 years and she was a child and the accused had committed sexual harassment by touching the vagina and the breast of the defacto complainant and also continued such sexual harassment, that when the said factum was intimated to her relative Vijayalakshmi, no action was initiated against the accused and that being so, on 11.12.2013 in the newly constructed house situated in the same locality, the said accused had committed penetrative sexual assault and then, the defacto complainant came to Perumanallur and resided at Pon Vizha Nagar at Perumanallur, Tiruppur, that when the accused



Crl.R.C.(MD).No.835 of 2024

WEB COPY

came to Perumanallur during the month of April 2016, had committed sexual assault upon the complainant and had also threatened the defacto complainant with dire consequences if she revealed the same and compelled the defacto complainant to live with him and that after completing the investigation, the charge sheet was filed and the case was taken on file, that they have examined 21 witnesses and 15 documents came to be recovered, that mere delay in lodging the F.I.R., with the police is not fatal to the prosecution, that the accused cannot be discharged from this case on the ground of delay in lodging the complaint, that the Headmaster of the Government Higher Secondary School at Konakkampalayam, Thiruppur had issued a bonafide certificate after verifying the school records and provided proof that the victim girl's date of birth is 24.06.1997, that the petitioner's contention is that the defacto complainant had suppressed her real age, as she had entered into a sale deed dated 11.12.2013 before the SRO of Keel Sathanur, that the prosecution has shown a *prima facie* case as against the petitioner/accused and the materials and evidence submitted by the prosecution are more than enough to frame the charges and that therefore, the petition is liable to be dismissed.



Crl.R.C.(MD).No.835 of 2024

WEB COPY

7. During enquiry, the petitioner/accused has produced a copy of the CSR No.130 of 2021 and sale deed dated 11.12.2013 and the same came to be exhibited as Exs.B.1 and B.2 respectively.

8. The learned Counsel for the petitioner would submit that the trial Court has failed to consider the said documents by holding that the said documents cannot be looked into at the stage of framing of charges and that there is no complete bar to look after the defence evidence in discharge application. The learned Counsel would rely on the decision of the Hon'ble Supreme Court in ***Nitya Dharmananda Vs. Gopal Sheelum Reddy*** reported in ***AIR 2017 SC 5846*** wherein it was held that if the Court is satisfied that there is material of sterling quality which has been withheld by the investigator / prosecutor, the Court is not debarred from summoning or relying upon the same even if the document is not part of charge sheet. He would further submit that the documents produced by the petitioner would go to prove that the victim had married the petitioner/accused after she has fallen in love with him, despite knowing that he had three wives, that the victim has given a complaint seeking action against the petitioner for suspecting her character, that the victim has also entered into a sale



Crl.R.C.(MD).No.835 of 2024

deed in the year 2013 which would go to show that she was eligible to enter into a contract at that time itself.

9. The learned Government Advocate (Crl.Side) would submit that the trial Court has no powers to consider the evidence or materials produced by the accused at the time of framing of charges or while deciding the discharge application.

10. When a similar issue was raised, this Court in ***I.Rajendran and another Vs. State represented by the Inspector of Police, Madurai Town, All Women Police Station, Madurai*** in Crl.R.C.(MD)No.921 of 2024, this Court had dealt with the same and the relevant paragraphs are extracted hereunder:

“10. The learned counsel appearing for the petitioners would rely on the judgment of the Hon'ble Supreme Court in ***Satish Mehra Vs. Delhi Administration and another*** reported in ***(1996) 9 SCC 766*** and argued that the Court can very well consider the materials placed by the accused while considering the discharge application or at the time of framing of charges and the relevant passages are extracted hereunder:-



Crl.R.C.(MD).No.835 of 2024

“Similar situation arise under Section 239 of the Code (which deals with trial of warrant cases on police report). In that situation the Magistrate has to afford the prosecution and the accused an opportunity of being heard besides considering the police report and the documents sent therewith. At these two State the Code enjoins on the Court to give audience to the accused for deciding whether it is necessary to proceed to the next State. It is a matter of exercise of judicial mind. There is nothing in the code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the Court at that stage. Here the "ground" may be any valid ground including insufficiency of evidence to prove charge.

The object of providing such an opportunity as is envisaged in Section 227 of the code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even material which the accused may produce at the stage contemplated in Section 227 of the Code.”



Crl.R.C.(MD).No.835 of 2024

11. At this juncture, it is necessary to refer the Three Judge Bench decision of the Hon'ble Supreme Court in the case of ***State of Orissa Vs. Debendra Nath Padhi*** reported in ***AIR 2005 SC 359***, wherein, the Hon'ble Apex Court has held that ***Satish Mehra's*** case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided and the relevant passages are extracted hereunder:-

“ In this case too the question was not about the right of the accused to file material at the stage of framing charge but was about quashing of proceedings in exercise of power under Section 482 of the Code. The decision in the case of State of Madhya Pradesh v. MohanLal Soni [(2000) 6 SCC 338] sought to be relied upon on behalf of the accused is also of no assistance because in that case an earlier order of the High Court wherein trial court was directed to take into consideration the documents made available by the accused during investigation while framing charge had attained finality since that order was not challenged and in that view this Court came to the conclusion that the trial court was bound and governed by the said direction of the High Court which had not been followed. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”



Crl.R.C.(MD).No.835 of 2024

If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.”

14. Considering the above, legal position is well settled that while considering the discharge application, the accused does not have any right to produce any material or documents and that the Court should base its decision solely on the charge sheet materials provided by the prosecution, presuming the material to be true for the purpose of determining the existence of *prima facie* case.”

11. Considering the above legal position, this Court has no hesitation to hold that the materials now produced by the petitioner/accused cannot be looked



Crl.R.C.(MD).No.835 of 2024

into. As already pointed out, the petitioner has produced the complaint allegedly lodged by the victim to show that she had admitted that she is the fourth wife of the petitioner and that there existed matrimonial dispute between them and also the copy of the sale deed dated 11.12.2013 allegedly in favour of the victim to show that she was not minor at that time.

12. The learned Government Advocate (Crl.Side) would submit that the victim has never admitted the alleged marriage with the petitioner nor the alleged complaint given before the police against the petitioner and without testing the genuineness of the same, the same cannot be looked into and more importantly in the present proceedings. The learned Government Advocate(Crl.Side) would further submit that the victim in her statement given under Section 164 Cr.P.C., before the Judicial Magistrate and also in the statement given under Section 161(3) Cr.P.C., before the Investigating Officer, has stated that since the petitioner was doing real estate business, he had registered some sale deeds in favour of the victim and her aunts and that the petitioner had tied karugamani malai, but she had returned the same.



Crl.R.C.(MD).No.835 of 2024

WEB COPY

13. As rightly contended by the learned Government Advocate (Crl.Side), even assuming for arguments sake that the said documents produced by the petitioner can be looked into for deciding the present discharge application, since the same were not admitted by the victim and the genuinenes of the documents is yet to be tested, the same cannot be considered at the present stage.

14. The first contention of the petitioner is that the allegations levelled by the defacto complainant are pre-motivated one, as the victim has converted the matrimonial dispute into a POCSO case against the petitioner/accused. It is not in dispute that the defacto complainant's sister is the third wife of the petitioner/accused. According to the petitioner, he married the defacto complainant as his fourth wife on 11.11.2018 with the consent of the defacto complainant and her parents. As already pointed out, the victim in her statement recorded under Section 164 Cr.P.C., has specifically disputed the above and she has narrated about the sexual harassment caused and the subsequent sexual assault made against her by the petitioner/accused. As rightly contended by the learned Government Advocate (Crl.Side), the victim before the jurisdictional Magistrate has reiterated her complaint version while giving statement under



Crl.R.C.(MD).No.835 of 2024

WEB COPY

Section 164 Cr.P.C., and whether the case put forth by the defacto complainant is true or not can only be tested at the trial.

15. The next contention of the petitioner is that there was an inordinate delay in lodging the complaint against the petitioner/accused. No doubt, the defacto complainant has stated that she was subjected to sexual harassment in the month of November 2012 and subsequently sexual assault on 16.12.2013 and thereafter, she was subjected to sexual assault continuously. Admittedly, the complaint came to be lodged on 04.01.2022 before the All Women Police Station, Avinashi. But as rightly pointed out by the learned Government Advocate (Crl.Side), the victim in her complaint as well as in her statements, has specifically stated that the petitioner/accused who is a boxer had threatened the victim and her brother not to reveal about the continuous sexual assault or else he would finish off their family.

16. It is pertinent to note that there is no period of limitation for lodging a POCSO complaint. It is settled law that the delay in lodging the complaint by itself is not a ground or a reason to discharge the accused from a criminal case and that too in a POCSO case. The learned Sessions Judge after referring to the



Crl.R.C.(MD).No.835 of 2024

judgment of the Bombay High Court in Bhiku Tukaram Jadhav Vs. State of Maharashtra reported in 2012 CrI.L.J.1129 (Bom), has rightly observed that whether the delay in lodging the F.I.R., affected the prosecution case or not has to be decided only after trial and it is premature to decide whether the delay of 10 years in lodging the F.I.R., is fatal to the prosecution.

17. Now turning to the contention of the petitioner that the victim was not minor at the time of alleged occurrence shown by her in the complaint, the case of the prosecution is that when the sexual harassment was made in November 2012, the victim was aged 15 years and at the time of sexual assault on 16.12.2013, she was aged 16 years. The prosecution has produced the certificate issued by the Headmaster of the Government Higher Secondary School at Konakkampalayam, where the victim had studied and wherein it has been mentioned that the victim was born on 24.06.1997. Moreover, the Investigating Officer has examined the Headmaster of the said School and recorded his statement. Moreover, the prosecution has also produced the Aadhar card of the victim girl wherein also her date of birth is shown as 24.06.1997.



Crl.R.C.(MD).No.835 of 2024

WEB COPY

18. The learned Counsel for the petitioner would mainly contend that the decision of the trial Court in determining the age of the victim is not in consonance with Section 34 of the Juvenile Justice Act 2015. As rightly contended by the learned Government Advocate (Crl.Side), the Sessions Judge has not finally determined the age of the victim girl in the impugned order, but on the other hand, the learned Judge has observed that as per the Aadhar card and the bonafide certificate, the victim seems to be a child on the date of occurrence as defined under Section 2(d) of POCSO Act.

19. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 455*** and the relevant paragraphs are extracted hereunder:

“7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v. CBI (2010) 9 SCC 368, State v. A.Arun Kumar (2015) 2 SCC 417, Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424, State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711, Niranjana Singh Karan Singh Punjabi



Crl.R.C.(MD).No.835 of 2024

vs. *Jitendra Bhimraj Bijjaya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the mater and weigh the materials as if he was conducting a trial”*

20. It is settled law that at the stage of framing charge, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against



Crl.R.C.(MD).No.835 of 2024

the accused and the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

21. It is also settled law that while considering an application seeking discharge from a case, the Court is not expected to go deep of the probative value of the material on record, but on the other hand, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, and for that purpose, the Court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is a main trial.

22. As rightly contended by the learned Government Advocate (Crl.Side), there are specific allegations levelled against the petitioner in the complaint as well as in the statement recorded under Sections 164 and 161 Cr.P.C. The petitioner has sought for discharge mainly on the basis of the documents produced by him and on the ground of delay. But as rightly contended by the learned Government Advocate (Crl.Side), the prosecution has produced sufficient materials to proceed against the petitioner and as such, there existed prima facie materials to frame charges against the petitioner/accused. Considering the above, the impugned order dismissing the discharge application



Crl.R.C.(MD).No.835 of 2024

cannot be found fault with. Hence, this Court concludes that the Criminal Revision Case is devoid of merits and the same is liable to be dismissed.

23. In the result, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

29.11.2024

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

To

1. The Sessions Court, Mahila Court, Trichy
2. The Inspector of Police,
All Women Police Station,
Thiruverumbur,
Trichy District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C.(MD).No.835 of 2024

K.MURALI SHANKAR, J.

SSL

Pre-Delivery order made in

Crl.R.C.(MD)No.835 of 2024

29.11.2024