



Crl.O.P.(MD)No.16857 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.16857 of 2024

Sahayaraj

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep., by The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.
Crime No.547 of 2022

2.XXX
XXX
XXX
Dindigul District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the records pertaining to the charge sheet in Spl.S.C.No. 219 of 2023 on the file of the Fast Track Mahila Court (Special Court for Exclusive Trial of Cases under Pocso Act), Dindigul and quash the same as illegal.

For Petitioner : Mr.D.Venkatesh



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For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)
For R2 : Mr.T.Leninkumar

ORDER

The petitioner/accused, who is facing trial in Spl.S.C.No.219 of 2023 for the offence under Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 5(I), 5(j)(ii) and 6 of the Protection of Child from Sexual Offences Act, 2012, has filed this quash petition.

2. The case of the prosecution is that based on the complaint given by the second respondent, case was registered against the petitioner in Crime No.547 of 2022 for the offence under Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 5(I), 5(j)(ii) and 6 of the Protection of Child from Sexual Offences Act, 2012.

3. The brief fact of the case is that the victim/defacto complainant/second respondent in this case was studying 9th standard in Government Higher Secondary School, Aaralvaimozhi. Due to family circumstances, she was unable to continue her study. Her father and mother are daily coolie wagers. Since they were unable to get



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employment in Kanniyakumari District, they shifted to Kalavasal area, Anaipatty, Kamatchipuram, Dindigul District, where they got employment in brick chamber. When the parents of the second respondent went to work, the second respondent was alone in home. The petitioner/Sahayaraj was also working in the same Kalavasal area. Thereafter, the petitioner and the second respondent came to know each other and developed interest between them and also they fell in love each other. Thereafter, on 25.05.2022, when the second respondent's parent went to work, the petitioner has taken the second respondent to Sepasthiyar temple and they performed marriage. Thereafter, they are living husband and wife. When the second respondent went to hospital for taking treatment, the doctor found the victim was pregnant in the minor stage and hence, advised her to lodge a complaint, otherwise they could not treat further. Thereafter, the victim lodged a complaint against the petitioner and got admitted in the hospital and gave birth to a female child on 15.03.2022. On the complaint of the victim, case was registered on 23.09.2022. Thereafter, on conclusion of investigation, charge sheet was filed in Spl.S.C.No.219 of 2023 on the file of the Fast Track Mahila Court (Special Court for Exclusive Trial of Cases under POCSO Act),



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Dindigul, for the offence under Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 5(I), 5(j)(ii) and 6 of the Protection of Child from Sexual Offences Act, 2012.

4. The learned counsel for the petitioner submitted that despite the registration of the case, the petitioner and the second respondent have been living together as husband and wife along with child. Since the petitioner was unable to appear before the trial Court in time and there was also an Advocate boy-cott, on 13.11.2024 NBW was issued against him. Now, he is confined in District Prison, Dindigul. The victim had not supported the prosecution case and confirmed that she voluntarily loved with the petitioner and married him and both are living happily as husband and wife.

5. He further submitted that the petitioner is the only breadwinner of the family. No body from the family objected the marriage between the petitioner and the victim girl. It is purely on the compulsion of the doctor, as a condition to give treatment to the victim girl, complaint lodged. The learned counsel submitted that this quash petition has been



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filed before this Court on 25.09.2024. Thereafter, notice was ordered.

Now, the victim girl is present before this Court along with child and parents. They agreed to compromise in this case. Hence, prayed for quashing the case against the petitioner. He further submitted that the Hon'ble Apex Court in similar case had quashed the cases under POCSO Act even after conviction, for the reason that punishing the accused amounts to punishing the victim and it would be amount to in-justice.

6. The learned Additional Public Prosecutor would submit that in this case the second respondent lodged a complaint before the respondent police and the same was registered in Crime No.547 of 2022. Thereafter, the victim was produced before the Magistrate and she gave her 164 statement. On completion of investigation, charge sheet has been filed in Spl.S.c.No.219 of 2023 before the Fast Track Mahila Court (Special Court for Exclusive Trial of Cases under POCSO Act), Dindigul. In this case, L.W.2 and L.W.3 are the parents of L.W.1 and L.W.4 is the mother of the accused. The other witnesses are formal witnesses. The Doctor have been examined, who gave treatment to the victim during delivery. In the presence of the witnesses, mahazor was prepared. Thereafter, the



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victim's school certificate was collected from the Headmaster of Government Higher Secondary School, Aralvaimozhi, which confirms that the victim date of birth is 01.04.2006. Since the victim was minor at the time of pregnancy, the petitioner act constituted the offence of penetrative sexual assault. On enquiry, it is confirmed the victim and the petitioner are living as husband and wife with the child, even after registration of the case. For non-appearance of the petitioner, NBW was issued against him and he is confined in District Prison Dindigul. Birth certificate of the child was produced. The marriage certificate could not be produced. In reply, the learned counsel for the petitioner submitted that since the petitioner and the victim belonged to different religion, application for registration of the marriage submitted on 29.10.2024 under Special marriage Act.

7. Considering the facts and circumstances of the case and perused the materials available on record, it is seen that the petitioner and the victim girl loved each other and they got married, at the time of marriage, since the victim girl was minor, case registered against the petitioner, victim consciously had relationship with the petitioner. Both family



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members not objected for the marriage. The complaint was lodged only on the compulsion of the doctor, who gave treatment to the victim girl during pregnancy. Now, the victim girl and family members all present before this Court and they intended not to proceed with the criminal case against the petitioner.

8. Today, when the matter was taken up for hearing a joint Memo of Compromise filed before this Court signed by the petitioner and the second respondent and their respective counsels. The second respondent present before this Court along with child and parent, identified by Mr.B.Balasubramanian, Sub Inspector of Dindigul Taluk Police Station, as well as by the learned counsels appearing for the parties. This Court enquired the second respondent, satisfied that she has come to an amicable settlement on her own voluntarily without any compulsion. She has also filed an affidavit. The relevant portion of the affidavit reads as follows:

“4. I submit that I and the petitioner fell in love with each other and out of sincere love, both we eloped and got married. We started to live as husband and wife. Since at the time of



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pregnancy, I was a minor, by getting a complaint from me, the first respondent registered a case against the petitioner, who is none other than my husband. Out of wedlock, I delivered a female baby on 15.03.2023. in view of I attained majority and I got marriage with the petitioner, the elders and friends sat together and decided to withdraw the complaint lodged against the petitioner. Now, we are taking steps to register our marriage as per existing law. In support of the above said quash petition, I am filing this affidavit. A joint compromise memo also filed along with this quash petition.”.

9. The case has been registered for offences under Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 5(I), 5(j)(ii) and 6 of the Protection of Child from Sexual Offences Act, 2012. It is settled law that the High Court has inherent power under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings even for the offences which are not compoundable under Section 320 of the Code of Criminal Procedure, where the parties have settled their dispute between themselves. However, while quashing the criminal proceedings, based on the settlement arrived at between the parties, the High Court should act with caution and the power should be exercised sparingly only



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in order to secure the ends of justice and also to prevent abuse of process of any Court.

10. Further, the Hon'ble Apex Court in the case of ***K.Dhandapani Vs. The State by the Inspector of Police*** reported in ***2022 SCC Online SC 1056***, has held as follows:

“In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle”.

11. The legal position expressed by the Hon'ble Apex Court in the case of ***Gian Singh vs. State of Punjab and another*** reported in ***(2012) 10 SCC 303*** and ***Parbatbhai Aahir @ Parbatbhai Vs. State of Gujarat***



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reported in **(2017) 9 SCC 641** were taken into consideration.

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12. Keeping the above principles in mind, let us now consider the instant case as to whether it is a fit case to quash the criminal proceedings based on the settlement arrived at between the parties.

13. In the case at hand, though the petitioner is charged with for the offences punishable under Sections under Section 9 of the Prohibition of Child Marriage Act, 2006 and Section 5(I), 5(j)(ii) and 6 of the Protection of Child from Sexual Offences Act, 2012, now, the petitioner and the second respondent/*victim* have amicably settled their dispute between themselves . The second respondent/victim has also filed an affidavit. In view of the compromise between the parties, the possibility of conviction is also remote and bleak. In the above circumstances, continuity of the criminal proceedings would only cause oppression and prejudice to the parties, hence, in order to secure the ends of justice, this Court is inclined to quash the criminal proceedings.

14. Accordingly, this Criminal Original Petition is allowed and the



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criminal proceedings initiated against the petitioner in Spl.S.C. No.219 of 2023 on the file of the Fast Track Mahila Court (special Court for Exclusive Trial of Cases under POCSO Act), Dindigul, is quashed and the terms of joint compromise memo and affidavit filed by the second respondent shall form part and parcel of this order. The petitioner is directed to be release forthwith, unless he is required for any other cases.

NCC : Yes / No

21.11.2024

Index : Yes / No

Rmk

Note : Issue order copy on 22.11.2024

To

- 1.The Fast Track Mahila Court
(Special Court for Exclusive Trial
of Cases under Pocso Act), Dindigul.
- 2.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR, J.

Rmk

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