



Crl.O.P.(MD)No.19203 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.19203 of 2024

1.Vignesh
2.Pothumani

... Petitioners

Vs.

1.The Inspector of Police,
All Women Police Station,
Thirumangalam,
Madurai District.
(Crime No.13 of 2022)

2.Guruparakash
3.xxxxxxxxxx

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records relating to the charge sheet in Spl/S.C.No. 246/2022, on the file of the Special Court for Exclusive Trail of Cases under POCSO Act, Madurai and quash the same.

For Petitioners : Mr.C.Susikumar

For R1 : Mr.K.Sanjai Gandhi

Government Advocate [Crl. Side]

For R2 : Mr.M.Chandra Bose



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ORDER

This Criminal Original Petition has been filed, invoking Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, seeking orders to call for the records in Spl/S.C.No.246/2022, on the file of the Special Court for Exclusive Trail of Cases under POCSO Act, Madurai, and quash the same as illegal.

2. The case of the prosecution is that on 03.05.2022, the second respondent who is the Legal Probation Officer in District Child Protect Unit, Madurai lodged a complaint, who received an information over phone on 30.04.2022 from the Government Rajaji hospital, Madurai that a victim girl who is aged about 15 years gave birth to a girl baby on 29.04.2022. On enquiry, he found that the girl fell in love with the first petitioner and they got married on 23.08.2021 without the knowledge of the parents and lived separately. The petitioner's parents not agreed for the marriage, but the victim's mother accepted the marriage, arranged a separate home for the petitioner and the victim. During the stay, petitioner committed penetrative sexual assault, later victim became



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pregnant and gave birth to a baby in the Government Hospital. Finding the victim a minor, complaint lodged and now charge sheet filed under Child Marriage Act and POCSO Act.

3. The learned counsel appearing for the petitioners would submit that the second respondent lodged a complaint before the first respondent and F.I.R. registered in Crime No.13 of 2022, after investigation, final report filed, the same taken cognizance in Spl/S.C.No.246/2022, on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, for the offences under Section 9 of the Prohibition of Child Marriage Act, 2006 and Sections 5(1), 5(j)(ii), 6, 16 & 17 of Protection of Children from Sexual Offences Act, 2012, against the petitioners.

4. The case is under trial. The petitioner and the victim were in love with each other for sometime, thereafter, petitioner took the victim to the family deity temple, tied Thali, thereafter they are living happily as husband and wife. Due to the young adolescent age not knowing the seriousness and consequence due to physical and psychological reasons committed to live as husband and wife. During her delivery in



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Government Rajaji Hospital, doctors found victim as minor and informed Child Welfare Committee and a case was registered. Now, the victim girl is leading her life peacefully with the first petitioner. The marriage is accepted by both parties. Out of the wedlock she gave birth to a girl baby. The petitioner is the only bread-winner, right from marriage, the victim residing with the petitioner. Even after registration of the case, they continue to live as husband and wife together. The victim girl does not want to proceed with the case.

5. A Joint Memo of Compromise filed and affidavit filed before this Court signed by the petitioners and the second respondent and their respective counsels. The petitioners and the second respondent present before this Court, identified by Mr.M.Vanitha, Women Special Sub-Inspector of Police, Thirumangalam Police Station, Madurai District, as well as by the learned counsels appearing for the parties. This Court enquired both the parties, satisfied that the parties have come to an amicable settlement between themselves on their own voluntarily, without any compulsion.



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6. In the instant case, the dispute is of personal in nature and the parties had compromised. Where the parties have compromised the matter, the High Court has to power to quash the complaint for offences though non-compoundable, depending upon the facts and circumstances of the case to do substantial justice.

7. The learned Counsel for the appellant relied upon the decision of the Apex Court and submitted that in a similar situation the Apex Court in the case of *K.Dhandapani Vs. State by the Inspector of Police*, reported in *2022 SCC Online SC 1056*, considered the subsequent events and observed that the Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix.

8. In the light of the guidelines issued in the above said judgments of the Hon'ble Apex Court, no useful purpose will be served in keeping the proceedings in Spl.S.C.No.246 of 2022, as against the petitioners pending before the Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, even though, the offences involved are not compoundable in nature.



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9. Accordingly, this Criminal Original Petition is allowed and the proceedings in Spl/S.C.No.246/2022, on the file of the Special Court for Exclusive Trail of Cases under POCSO Act, Madurai, is quashed as against the petitioners and the joint compromise memo shall form part and parcel of this order.

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NCC : Yes / No
Index : Yes / No
MR



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To

- 1.The Inspector of Police,
All Women Police Station,
Thirumangalam,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR, J.

MR

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