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Crl.O.P.No.20093 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.20093 of 2025

and

Crl.M.P.No. 13879 of 2025

1. Dhanush @ Dhanushkumar
2. R.Sasikumar

... Petitioners

Vs.

1. The State represented by
Inspector of Police,
G-1 Police Station,
Ooty, The Nilgiris.

2. Christoper

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 BNSS, 2023, call for the records in Spl.S.C.No.47 of 2024 on the file of the Mahila Court (Fast Track), Udthagamandalam and quash the same.

For Petitioner : Mr.J.Bharathi Raja

For Respondents : Dr.C.E.Pratap
Government Advocate (Crl.Side)
for R1



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ORDER

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2. The case of the prosecution is that there was love affair between the first petitioner and the victim. Since the victim girl was missing from 20.04.2023, her mother/second respondent herein preferred a complaint before the first respondent-Police and a case was registered in Crime No.140 of 2023 for 'Girl Missing'. During investigation, it came to light that the victim eloped with the petitioner and both got married and she became pregnant. Since the victim is a minor, the case was subsequently altered into Sections 5(l), 6, 5(j)(ii) of the Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as 'POCSO Act'] and Section 9 of the Child Marriage Act, 2009 and Section 120B IPC. After investigation, final report was filed and the same was taken on file in Spl.S.C.No.47 of 2024 on the file of the Mahila Court (Fast Track), Udthagamandalam.



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3. Learned counsel for the petitioners submits that there was love affair between the first petitioner and the victim and with her consent, they had physical relationship due to which, the victim became pregnant. Learned counsel also submits that since the petitioner and the victim are living under one roof as husband and wife, she does not want to prosecute the case. He further submitted that the second petitioner has not committed any alleged offences and he is only the relative of the first petitioner. Therefore, the proceedings against the petitioners in Spl.S.C.No.47 of 2024 may be quashed.

4. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the first respondent and perused the materials available on record.

5. Admittedly, at the time of physical relationship, the age of the victim was below 18 years and the provisions of POCSO Act make it very clear that a person aged below 18 years either male or female is defined as 'child' and there is no word mentioned regarding consent in the POCSO Act and hence, consent is immaterial. Even otherwise the



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victim, who was below 18 years at the time of occurrence, had no authority to give consent and there is no waiver against law and there is no estoppel against the law. Once it is found that at the time of physical relationship, the victim is under 18 years, POCSO Act would attract. If the victim subsequently attained majority and give up her right, it cannot be accepted. Considering the offence, which is grave in nature and object of POCSO Act, this Court cannot invoke Section 482 Cr.P.C./ 528 BNSS, 2023, ignoring the intention of the legislature and the purpose of enactment of the Act.

6. In this regard the Hon'ble Supreme Court rendered a decision reported in *CDJ 2024 SC 953* in the case of ***Ramji Lal Bairwa & Another Vs.State of Rajasthan & Ors***, it was held as follows:

"In the decision relied on by the High Court to quash the proceedings viz., Gian Singh's case and the decision in Laxmi Narayan's case in unambiguous terms the Apex Court held that the power under Section 482, Cr. P.C. could not be used to quash proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the society. Cases of this nature, the fact that in view of compromise entered into between the parties, the chance of a conviction is remote and bleak also cannot be a ground to abruptly terminate the investigation, by quashing FIR and all further proceedings pursuant thereto, by invoking the power under Section 482, Cr.P.C."



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7. As held by the Ho'ble Supreme Court in the above decision, in this case the charged offences under Sections 5(l), 6, 5(j)(ii) of POCSO Act, 2012 and Section 9 of Child Marriage Act, 2009 and Section 120B IPC, are not private in nature and have a serious impact on the society. Therefore power under Section 482 Cr.P.C./Section 528 of BNSS, could not be used to quash the criminal proceedings under POCSO Act, only based on the compromise entered into between the parties.

8. Under these circumstances, this Court is not inclined to entertain the petition filed under Section 482 Cr.P.C. or Section 528 of BNSS and quash the proceedings in Spl.S.C.No.47 of 2024 pending on the file of the learned Sessions Judge, Fast Track Mahila Court, Uthagamandalam. Hence, this Criminal Original Petition is dismissed. However the petitioners can very well establish all their defence before the trial Court. Consequently, connected miscellaneous petition is closed.

16.07.2025

Index : Yes/No
Neutral Citation Case : Yes/No
Speaking Order : Yes/No
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To

1. The Sessions Judge,
Mahila Court (Fast Track)
Udhagamandalam.
2. The Inspector of Police,
G-1 Police Station,
Ooty, The Nilgiris.
3. The Public Prosecutor,
High Court, Madras.



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