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CrI.O.P.No.29000 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2025

CORAM:

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.29000 of 2025

1. Shamprasath @ Mohammed Suhail
2. Reshma
3. Esther Evlin

... Petitioners

Vs.

- 1.The Inspector of Police
W9, AWPS,
Villivakkam, Chennai – 600 049
Crime No.21 of 2023
2. Mrs.A.Ravikumari
Development Officer
North Chennai District Social Welfare Office
Zone – 8, Chennai
3. XXXX
XXXX
XXXX

... Respondents

PRAYER: Criminal Original Petitions filed under Section 528 of B.N.S.S. to call for the records and quash the final report/charge sheet, arising out of Crime No.21 of 2023, on the file of the 1st respondent and pending trial before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai in Spl.S.C.No.104 of 2024.



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For Petitioners : Mr.F.Wellington

For Respondents : Mr.R.Vinothraja

Government Advocate (CrI. Side) for R1



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ORDER

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This Criminal Original Petition has been filed to quash the final report arising out of Crime No.21 of 2023, on the file of the 1st respondent and pending trial before the learned Sessions Judge, Special Court for Exclusive Trial of Cases under the POCSO Act, Chennai in Spl.S.C.No.104 of 2024 for the offences under Sections 9 and 10 of the Child Marriage Act and Section 6 of the POCSO Act, 2012, on the ground of compromise.

2. The case of the prosecution is that based on the information received from the hospital authority, the second respondent/Development Officer, lodged a complaint before the 1st respondent police alleging that the 1st petitioner married the victim girl/3rd respondent who was a minor with the help of the petitioners 2 and 3 and due to the wedlock, the victim girl was eight months pregnant. Pursuant to the said complaint, the FIR in Crime No.21 of 2023, came to be registered against the petitioners and other accused/A2. Subsequently, after completion of investigation, the final report was filed and the same has been taken on file in Spl.S.C.No.104 of 2024 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of

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Cases under the POCSO Act, Chennai.

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3. The learned counsel for the petitioners would further submit that the 3rd petitioner is the mother of the 1st petitioner and the 2nd petitioner is the mother of the victim girl/3rd respondent. There was a consensual affair between the 1st petitioner and the victim girl and at the time of registration of the FIR, the victim girl was aged 17 years. He would further submit that subsequent to the registration of FIR, the victim girl delivered a boy baby on 13.11.2023 and they have been living together happily as husband and wife. He would further submit that since the 1st petitioner belongs to a different community, they have applied for registration of the marriage under the Special Marriage Act and the same is pending and a Joint Compromise Memo signed by the petitioners and the 3rd respondent/victim girl for compromising the offences has also been filed. He would submit that when the petitioners and the victim girl compromised the matter, no useful purpose will be served by continuing the impugned proceedings; hence, the impugned proceedings may be quashed on the ground of compromise.

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4. The learned Government Advocate (Crl. Side) appearing on behalf

of the 1st respondent-Police submitted that though the parties entered into a compromise while this case is pending, this Court, taking into account the seriousness of the offence, has to consider the issue as to whether an offence of this nature can be quashed on the ground of compromise between parties.

5. The victim girl/ 3rd respondent and the petitioners including the mother of the victim/2nd petitioner, were present before this Court at the time of hearing and they were identified by the learned counsel for the petitioners and Ms.S.Uma, WSSI, W9-AWPS., Villivakkam.

6. This Court also enquired both the parties and was satisfied that the 1st petitioner and the victim girl/ 3rd respondent have been living together as husband and wife and that they have agreed to compromise the issue.

7. The main issue that requires the consideration of this Court is as to whether this Court can quash the criminal proceedings involving non-compoundable offences pending against the petitioner.

8. The Supreme Court, in a very recent judgment in **K. Kirubakaran vs. State of Tamil Nadu [2025 INSC 1272]**, in which the appellant was



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convicted for the offences under Sections 366 IPC and Section 6 of the

POCSO Act, pursuant to the compromise entered into between the parties,

by commencing the judgment with the quote “*The final cause of law is the*

welfare of society” of Benjamin N. Cardozo, Former Associate Justice of

the Supreme Court of the United States, and finding that the crime was not

the result of lust but love, quashed the proceedings against the appellant

invoking Section 142 of the Constitution of India. The relevant paragraph of

the said judgment read as under:

“5. The only question which remains to be decided is whether the proceedings should be quashed in the present case, considering that the appellant is convicted of a heinous offence.

6. We are conscious of the fact that a crime is not merely a wrong against an individual but against society as a whole. When an offence is committed, it wounds the collective conscience of the society and therefore the society, acting through its elected lawmakers, determines what would be the punishment for such an offence and how an offender should be dealt with, to deter its recurrence. The criminal law is, thus, a manifestation of the sovereign will of the society. However, the administration of such law is not divorced from the practical realities. Rendering justice demands a nuanced approach. This Court tailors its decisions to the specifics of each case: with firmness and severity wherever necessary and it is merciful when warranted. It is also in the best interest of society to bring a dispute to an end, wherever possible. We draw inspiration from Cardozo, J. to hold that the law aims to ensure not just punishment of the guilty, but also harmony and restoration of the social order.



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7. With such perspective in mind, we need to proceed to balance the competing interests of justice, deterrence, and rehabilitation.

8. The founding fathers of the Constitution conferred this Court with the extraordinary power to do “complete justice” in proper cases. This constitutional power stands apart from all other powers and is intended to avoid situations of injustice being caused by the rigid application of law.

9. Per the law made by the legislature, the appellant having been found guilty of a heinous offence, the proceedings in the present case on the basis of a compromise between the appellant and his wife cannot be quashed. But ignoring the cry of the appellant’s wife for compassion and empathy will not, in our opinion, serve the ends of justice. Even the most serious offenders of law do receive justice moderated by compassion from the courts, albeit in appropriate cases. Given the peculiar facts and circumstances here, a balanced approach combining practicality and empathy is necessary. The appellant and the victim are not only legally married, they are also in their family way. While considering the offence committed by the appellant punishable under the POCSO Act, we have discerned that the crime was not the result of lust but love. The victim of crime herself has expressed her desire to live a peaceful and stable family life with the appellant, upon whom she is dependent, without the appellant carrying the indelible mark on his forehead of being an offender. Continuation of the criminal proceedings and the appellant’s incarceration would only disrupt this familial unit and cause irreparable harm to the victim, the infant child, and the fabric of society itself.

10. We are, thus, persuaded to hold that this is a case where the law must yield to the cause of justice.

11. Accordingly, resting on the foregoing considerations, the developments subsequent to the trial, and in the interest of rendering complete justice, we deem it appropriate to invoke our powers under Article 142 of the Constitution of India to quash the



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criminal proceedings against the appellant including the conviction and sentence. Ordered accordingly.

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12. Also, bearing in mind the interests of the appellant's wife and child, we deem it appropriate to subject the appellant to the specific condition of not deserting his wife and child and also to maintain them for the rest of their life with dignity. If, in future, there be any default on the appellant's part and the same is brought to the notice of this Court by his wife or their child or the complainant, the consequences may not be too palatable for the appellant.

13. We make the interim order granting benefit to the appellant of exemption from surrendering absolute and discharge him from the bail bonds.

14. The appeal is, accordingly, allowed.

15. Needless to observe, this order is rendered in the unique circumstances that have unfolded before us and shall not be treated as a precedent for any other case." (emphasis supplied by this Court)

9. It is also apropos to point out that the Supreme Court, in **K.Dhandapani vs. The State [2022 LiveLaw (SC) 477]**, in which the appellant was convicted of the offences under Sections 5 and 6 of the POCSO Act, by a terse order, set aside the conviction and sentence slapped on the appellant, on the basis of the settlement arrived at between the parties. The following relevant paragraphs of the said order make an interesting reading:



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“The appellant submitted that this Court should exercise its power under [Article 142](#) of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

After hearing the matter for some time on 08th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

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 Tamil Nadu of the marriage of a girl with the maternal uncle.

For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for



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any default on his part in this regard being brought to the notice of this

Court, the consequences that would befall the 1st petitioner would be very serious.

14. Before parting, this Court hastens to add that this Court is not oblivious of the fact that the Supreme Court, in **K. Kirubakaran, supra**, had invoked Article 142 of the Constitution of India and quashed the criminal proceedings against the appellant. However, since the facts obtaining in this case being akin to the facts in **K. Kirubakaran, supra**, this order is passed.

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Index:Yes/No

Speaking/Non-speaking order

Neutral Citation:Yes/No

To

1.The Sessions Judge,
Special Court for Exclusive Trial of Cases
under the POCSO Act, Chennai

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2. The Inspector of Police

W9, AWPS, Villivakkam

Chennai – 600 049

3. The Public Prosecutor

High Court of Madras, Chennai



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A.D.JAGADISH CHANDIRA J.

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