

Crl.O.P(MD).No.1967 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.01.2025

Pronounced on : 19.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.O.P(MD).No.1967 of 2025

Asrin Fathima

... Petitioner

Vs.

1.State of Tamil Nadu rep. By
The Inspector of Police,
All Women Police Station,
Srivaikundam,
Thoothukudi District.
Crime No.3 of 2024.

2.Hussain

... Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, to call for records and to quash the same against the petitioner in Spl.S.C.No.188 of 2024 on the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi.

For Petitioner : Mr.S.:Pandiyaraj

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

For R2 : Mr.J.Yesu Subananth

ORDER

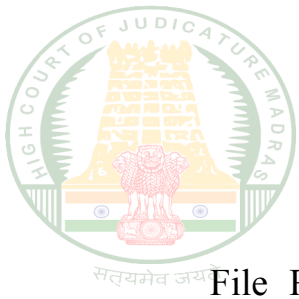


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The petitioner/accused in Spl.S.C.No.188 of 2024 facing trial for the offence under Sections 3(d), 4, 5(n), 6, 16, 17 of Protection of Child from Sexual Offences Act, 2012 [POCSO Act] and Section 67A of the Information Technology Act, 2000 filed this quash petition.

2.The case projected against the petitioner is that the petitioner and the defacto complainant/second respondent got married during the year 2020 and out of their wedlock, they were blessed with a girl child aged about three years. During November 2022, the defacto complainant/husband left to Dubai for his job and the petitioner along with her daughter was residing with her parents at Eral. During December 2023, the defacto complainant found the petitioner's phone to be in online for a long and he got suspicion. On 23.02.2024, the defacto complainant came to India, went to his native at Kayalpattinam and when he called the petitioner to join him, she refused. Hence, on 29.02.2024 the defacto complainant went to Eral, at that time, he found his wife going out constantly and talking in her mobile [Redmi mobile with Phone No.9080528042]. Thereafter, the defacto complainant installed



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File Recovery App in her mobile and downloaded the erased files, wherein he found nude photographs of his daughter and the petitioner making some sexual assault on the child. When the defacto complainant enquired, the petitioner admitted that she had relationship with one Udhayakumar of Siruthondanallur Village for the past three years and she used to click photos and send it to the said Udhayakumar's mobile [Oppo mobile with No.8682828258] and hence, he lodged a complaint. On receipt of the complaint, the respondent police registered a case, enquired the witnesses, arrested the accused and sent her mobile to the forensic examination. The forensic report confirms the photographs of the child and the petitioner's sexual assault on the baby. On completion of investigation, charge sheet filed listing L.W.1 to L.W.22, documents and material objects.

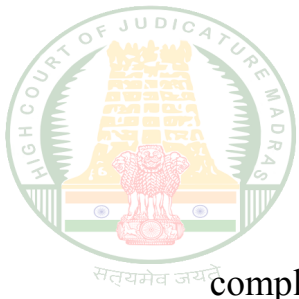
3.The contention of the learned counsel for the petitioner is that the petitioner had only taken the photographs of her daughter in normal course and not with any sexual intent. There is a matrimonial discord between the petitioner and the defacto complainant with regard to the place of residence. The defacto complainant insisted the petitioner to



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reside with his parents at Kayalpattinam but the petitioner was insisting that she will reside with her parents at Eral. This matrimonial discord has been amplified and the photographs were projected against the petitioner as though she had sent the photographs to the second accused Udhayakumar with sexual intent. He would submit that the said Udhayakumar is known to the petitioner when she was attending Tailoring class prior to her marriage and this was projected as though the petitioner continued her relationship with him even after the marriage and a false case has been projected. He would further submit that the forensic expert report confirms that no obscene photographs were shared with the said Udhayakumar. The defacto complainant who was in Dubai was fed with false information which lead to the registration of the case. He further submitted that after coming back to India, in a fit of rage complaint was lodged, later the petitioner explained the sequence of events, the defacto complainant realised the same, found the complaint was lodged in a knee jerk reaction, thereafter reconciled with the petitioner and now they are living happily as husband and wife. The petitioner is now pregnant for the second time which confirms forgiveness and close relationship between the petitioner and the defacto

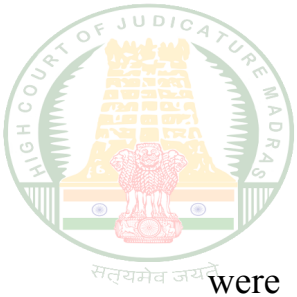


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complainant. He would further submit that the defacto complainant now came forward to file a petition to withdraw the complaint against the petitioner and the said Udhayakumar.

4.The learned Government Advocate (Crl. Side) submitted that it is the defacto complainant who lodged the complaint against the petitioner, who is none other than his wife. The defacto complainant left to Dubai for his job, at that time, the petitioner stayed with her parents at Eral. The petitioner was always in online and the defacto complainant got suspicious, came back to India, searched her phone and found regular contact between the petitioner and one Udhayakumar. Later, the defacto complainant recovered the deleted photos through file retrieving application and found that the petitioner had taken nude photographs of his daughter. She also took some photographs which clearly proves that the same had been made with sexual intent. The petitioner admits that these photographs were taken at the instance of the second accused Udhayakumar and shared the same to his mobile. This act is only for the lust and she failed to act as a mother to the child. On the complaint of the defacto complainant, the petitioner as well as the said Udhayakumar



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were arrested and their mobile phones [Redmi phone with Phone No. 9080528042 from the petitioner and Oppo phone with Phone No. 8682828258 from the second accused] were seized and sent for forensic examination. From the tower location and call details given by the Service Providers of both confirms that the petitioner and the second accused Udhayakumar were in constant touch. The forensic examination report confirms the capturing of nude photographs of her daughter by the petitioner. During investigation witnesses examined, statements recorded, documents collected including electronic evidence and charge sheet filed. He fairly submitted that the photographs were found only in the petitioner's mobile and no obscene photographs of the child was found in the mobile phone of Udhayakumar. The learned Government Advocate (Crl. Side), on verification, further submitted that the issue between the petitioner and the defacto complainant resolved, both the petitioner and the defacto complainant are living happily and the petitioner is also pregnant for the second time.

5.The petitioner and the defacto complainant appeared before this Court along with the child and filed a compromise affidavit. On

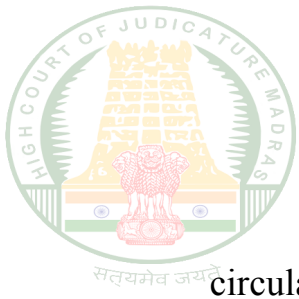


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interaction, the defacto complainant confirmed that the issue now resolved and both the petitioner and the defacto complainant are living happily as husband and wife, now the petitioner is pregnant for the second time.

6.Considering the submissions made and on perusal of the materials placed, it is seen that the primary complaint against the petitioner is that she had taken nude photograph of her minor daughter and the said act was with sexual intent. The petitioner informed that it is with love and affection she hugged and kissed her daughter and nothing more. The relationship between the petitioner and the said Udhayakumar prior to the marriage might have been the cause for the complaint, added to it there was some matrimonial discord between the petitioner and the defacto complainant. Now the issue has been resolved and they are living happily as husband and wife and the petitioner is now pregnant for the second time. It is to be seen from the forensic report that no obscene photographs of the child found in the petitioner's mobile was shared to the mobile phone of the said Udhayakumar. It is also not the case that the objectionable photographs was found in social media or in

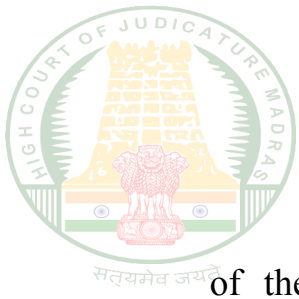


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circulation. Hence, this Court is of the view that quashing of the case will do good to the petitioner to continue her matrimonial life and continuation of the case will do injustice.

7.The Apex Court in the case of ***Gian Singh vs. State of Punjab*** reported in ***(2012) 10 SCC 303*** had given guidelines and the nature of cases where even in non-compoundable cases, invoking Section 482 Cr.P.C. and quashing of criminal proceedings is guided by the material on record as to whether the ends of justice would justify such exercise of power and held certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of his inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood



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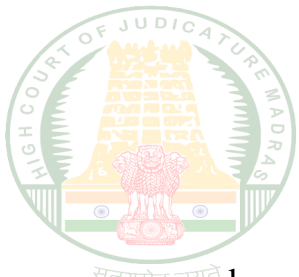
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of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

8.Recently, the Apex Court in the case of ***K.Bharthi Devi and another vs. State of Telgana and another*** reported in ***2024 SCC Online(SC) 2695***, reiterated this principle, which is as follows:

“31.It could thus be seen that this Court reiterates the position that the criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

9.In view of the above, the case against the petitioner and the other accused Udhayakumar/A2 pending in Spl.S.C.No.188 of 2024 on the file of the Special Court for Exclusive Trial of Cases under POCSO Act, Thoothukudi is quashed. The Trial Court is directed to send the seized mobile phones [Redmi phone with Phone No. 9080528042 and Oppo



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phone with Phone No. 8682828258] to the Director, Forensic Science Laboratory, Chennai to erase the photographs and files available in the mobile phones and the mobile phones shall be retained by the Trial Court as Court property and to be disposed in accordance to the procedure and rules.

10. With the above directions, the Criminal Original Petition stands allowed.

19.02.2025

Neutral Citation: Yes/No
Speaking order/Non-speaking order
Index: Yes/No

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To

- 1.The Special Court for Exclusive Trial of Cases
under POCSO Act,
Thoothukudi.
- 2.The Inspector of Police,
All Women Police Station,
Srivaikundam,
Thoothukudi District.
- 3.The Public Prosecutor,
Madurai Bench of Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN

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