



Crl.O.P.(MD) No.2914 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD) No.2914 of 2026
and Crl.M.P(MD).Nos.3200 and 3202 of 2026

Sowndarapandi

... Petitioner/A2

Vs.

1.The State of Tamil Nadu,
rep., by the Assistant Commissioner of Police,
Madurai City, Madurai.

2.The Inspector of Police,
All Women Police Station,
Thilagar Thidal,
Madurai City.
Crime No.32 of 2021

3.XXX

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the records in Spl.S.C.No.21 of 2023 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.G.Karuppasamypandiyan

For R1 & R2 : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)



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For R3

: Mr.M.Aboobacker Siddik

ORDER

Seeking quashment of the final report laid in Spl.S.C.No.21 of 2023 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, this criminal original petition is filed.

2.The learned counsel for the petitioner submitted that the petitioner herein is the second accused in the pending Spl.S.C.No.21 of 2023 before the learned trial Court. The third respondent is the victim/ defacto complainant, on whose complaint, a First Information Report in Crime No.32 of 2021 was registered for the offences under Sections 366A and 312 of IPC, 1860 Section 5(1), 5(J)(ii) and 6 of the Protection of Child From Sexual Offences Act, 2012 and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, against the petitioner and three others. On completion of the investigation, a final report was filed in Spl.S.C.No.21 of 2023 and the petitioner herein, who is the second accused, is charged with offences under Sections 3(1)(r) and 3(1)(s) of SC/ST (POA) Act and Sections 16 and 17 of POCSO Act.



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3.The learned counsel categorically contended that a complete reading of the charge sheet itself demonstrates that the prosecution story is false, bald, and vague with respect to the role of A2, who is the petitioner herein. No specific overt act constituting the offences charged is clearly made out. Section 16 of the POCSO Act pertains to abetment of an offence, while Section 17 prescribes punishment for abetment. A1 is the person, who allegedly committed penetrative sexual assault upon the third respondent, victim. A2, the petitioner herein, is his friend. A3 and A4 were the parents of A1. In the instant case, the petitioner was charged for the offences under Sections 16 and 17 of POCSO Act. However, the prosecution narrative in the charge sheet as against the petitioner, who is A2, will not attract the offence under Sections 16 and 17 of POCSO Act, since the primary offence of penetrative sexual assault was allegedly committed solely by A1 against the third respondent. The prosecution narrative does not satisfy all the three limbs of Section 16 of POCSO Act, explaining in what way the petitioner had instigated the first accused in committing penetrative sexual assault on the third respondent.

4.As regards the offences under Sections 3(1)(r) and 3(1)(s) of the SC/ST (Prevention of Atrocities) Act, it was pointed out by the learned



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counsel that, to attract these provisions, the alleged acts must have occurred within public view. However, in the instant charge sheet, it is alleged that on or after 20.08.2021, when the first accused refused to marry the victim and the victim declined to co-operate in any further sexual acts, the first accused, along with the petitioner, proceeded to the residence of the victim and allegedly assaulted her indiscriminately, using abusive language and calling her by caste names. In any stretch of imagination, a home could be interpreted as one within public view and hence, categorically contended that all the four Sections with which the petitioner is charged, should be quashed and sought for the indulgence of this Court to allow this criminal original petition.

5.The learned Government Advocate (crl.side) categorically contended that 161 (3) of Cr.P.C., statement obtained from the victim itself is sufficiently voluminous to prove the specific overt act as against the petitioner herein. He also placed before me the statement recorded under Section 164(5) of Cr.P.C., by the learned Additional Mahila Court, Judicial Magistrate, Madurai, from the victim girl, wherein she clearly stated that the petitioner, along with the first accused, had gone to her



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house, damaged her mobile phone, called her by caste names, and also stood on her leg and sought for dismissal of this petition.

6.The learned counsel for the third respondent relying upon the judgment passed by this Court in ***Crl.A.No.596 of 2019 dated 05.03.2021*** categorically contended that the abetment of an offence under Section 16 of POCSO Act would be clearly made out, when a particular accused aids or facilitates another person to have penetrative sexual intercourse with the victim, particularly, the victim is a minor. In the instant case, both the petitioner as well as the first accused are aware that the victim was a minor girl and hence, the offence under Section 16 of POCSO Act would be automatically attracted. He also relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Karuppudayar Vs., State rep., by the Deputy Superintendent of Police, Lalgudi, Trichy and others***, reported in ***2025 INSC 132*** in ***Crl.A.Nos..... of 2025*** arising out of Special Leave Petition (Crl) No.8778 and 8779 of 2024, dated 31.01.2025 and pointed out that the term “any place within public view” for the purposes of offences under Sections 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act would also include situations, where the offence is committed



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outside a building. In the instant case, the charge sheet does not specifically indicate whether the alleged offence was committed either inside the house or outside the house and hence, the offences under Section 3(1)(r) and 3(1)(s) would be clearly attracted and sought for dismissal of this petition.

7.Heard either side and carefully perused the materials available on record.

8.It is needless to state that the petitioner is not the one, who had committed the offence of penetrative sexual assault as against the victim. He is the friend of the first accused. As rightly pointed out by the learned counsel for the petitioner only in two instances the final report elaborates the role of the petitioner herein and the same is extracted as follows:-

"The alleged accused A2 to A4 knowingly and intentionally aid the accused No.1 and A2 to A3 abetted the offence."

"On 20.08.2021, the victim child asked first accused to marry her. Enraged by that, the first accused, Boopathiraja and his friend



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Soundrapandi (petitioner herein) went to victim child home and they have assaulted the victim child indiscriminately."

"The second accused, Soundrapandi assaulted with his leg and abused "பற நாயே உனக்கு கல்யாணம் ஒரு கேடா. The alleged A1 and A2 intentionally insulted and intimidated with intent to humiliate the member of schedule caste in public place in public view. Further, the alleged A1 and A2 abuses the victim child by her caste name in public place and public view."

9.A precise reading of the extracted portion *supra*, would clearly throw light of the fact that the offence under Section 16 of POCSO Act will not be made out. Nothing is substantiated in those portion of the charge sheet as to how the petitioner had abetted the first accused to commit penetrative sexual assault upon the victim girl.

10.The Hon'ble Supreme Court in ***Karuppudayar's case*** stated *supra* has dealt with the similar case and had quashed the offence under Section 3(1)(r) and 3(1)(s) of SC/ST(POA) Act and the relevant portion of the same is extracted as follows:



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“.....14.It is thus clear that even as per the FIR, the incident has taken place within the four corners of the chambers of the complaint. The other colleagues of the complaint arrived at the scene after the occurrence of the incident.

15.We are, therefore, of the considered view that since the incident has not taken place at a place which can be termed to be a place within public view, the offence would not come under the provisions of either Section 3(1)(r) or Section 3(1)(s) of the SC/ST Act.....”

11.Even in the instant case, the alleged offences as to the petitioner having stamped the victim and calling her caste name are at the home, which cannot be interpreted as a place which is within public view. Hence, the offences under Sections 3(1)(r) and 3(1)(s) of SC/ST(POA) Amendment Act are liable to be quashed. As far as the offences under Sections 16 and 17 of POCSO Act is concerned, this Court in ***Crl.O.P(MD).No.2611 of 2021 dated 06.11.2023*** in the case of ***C.Arul Kumar Vs., State***, has dealt with a similar case and the relevant portion is extracted as follows:

“4.There are totally two accused, in which the petitioner is arrayed as A2. Even according to the case of the prosecution, the petitioner is the paternal uncle of the first accused. When the victim girl



was studying 11th std by staying in her grandmother's house, she used to go to her parents' house once in a week. While being so, on 20.02.2019, after school hours, when she was coming out from the school, the first accused stated that her mother fell ill and as such, he had taken her in his bike. Instead of going to her parents' house, he had kidnapped her to his grandmother's house at Tittakudi. There, he abducted her and committed aggravative penetrative sexual assault on her for one week. After knowing the complaint lodged by her father on 28.02.2019, he called his paternal uncle i.e. the petitioner herein. He came there and he scolded him. Thereafter, he had taken the victim girl in order to drop her in her house and while dropping her, he threatened her with dire consequences and threatened her that not to disclose to anybody. As far as the petitioner is concerned, he initially scolded the first accused for the offence committed by him and he only had taken the victim to her house. It would not amount to abetment. It is relevant to extract the provision under Section 16 of the POCSO Act hereunder:

16. Abetment of an offence—A person abets an offence, who — First - Instigates any person to do that offence; or Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or Thirdly - Intentionally aids, by any act or illegal omission, the doing of that offence.

5. Thus, it is clear that as far as the petitioner is concerned, only after the offence committed by the first accused, he had called the petitioner herein on 28.02.2019 i.e. after period of eight days from the date of kidnapping. The petitioner went to the first accused's house and in fact, he scolded him for the offence committed by him. Immediately, he had taken the victim to her house by his motorcycle. Therefore, it would not amount to abetment of offence. He never abetted to commit the offence by the first accused. If he instigates any person to do that offence or engages with one or more other person or persons in any conspiracy for the doing of that offence would amount to abetment. Further, whoever either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act and



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thereby facilitates the commission thereof, is said to aid the doing of that act. Therefore, as far as the act of the petitioner is concerned, only after the commission of offence, the first accused called him in order to take her to her home. Therefore, the offence under Section 16 of POCSO Act would not at all attract as against the petitioner.”

12.In the instant case, if it is alleged that the petitioner had abetted the commission of penetrative sexual assault on the victim, the entire prosecution narrative would stand falsified for the simple reason that the relationship between the victim and the first accused had continued for more than 2½ years, even when the victim was about 17 years of age and continuing until she was around 18½ years old. It is only when the victim had attained the age of about 18 years and a few months that the First Information Report came to be registered and the same culminated in laying a final report implicating the petitioner and others. As far as abetment is concerned, the same must be shown to have been in existence even prior to the commission of the main offence. The charge sheet narrative is conspicuously absent as to the specific role played by the petitioner in allegedly abetting the first accused to commit penetrative sexual assault upon the victim, who was aged about 17 years, which stated to have continued until she attained the age of 18 years and few months.



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13. Fully fortified by the judgment extracted *supra*, this Court is of the considered view that the petitioner had not facilitated or even abetted the first accused in any way to commit sexual penetrative sexual assault on the victim. The role which is ascribed by the respondent police to the petitioner herein is only that he had been a friend to A1, who had accommodated him in several occasions. However, it was only on one occasion that is “on or after 20.08.2021, when the first accused refused to marry the victim and the victim declined to co-operate in any further sexual acts, the first accused, along with the petitioner, proceeded to the residence of the victim and allegedly assaulted her indiscriminately, using abusive language and calling her by caste names”. The other portions of charge sheet, which were extracted *supra* in para 8, are bald and vague.

14. At the stage of considering the petition for quashment, this Court is to examine whether the uncontroverted allegations made in the final report *prima facie* constitutes any commission of offence levelled in the charge sheet. In the present case, a careful perusal of the final report and the materials produced along with the same would falsify the entire



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prosecution narrative and even if the entire prosecution case is accepted as it stands, the essential ingredients of the offences alleged are conspicuously absent in so far as the petitioner is concerned. Criminal law cannot be permitted to be used as a tool for harassing any person, when the foundational facts necessary to constitute the offence are absent compelling the accused to undergo rigors of trial would amount to abuse of process of law. In view of the same, the impugned charge sheet in Spl.S.C.No.21 of 2023 on the file of the learned Special Court for Exclusive Trial of Cases under POCSO Act, Madurai, is quashed as far as the petitioner is concerned. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

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Index: Yes/ No
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under POCSO Act, Madurai.

- 2.The Assistant Commissioner of Police,
Madurai City, Madurai.
- 3.The Inspector of Police,
All Women Police Station,
Thilagar Thidal,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

L.VICTORIA GOWRI, J.



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