

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESHCrl.O.P.No.232 of 2021and Crl.M.P.No.109 of 2021

1. Vijayalakshmi
 2. G. Vennila
- ... Petitioners

Vs.

1. State Rep. By
The Inspector of Police,
All Women Police Station,
Erode.
Crime No.2 of 2018

2. Indhran @ Siva
- ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records pertaining to Spl.S.C.No.24 of 2018 pending on the file of learned Sessions Judge, Mahila Court (Fast Track Mahila Court) Erode and quash the same.

For Petitioners : M/s.A.Gokulakrishnan

For Respondents : Mr.M.Mohammed Riyaz
Additional Public prosecutor

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ORDER

This petition has been filed seeking to quash the proceedings pending in Special S.C.No.24 of 2018 on the file of the learned Sessions Judge, Mahila Court (Fast Track Mahila Court) Erode.

2. This is a very peculiar petition that has been filed by the Defacto Complainant and the victim girl, jointly seeking for quashing the proceedings pending against the 2nd Respondent who is facing trial before the Court below for offences under Section 366 of the Indian Penal Code, 1806, Section 6 of the Prevention of Child from Sexual Offences, 2012 (hereinafter referred to as "POSCO Act" or "the Act") and Section 9 of the Prohibition of the Child Marriage Act, 2006.

3. It is seen from records that the 2nd Petitioner, victim girl, is well known to the second respondent, and they were in love with each other. Ultimately, they decided to get married and went away from their respective homes and a police complaint came to be filed before the 1st Respondent and the same has now resulted in criminal proceedings against the 2nd

Respondent before the Court below.

4. Ms. Doulagh Nisha, Inspector of Police was present at the time of hearing through video conferencing and she informed this Court that the petitioners have approached her and informed her that they do not want to continue further with the criminal proceedings against the 2nd Respondent. It was informed to her that the 1st Petitioner wants her daughter to get married and that the same is getting delayed due to the criminal proceedings, thereby only causing more mental agony to the Petitioners.

5. The Defacto Complainant and the victim girl were also present at the time of hearing through video conferencing. This Court examined the victim girl and she stated that there was a love affair between herself and the 2nd Respondent and that she is not willing to undergo this agony any further and wanted the criminal proceedings to be quashed.

6. The victim girl was examined as PW2 before the Court below and her statement before the Court below is extracted herein under:

கேள்வி இவ்வழக்கு சம்பந்தமாக எங்கு, எப்போது என்ன நடந்தது

கடந்த 09.02.2018 ல் நான் வீட்டில் இருந்தேன். அதற்கு முன்பே வீட்டில் பிரச்சனையாக இருந்தது. என்னுடைய அம்மா மற்றவர்கள் சொன்ன பேச்சை கேட்டு பிரச்சனை செய்து வந்தார்கள், அது எனக்கு பிடிக்கவில்லை. ஆஜர் எதிரியை எனக்கு முன்பே தெரியும். நான் காதலிப்பதாக சொன்னபோது அவர் இது செட்டாகாது என்றார். நீதான் வேண்டும் என்றதால் அவர் சரி என்றார். வீட்டில் டார்ச்சர் பண்ணியதால் 09.02.2018 அன்று ஆஜர் எதிரியை வீட்டுக்கு வர சொன்னேன். வந்தவுடன் என்ன என்று கேட்டார். வீட்டில் டார்ச்சராக இருக்கிறது என்றேன். என்னை திருமணம் செய்து கொள்ள கேட்டேன். சிறிது காலம் வயது வரும்வரை காத்திருக்க சொன்னார். என் வீட்டிற்கு திரும்ப முடியாது என்று கூறினேன். மேட்டுருக்கு என்னை அவரது அத்தை வீட்டில் கொண்டுவிட்டார். 09.02.2018 அன்று இரவு நேரமாகிவிட்டதால் பஸ் ஸ்டாண்டில் இருந்தோம். அவரது அத்தை வீட்டில் இல்லை. நான் திருமணம் செய்து கொள்ள கேட்டதால் மேட்டுர் விநாயகர் கோவிலில் வைத்து திருமணம் செய்து கொண்டார். மேட்டுரில் அவர் அத்தை வரும்வரை மேட்டுர் டேமிற்கு சென்றோம். சுமார் 3,00 மணிக்கு எதிரியின் அம்மா அவரை தொலைபேசியில் தொடர்பு கொண்டார்கள், பொண்ணு வீட்டில் கேஸ் கொடுத்து பிரச்சனை செய்கிறார்கள் என்று கூறினார்கள். அதற்கு பிறகு மேட்டுரில் இருந்து ஈரோட்டிற்கு வந்தோம். மறுநாள் காலை சிவா வீட்டிற்கு சென்றுவிட்டோம். அங்கிருந்து காவல்நிலையத்திற்கு சென்றோம்.

இந்த நிலையில் அரசு தரப்பில் பகுதியாக பிறழ் சாட்சியாக மாறியதாக சாட்சியை அரசுத்தரப்பில் குறுக்கு விசாரணை செய்ய அனுமதி கோரி வழங்கப்பட்டது.

அரசுத்தரப்பு குறுக்கு விசாரணை

11.02.2018 அன்று போலீசார் என்னை விசாரித்தார்கள் என்றால் சரிதான். மேட்டுர் டேமில் மறைவிடத்தில் வைத்து சிவா என்னுடன் உடலுறவு கொண்டான் என்று போலீசார் விசாரணையில் சொல்லியுள்ளேன் என்றால் சரிதான். அன்று மாலையே மேட்டுரில் இருந்து ஈரோட்டிற்கு வந்து விட்டோம் என்றால் சரிதான். என்னிடம் காண்பிக்கப்படும் 164 வாக்குமுலத்தில் உள்ள விவரங்களை நான் தான் நீதிபதியிடம் கூறினேன். அந்த வாக்குமுல் அ.த.சா.ஆ.1 என்னிடம் காண்பிக்கப்படும் வாக்குமுலத்தில் உள்ள கையெழுத்து என்னுடையதுதான்.

7. The father of the victim girl who was examined as PW1 also did not support the case of the prosecution and he was treated as a hostile witness.

8. The mother of the victim girl was also present at the time of hearing through video conferencing. She stated that let bygones be bygones, she wants her daughter to get married and settled in life. She further stated that she is not interested in pursuing the criminal proceedings any further and that same can be quashed by this Court.

9. The learned Additional Public Prosecutor appearing on behalf of the Respondent Police submitted that though the parties are entering into a compromise while the trial in 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.

10. This Court is instantaneously reminded of an earlier order

passed by a learned Single Judge of this Court, in ***Sabari v. Inspector of Police*** reported in ***2019 (3) MLJ CrI 110***, wherein he had discussed in detail about the cases in which persons of the age group of 16 to 18 years are involved in love affairs and how in some cases ultimately end up in a criminal case booked for an offence under the POSCO Act. The relevant portions of the judgment are extracted here under for proper appreciation:

“ 21. When this case was taken up for hearing, this Court became concerned about the growing incidence of offences under the POCSO Act on one side and also the Rigorous Imprisonment envisaged in the Act. Sometimes it happens that such offences are slapped against teenagers, who fall victim of the application of the POCSO Act at an young age without understanding the implication of the severity of the enactment.

26. In addition to the above, this Court is of the view that 'warning' of attraction of POCSO Act must be displayed before screening of any film, which have teenage characters suggesting relationship between boy and girl.

27. Apart from the above, this Court is of the view that as per the 3rd respondent's report, majority of cases are due to

relationship between adolescent boys and girls. Though under Section 2(d) of the Act, 'Child' is defined as a person below the age of 18 years and in case of any love affair between a girl and a boy, where the girl happened to be 16 or 17 years old, either in the school final or entering the college, the relationship invariably assumes the penal character by subjecting the boy to the rigours of POCSO Act. Once the age of the girl is established in such relationship as below 18 years, the boy involved in the relationship is sure to be sentenced 7 years or 10 years as minimum imprisonment, as the case may be.

28. When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.

29. Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous WWW.LIVELAW.IN 46 provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence”.

11. There can be no second thought as to the seriousness of offences under the POCSO Act and the object it seeks to achieve. However, it is also imperative for this Court to draw the thin line that demarcates the nature of acts that should not be made to fall within the scope of the Act, for such is the severity of the sentences provided under the Act, justifiably so, that if

acted upon hastily or irresponsibly, it could lead to irreparable damage to the reputation and livelihood of youth whose actions would have been only innocuous. What came to be a law to protect and render justice to victims and survivors of child abuse, can, become a tool in the hands of certain sections of the society to abuse the process of law.

12. As rightly recognized by the Learned Single Judge of this Court in Sabari's Case (cited supra), incidences where teenagers and young adults fall victim to offences under the POCSO Act being slapped against them without understanding the implication of the severity of the enactment is an issue that brings much concern to the conscience of this Court. A reading of the Statement of Objects and Reasons of the POCSO Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India, 1950 and the Convention on the Rights of the Child. However, a large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with

each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or ambit, cases of the nature where adolescents or teenagers involved in romantic relationships are concerned.

13. This Court, therefore, deems it fit and necessary to take a moment to delve into an important aspect, the awareness of which is crucial in understanding and dealing with cases of this nature. It is crucial to be aware of the science and psychology of adolescence and young adulthood at this juncture. 'This is because social and biological phenomena are widely recognized as determinants of human development, health, and socio-economic attainments across the life course, but our understanding of the underlying pathways and processes remains limited. Therefore, a "biosocial approach" i.e. one that conceptualizes the biological and social as mutually constituting, and draws on models and methods from the biomedical and social/behavioral sciences, is required.' (McDade, T. W., & Harris, K. M. (2018). The Biosocial Approach to Human Development, Behavior, and Health Across the Life Course. The Russell Sage Foundation journal of the social sciences: RSF, 4(4), 2–26.)

14. The UN has come to formally define 'adolescence' as the period between 10 and 19 years of age and 'young people' between 10 to 24 years of age, in the South- East Asia Region. Adolescence and young adulthood form a continuum for many development processes, but there are also unique aspects of young adulthood. Scientists who study brain development have spent much time looking at adolescents than at young adults. By the time people become young adults, significant aspects of their neurobiology have reached adult levels. However, their brains also continue to change in part because of continuing brain development, and in part because behavior is always remodeling the brain. Brain plasticity is evident throughout the lifespan but different kinds of plasticity come to the fore at different stages. For example, from childhood through adulthood, the gray matter in the brain, which contains neurons, thins as it loses synaptic connections and it is a method that the brain uses to sculpt itself to a particular environment. Studies of particular brain regions show continued changes after adolescence. It has been observed that the pathways that connect different parts of the brain also change over time. The decision-making ability is a

reflection of the development of the superior longitudinal fasciculus, which is involved in cognition and executive function. This superior longitudinal fasciculus continues to develop throughout the young adult years. Profound and protracted physical, biological, and neurological changes linked to puberty occur throughout adolescence and early adulthood. Hormonal changes prompt a literal remodeling of cortical and limbic circuits in the brain that were previously organized in the perinatal period and that, in combination with adolescent social experiences and contexts, affect general cognition, decision making, and behavior into adulthood. (Sisk CL, & Zehr JL (2005). Pubertal hormones organize the adolescent brain and behavior. *Frontiers in Neuroendocrinology*, 26(3–4), 163–174.)

15. It is only relatively recently that neurobiologists have started to probe into the neural basis of one of the most powerful and exhilarating states known to humans, namely love. Studies largely show that the basic human motivations and emotions arise from distinct systems of neural activity and that these systems derive from mammalian precursors. Thus, it is only natural that this mechanism is also active in Homo Sapiens i.e.

humans. Adolescence is associated with many psychosocial and developmental challenges, including the processing of intense emotions and “first loves”. (Arnett J.J. Adolescence and Emerging Adulthood. Pearson Education Limited; New York, NY, USA: 2014.) It is now well evidenced that adolescent romance is an important developmental marker for adolescents’ self-identity, functioning and capacity for intimacy. Developmental-contextual theories of adolescent romantic stages also provide a framework for how romantic relationships assist young adults with addressing their identity and intimacy needs. Therefore, the age of adolescence as can be seen evidently, is one associated with an amassing change in the neurological, cognitive and psychological systems of a person and one of the most important aspect is that the individual tries to establish their identity, develops emotional and biological needs during this period as a result of which the individual tends to look for new relationships, bonding and partnership. It is also important to acknowledge in addition to this, the vast exposure that is available to adolescents and youth in the form of digital content that play a major role in influencing their growth and identity.

16. In light of the above, it is only natural that there are cases of the above-mentioned nature that are on the rise at present and it does not help matters to avoid acknowledging that the society is changing and influencing people's identity and cognition, constantly. Therefore, painting a criminal colour to this aspect would only serve counter-productively to understanding biosocial dynamics and the need to regulate the same through the process of law.

17. This Court is not turning a blind eye to cases where the victim or survivor may, under the effect of trauma that they have undergone, studies on which show that they might tend to reconcile with the same by blaming themselves or convincing themselves that the element of consent was infact present. Nor is this Court scientifically justifying in toto, the genuineness or predicament of the accused in every case where it appears that the accused and victim child have been in a romantic relationship. That will depend on the facts and circumstances of each and every case.

18. In the present case, the 2nd Petitioner who was in a relationship with the 2nd Respondent who is also in his early twenties, has clearly stated that she was the one who insisted that the 2nd Respondent take her away from her home and marry her, due to the pressure exerted by her parents. The 2nd Respondent, who was placed in a very precarious situation decided to concede to the demand of the 2nd Petitioner. Thereafter, they eloped from their respective homes, got married and consummated the marriage. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally in cities. After the parents or family lodge a complaint, the police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. As a consequence of such a FIR being registered, invariably the boy gets arrested and thereafter, his youthful life comes to a grinding halt. The provisions of the POCSO Act, as it stands today, will surely make the acts of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. Punishing an adolescent boy who enters into a relationship with a minor girl by treating

him as an offender, was never the objective of the POCSO Act. An adolescent boy and girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. It is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act.

19. 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 second respondent. The Hon'ble Supreme Court in the case of *Parbathbhai Aahir @ Parbathbhai*

Vs. State of Gujrath, reported in **2017 9 SCC 641** and in case of *The State of Madhya Pradesh Vs. Dhruv Gurjar and Another* reported in **(2019) 2 MLJ CrI 10**, has given sufficient guidelines that must be taken into consideration by this Court while exercising its jurisdiction under Section 482 of Cr.P.C, to quash non-compoundable offences. One very important test that has been laid down is that the Court must necessarily examine if the crime in question is purely individual in nature or a crime against the society with overriding public interest. The Hon'ble Supreme Court has held that offences against the society with overriding public interest even if it gets settled between the parties, cannot be quashed by this Court.

20. In the present case, the offences in question are purely individual/personal in nature. It involves the 2nd Petitioner and the 2nd Respondent and their respective families only. It involves the future of two young persons who are still in their early twenties. The second respondent is working as an Auto driver to eke his livelihood. Quashing the proceedings, will not affect any overriding public interest in this case and it will in fact pave way for the 2nd Petitioner and the 2nd Respondent to settle down in their

life and look for better future prospects. No useful purpose will be served in continuing with the criminal proceedings and keeping these proceedings pending will only swell the mental agony of the victim girl and her mother and not to forget the 2nd Respondent as well.

21. In view of the above, this Court is inclined to quash the criminal proceedings in Special S.C.No.24 of 2018 on the file of the learned Sessions Judge, Mahila Court (Fast Track Mahila Court) Erode in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code, 1973. Accordingly, the same is quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is also closed.

27.01.2021

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N.ANAND VENKATESH. J,

dpq

To

1. The learned Sessions Judge,
Mahila Court (Fast Track Mahila Court) Erode
2. The Inspector of Police,
All Women Police Station,
Erode.
3. The Public Prosecutor,
High Court, Madras.



CrI.O.P.No.232 of 2021
and M.P.No.109 of 2021

27.01.2021

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