

A.Sahaya Delwin Raj vs The State Rep.By on 17 October, 2024

CrI.O.P.(MD)No

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.17010 of 2024

and

CrI.M.P(MD)Nos.10689 and 10690 of 2024

A.Sahaya Delwin Raj : Petitioner/Sole

Vs.

1.The State rep.by
The Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.
Crime No.35 of 2023.

2.Paul Lishani : Responden

PRAYER : Criminal Original Petition filed under Section 528 of BNSS to call for the records pertaining to the charge sheet in Spl.C.C.No.43 of 2024 on the file of the learned Judge of Special Court for Exclusive Jurisdiction Cases under POCSO Act, Tirunelveli District and quash the same as illegal.

For Petitioner : Mr.B.Char Murugan,

For Respondents : Mr.K.Sanjai Gandhi,
Government Advocate (CrI. Sid
for R1 & R2.

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CrI.O.P

ORDER

The Criminal Original Petition has been filed, invoking Section 528 of BNSS., seeking orders, to call for the records pertaining to the charge sheet in Spl.C.C.No.43 of 2024 on the file of the learned

Judge of Special Court for Exclusive Trial Cases under POCSO Act, Tirunelveli District and quash the same as illegal.

2. It is evident from the records that on the basis of the complaint given by the third respondent, FIR came to be registered in Crime No.35 of 2023 for the offences under Sections 10, 9(f), 12, 11(1) and 11(3) of POCSO Act 2012, and after completing the investigation, the second respondent has laid the final report for the offence under Sections 6, 9(l), 9(f), 10, 11(1), 11(3), 12, 18 of POCSO Act and Section 506(1) of IPC and the same was taken on file in Spl.C.C.No.43 of 2024 on the file of the learned Judge of Special Court for Exclusive Trial Cases under POCSO Act, Tirunelveli District.

3. The case of the prosecution is that the petitioner is a teacher and in the class premises as well as in the tuition centre, he had approached the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.17010 of 2024 victim girl with sexual intention and one day in tuition, he had inserted his hands in the shirt of the victim girl and that he had shown the obscene photographs to the victim girl and that on another day, he had attempted to commit penetrative sexual assault. Hence, the complaint.

4. The learned counsel for the petitioner would submit that there is absolutely no material or evidence to show that the petitioner had committed penetrative sexual assault so as to attract the offence under Section 6 of POCSO Act.

5. It is pertinent to note that though FIR came to be registered for the offence under Sections 9(f), 10, 11(1), 11(3) and 12 of POCSO Act, the investigating officer, after completing the investigation has included the offences under Sections 6, 9(l), 18 of POCSO Act and 506(i) of IPC along with the offences shown in the FIR.

6. Section 3 of POCSO Act provides that if a person penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or inserts, to any extent, any object or a part of the body, not being the penis, into the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.17010 of 2024 vagina, the urethra or anus of child or makes the child to do so with him or any other person, or manipulates any part of the body of the child so as to cause penetration into the vagina, urethra or anus or any part of the body of the child or makes the child to do so with him or any other person, or applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so with him or any other person, he is said to commit the offence of penetrative sexual assault.

7. As rightly contended by the learned Government Advocate (Criminal Side) under the POCSO Act, penetrative assault is not a necessary condition to attract the liability and even non penetrative acts, such as using photographs or other performance of visual representation can be sufficient to constitute an offence under Section 11 of POCSO Act, which deals with sexual harassment.

8. In the case on hand, as rightly contended by the learned Government Advocate (Criminal Side), there are specific allegations against the petitioner so as to attract the offences shown in the charge sheet. He would further submit that the learned Magistrate has recorded the statement under

Section 164 Cr.P.C and the victim girl has reiterated [https://www.mhc.tn.gov.in/judis Crl.O.P.\(MD\)No.17010 of 2024](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)No.17010%20of%202024) the complaint version before the learned Magistrate also. Except the above, the petitioner has not canvassed any other reason or ground to quash the impugned charge sheet.

9. The Hon'ble Supreme Court in the case of State of Haryana and others Vs. Bhajan Lal and others reported in 1992 SCC (Cri) 426 has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

[https://www.mhc.tn.gov.in/judis Crl.O.P.\(MD\)No.17010 of 2024](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)No.17010%20of%202024) (1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused; (2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused; (4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code; (5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

[https://www.mhc.tn.gov.in/judis Crl.O.P.\(MD\)No.17010 of 2024](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)No.17010%20of%202024) (6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party; (7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. In Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others reported in 2019 (18) SCC 191, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.17010 of 2024

11. The Hon'ble Supreme Court in Kaptan Singh Vs. The State of Uttar Pradesh and others reported in 2021 (3) Crimes 247 has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and prima facie materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

12. A cursory perusal of the final report and the statements filed along with the final report would make it clear that there existed a prima facie case to proceed against the petitioner and it is a matter for trial.

13. Considering the above and also the submission made by the learned Government Advocate (Criminal Side) and also taking note of the fact that this is not a fit case to quash the charge sheet against the petitioner. Hence, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.17010 of 2024

14. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

17.10.20

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das

To

1.The Special Judge of Special Court

for Exclusive Trial Cases under POCSO Act, Tirunelveli District.

2. The Inspector of Police, Mukkudal Police Station, Tirunelveli District.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.17010 of 2024 K.MURALI SHANKAR,J.

das Order made in Crl.O.P.(MD)No.17010 of 2024 and Crl.M.P(MD)Nos.10689 and 10690 of 2024
Dated: 17.10.2024 <https://www.mhc.tn.gov.in/judis>