

Crl.M.P.No.3209 of 2021
in Crl.A.No.258 of 2019

P.VELMURUGAN, J.

This Crl.M.P., has been filed under Section 482 and 391 Cr.P.C., seeking to take additional evidence of the victim by recording her deposition before this court and to mark the affidavit filed by the victim through her in above Crl.A.No.258 of 2019.

2. The respondent police registered the case against the appellant/petitioner for the offence under Sections 417, 376 IPC and u/s.5(l) read with 6 of the Protection of Children from Sexual Offences (**POCSO**) Act. The learned Special Judge in Spl.S.C.No.43/2015, after trial, convicted the appellant under Section 5(l) read with 6 of POCSO Act and sentenced to undergo 10 years Rigorous Imprisonment.

3. Challenging the said judgment, the appellant/petitioner has filed Crl.A.No.258 of 2019. During the pendency of the appeal, he has filed the present petition to take additional evidence of the victim by recording the deposition before the Court u/s.482 and 391 Cr.P.C.

4. The learned counsel for the petitioner would submit that even during the trial, the victim filed the petition praying to further examine herself as she intends to untold the truth before the trial court in Crl.M.P.No.171/2019 u/s.311 Cr.P.C., however the said petition was dismissed.

5. The victim girl sworn affidavit on 08.02.2021 before this court, pursuant to the order of this court passed in the Crl.M.P.No.6452 of 2019 for suspension of sentence. In the said affidavit it is stated that both the appellant and the victim girl are living together for the past four years and they are living and they settled the matter and therefore, prayed to allow the appeal and to set aside the order of the trial court and let them live peacefully.

6. The learned counsel for the petitioner/appellant would further submit that this court while suspending the sentence also mentioned the same thing.

7. The learned Government Advocate (Criminal Side) would submit that already sufficient opportunity given to the appellant before the trial court; he has not let in any evidence or produced any documents. The victim girl also at the earliest point of time before the doctor during the Medical test, before the Magistrate during the statement recorded under Section 164(5)

Cr.P.C. During the trial, while examining as witness, P.W.1 has clearly stated that the appellant forcefully had penetrated sexual assault repeatedly by making false promise. After trial, in order to escape from the clutches of law, he filed the petition before the trial court, the same was rightly dismissed, which is not maintainable under law. Now the petition has been filed before this court.

8. Heard and perused the records.

9. Admittedly the case was registered against the petitioner for the offence u/s.5(1) read with 6 of POCSO Act and after trial, the petitioner was convicted and sentenced to undergo 10 years R.I. It is submitted by the learned counsel for the petitioner that he filed the petition before the trial court along with the affidavit filed by the victim girl even during the trial and the same was rejected. After completing the examination of prosecution witnesses, the appellant convinced the victim girl, filed the petition for examining the victim child stating that she intended to untold the truth before the trial court in Crl.M.P.No.171 of 2019. The said petition was dismissed and the petitioner has not challenged the order passed in Crl.M.P.No.171 of 2019

on the file of the Fast Track Court, Mahila Court, Dharmapuri and argued the case. After passing the judgment of conviction, the appellant/accused has filed the present appeal before this court. Once again, the petitioner has set up the victim girl and filed affidavit and in the said affidavit, in paragraphs 3 and 4 the victim girl has stated as under:-

“3. I submit that I had fall in love with MARUTHAPANDI over Two years and on refusal to give in marriage me to Maruthapandi due to family circumstances. Both are belonging to same community, Hindu Parayar S.C.Community. Hence there is no impediment socially to marry Marudhupandi. I filed a petition before the Trial court Dharmapuri under Section 311 Cr.P.C., to examine myself and my father, refusal to examine myself Under Section 311 Cr.P.C. The Trial court wrongfully convicted the said Maruthupandi for Ten years R.I. On appeal, the Hon’ble High Court considered his Suspension of Sentence on the ground of consensual affairs” this Honourable Court has taken lenient view and suspended the sentence on 03.06.2019 we both are living together over four years and the imminent threat of arrest of Maruthupandi would ruin the life of both myself and the said Marudhupandi. Hence it is just and necessary to allow the above appeal.

Hence, it is prayed that this Honourable Court may be pleased to allow the above Appeal No.258 of 2019 and leave Maruthupandi to live peacefully with me to secure the ends of justice and thus render justice.”

10. The petitioner has now filed the present petition u/s.391 Cr.P.C., seeking that the victim girl has to be reexamined before the court. The affidavit has to be taken as additional evidence and she has to be examined and her further evidence has to be taken as additional evidence. But, once before the trial court, already the victim girl deposed and further her statement also recorded u/s.164 Cr.P.C. before the Magistrate, she has clearly stated that the appellant has committed the offence. The evidence of the victim girl is very clear that she was at the age of 17 years on the day of occurrence and the appellant had made a false promise that he would marry her and against her will, he had forceful penetrated sexual intercourse repeatedly with her, subsequently, he refused to marry her. So, after the completion of examination of prosecution witnesses, the appellant convinced the victim girl and filed an affidavit. Even in the affidavit, the victim girl has not stated that no such occurrence occurred. But she has stated that for four years they have been living together. Even in the said affidavit, she has stated that she had fall in

love over Marudhupandi over two years and due to family circumstances, she refused to marry. The scope of the Act is very clear, mere fall in love is not an offence but a person who is above 18 had sexual assault intentionally against a child who is under 18 years is an offence. Any offence committed under POCSO Act is not compoundable offence.

11. Further, in paragraph 4 of the affidavit filed in support of the petition, it is stated that pursuant to the order passed by this court on 03.06.2019, they are living together over the period of four years and no offence is made out. She admitted that both are living together for more than four years. Therefore, at the time of commission of offence, the victim child was aged under 18 and hence, victim is child under Section 2(1)(d) of POCSO Act. The date of birth of the victim girl is 24.06.1997 and the date of offence is 24.06.2014. So at the time of occurrence, she was only 17 years and she has deposed before the trial court and also prior to that she has given statement before Magistrate.

12. Even assuming that victim girl had fall in love with the appellant and admitted that they are living for four years, even on the date of

commission of offence, provisions of POCSO Act attract. It is not a compoundable offence. Subsequently, she cannot turn it to compound the offence. Once the victim girl gave complaint that the appellant has committed the offence and the case has been registered, it is offence against State. Therefore subsequent compromise will not take away the offence. The victim girl already gave statement u/s.164 Cr.P.C., before the Magistrate and also deposed before the trial court even in the year 2016. So subsequently, the appellant filed the petition. The appellant convinced the victim and filed M.P., before the trial court in the year 2019 in Crl.M.P.No.171 of 2019, but the same was dismissed and not challenged. Therefore, she cannot once again be examined by invoking Section 391 Cr.P.C. Even in the affidavit filed by the victim child, she has not stated that she was under threat or coercion and made such statement before Magistrate or evidence before trial court. In order to protract the case and escape from the clutches of law, the petitioner has filed the petition in the criminal appeal of the year 2019. Even in the grounds of appeal, the appellant has not raised any ground that by threat she gave a statement or evidence. Now at the time of final hearing of appeal, this Crl.M.P.No.3209 of 2021 is filed along with sworn affidavit of victim to take additional evidence which is against the scope of POCSO Act.

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13. Considering the circumstances, there is no merit in the petition. The petition is liable to be dismissed. Accordingly, this Crl.M.P.,is dismissed.

16.03.2021

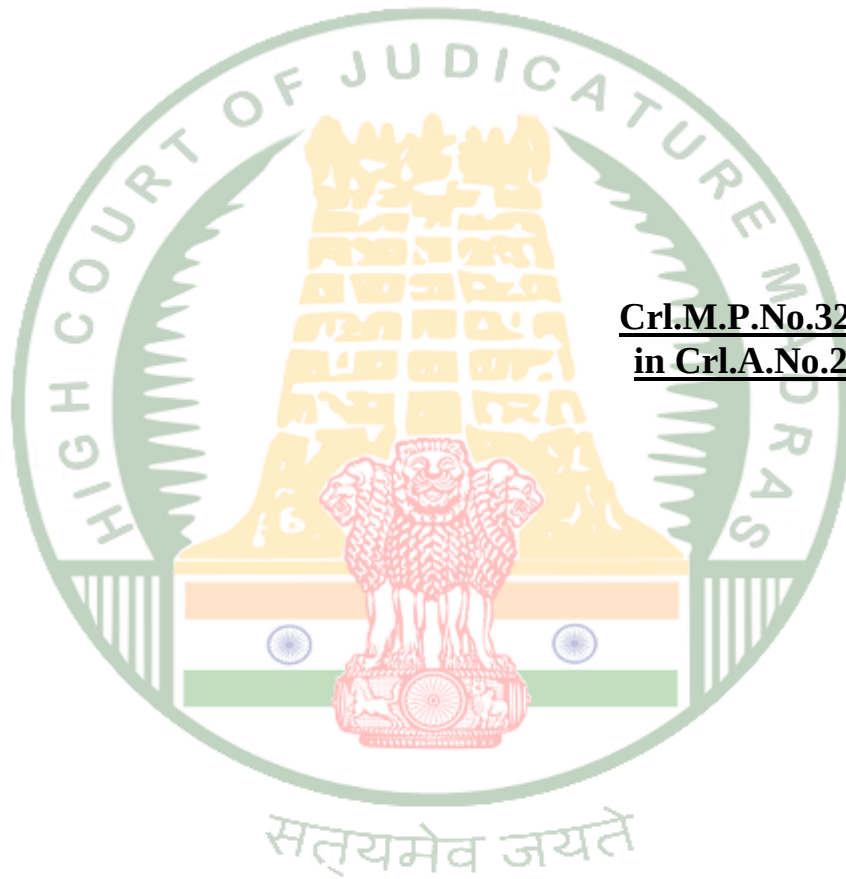
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Note: Issue order copy today itself (16/03/2021)

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