

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10891 OF 2022

ORDER:

1. This Criminal Petition is filed to quash the proceedings against the petitioner/Accused in SC.PCS.No.288 of 2022 on the file of XIX Special Court for the Trial of the Protection of Children from Sexual Offences (POCSO) Act Cases-cum-XII Additional Metropolitan Sessions Judge, Nampally, Hyderabad.

2. The petitioner is questioning his implication in the criminal case for the offences under Section 354(1)(i) IPC and Section 8 r/w 7 of POCSO Act, 2012.

3. The case of the police Hussaini alam, is that the 2nd respondent, who is the mother of the victim filed a complaint on 27.05.2022 stating that she has four daughters and the victim daughter was attending Arabic classes. She used to drop the children at Arabic classes and pick them up after classes. On 26.05.2022, the victim girl came in fear and informed that while returning from the classes, one unknown person caught hold of her hand and took her to nearby lane and closed the mouth of the victim girl, so as to not to make sound. However, she escaped from

the said person. The 2nd respondent went to the said premises to find out who the said person was and since she did not have any clue of such person, having made local enquiries, lodged complaint with the police. The police assured her that they will look into the CC TV footage and later identified the person who had taken the victim girl into the nearby lane by closing her mouth. The police, having looked into the CC TV footage, identified the petitioner to be the person who had taken the girl to the nearby lane forcibly, for which reason, he was charge sheeted.

4. Learned counsel appearing for the petitioner would submit that the prosecution is nothing but abuse of process of the court and the powers of the police. The petitioner has been falsely implicated on the basis of alleged CCTV footage. He submits that the said CCTV footage was not provided to the petitioner. If such complaints are taken cognizance of and charge sheets are being filed, then no one can survive. Even assuming that the victim girl's mouth was closed, it does not attract an offence punishable under the Act of 2012. He readout Section 7 of the Act of 2012, which is extracted:

“Section 7 : Sexual assault

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

5. He further submits that as seen from the statement of the 2nd respondent, who is the mother of the victim girl, there are no such acts which fall within requirements to be fulfilled to attract an offence under section 7 of POCSO Act. The statement of victim also does not make out any of the ingredients of section 7, for which reason, complaint has to be quashed. Further, the petitioner is a respectable person, who served the police department and retired. Without any basis, the petitioner was roped in only for the reason of his passing through the said street. Since there was no proof of the petitioner taking the victim girl forcibly as stated by the prosecution and both for the reason of suppression of CCTV footage and also on facts, no case is made out and proceedings have to be quashed.

6. On the other hand, Sri S.Sudershan, learned Additional Public Prosecutor submits that the police had committed no error in filing charge sheet against this petitioner as he was found to be the person who had taken the victim girl to nearby lane forcibly. For the

said reason, the evidence of the witnesses and the victim girl have to be adduced during the course of trial to prove the acts of the petitioner amounted to an offence under POCSO Act and also under Section 354 of IPC and prayed to dismiss the petition.

7. Under Section 7 of the Act of 2012, whoever makes physical contact of the vagina, penis, anus or breast of the child or makes the child touch such parts, commits sexual assault. Further, any act with sexual intent involving physical contact without penetration is said to have committed sexual assault.

8. On the basis of record, though there is no narration by any of the witnesses that that the victim girl was made to touch the penis or any part of the body of the petitioner nor the petitioner touched any private parts of the victim girl, it is stated that the petitioner had forcibly taken her to the nearby lane by holding her hand and closed her mouth. Firstly, there was no necessity for the petitioner to catch hold of the victim girl and take her forcibly to nearby lane by closing her mouth. Secondly, whether such act was with the sexual intent or not is subject matter of trial since holding of victim girl and closing her mouth involves physical contact.

9. An absurd argument is advanced by Counsel that everyone would fear touching one's own child if such prosecutions are allowed. Touching one's own child or a child of a relative out of affection or fondly or playfully is totally different from a stranger catching hold of a child forcibly. No doubt that a relative will be prosecuted if he touches a child inappropriately.

10. In the said circumstances, when the incident is narrated by the victim girl about a person who was later identified to be this petitioner, who forcibly took her to the nearby lane by closing her mouth, according to the mother of victim, this Court does not find favour with the argument of the learned counsel for the petitioner that since there was no physical contact with the private parts, Section 7 of the Act of 2012 would not attract. Section 7 of the Act provides for various circumstances under which an offence under Section 7 of the Act is made out. It also includes physical contact without penetration. However, such physical contacts should be with sexual intent. *Prima facie*, at this stage under Section 482 of Cr.P.C, this Court cannot infer whether there was sexual intention of the petitioner when he had taken the victim girl forcibly to the

nearby lane by closing her mouth or when he forcibly caught hold of her. The statement of the victim made before the Police is that one person who is a stranger caught hold of her hand near the house of Moulana and asked her to sit on his vehicle, for which reason, the victim girl bit his hand and escaped from there. The question of biting a person's hand and escaping from him would only arise when such acts of the person were improper or inappropriate.

11. The counsel read the statements made by witnesses before police and before Magistrate and tried to convince this Court that there are several discrepancies and versions, which has to be taken note of and quash the proceedings. This Court under the inherent powers cannot conduct a mini trial and conclude that the petitioner's prosecution cannot be continued. The genesis of the complaint is that a stranger had acted inappropriately with a child. Minor differences in versions of witnesses are of no avail in the present application.

12. The petitioner's identity when disputed can as well be ascertained during the course of trial and not in the present

application. For all the above reasons, I do not find any ground to interfere with the prosecution of the petitioner.

13. In the result, the Criminal Petition is dismissed. However, the Trial Court can draw its own conclusions on the basis of evidence adduced by both parties, uninfluenced by the observations in the present petition.

K.SURENDER, J

Date:18.01.2023

Note: LR copy to be marked.

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