



H.C.P.No.2182 of 2022

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N. ANAND VENKATESH, J.

and

SUNDER MOHAN, J.

[Order of the Court was made by N. ANAND VENKATESH, J.]

Mr.M.Kingshiln, S.P., Child Welfare Committee, Mr.S.Arumugam, Inspector, Chidambaram Town Police Station, Ms.S.Komalavalli, Inspector, Pennagaram All Woman Police Station, Ms.G.Kasthuri, Deputy Director of Social Defence and Dr.P.Krishna, Joint Director, D.M.S. are present before this Court.

2. In continuation to the earlier order passed by this Court on 16.06.2023, the matter was posted for hearing today.

3. While passing the earlier order, we had directed the investigation officer in Crime No.623 of 2023 to file the final report before the Juvenile Justice Board, Cuddalore on or before 30.06.2023. We further directed the copy of the final report to be placed before us at the time of hearing.



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4. Learned Additional Public Prosecutor appearing on behalf of respondent Police filed the status report of the Inspector of Police, Chidambaram Town Police Station, Cuddalore. The relevant portions in the status report are extracted hereunder:

“7. It is humbly submitted that Mrs.Padma, Inspector of Police, had obtained a certificate from the Village Administrative Officer concerned, Cuddalore regarding the owner of the said building at Vaitheeswarankovil and its present condition. The Inspector of Police subsequently recorded statements of remaining witnesses and almost completed investigation before getting relieved of the incharge duty.

8. It is humbly submitted that I subsequently took charge and recorded further statements of the victim girl, her father and this juvenile in conflict with law x. All their further statements do not reveal commission of offences as stated to be altered above.

Hence further action in this case is dropped and the de- facto complainant has been served with RCS No.25/2023 on 25.06.2023 and on the same day (i.e.) on 25.06.2023, Final Report has been laid to that effect the Court concerned and the same was taken on file vide No.01/2023 dated 06.07.2023.”

5. The learned Additional Public Prosecutor submitted that a closure report has been filed before the Juvenile Justice Board, viz., Judicial



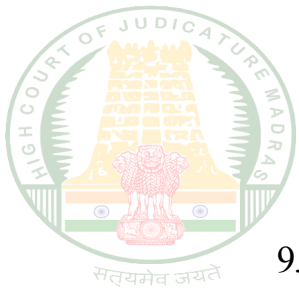
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Magistrate No.III, Cuddalore and X and Y have appeared before the concerned Court today to enable the Juvenile Judge to record their statements. We also had the advantage of going through the closure report filed before the Juvenile Justice Board.

6. In our considered view, the closure report clearly reveals the fact that no offence has been made out and hence the Juvenile Justice Board, viz., Judicial Magistrate No.III, Cuddalore after inquiring X and Y shall take the closure report on file and pass appropriate orders.

7. With the above development, the case in Crime No.623 of 2023, on the file of Chidambaram Town Police Station comes to an end.

8. While passing the earlier order, our attention was drawn to a case at Dharmapuri where a boy and girl who were below 18 years eloped. The girl also became pregnant and ultimately both of them were secured. Unfortunately, the boy was said to have been straightaway arrested without issuing Section 41-A notice under Cr.P.C. We directed the learned Additional Public Prosecutor to take instructions during the previous hearing.



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9. The learned Additional Public Prosecutor handed over the Case Diary pertaining to Crime No.10 of 2023, pending on the file of All Women Police Station (AWPS), Pennagaram, Dharmapuri District. On going through the same, we found that based on the complaint given by the Block Development Officer, the F.I.R. was registered against the minor boy (Y) for various offences under I.P.C. and POCSO Act, 2012. The Juvenile Justice Board, Dharmapuri by an order dated 21.06.2023 after getting a bond from the parents of Y had released the boy.

10. Following is the sequence of events pertaining to Crime No.10 of 2023:

(a) X (D.O.B. 09.08.2005) and Y (D.O.B. 22.03.2005)

fell in love with each other. There was some pressure on the side of X to get her married. Hence, X informed about this to Y and wanted to desperately get married to Y to pre-empt the parents of X from not getting X married elsewhere.

(b) On going through the 164 statement that was recorded from X it is seen that Y was not willing to marry X and he had informed X that both of them are aged only 17



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years and hence, they cannot legally get married. However, X had put tremendous pressure on Y and left with no other alternative X and Y eloped on 02.12.2022 and got into a bus at about 7.00 p.m. and went to Dharmapuri. Thereafter, they went to Chennai.

(c) On 03.12.2022, Y tied Thali around the neck of X in a temple as a symbol of marriage and they rented a house at Avadi and started living there. Over a period of time, X also got pregnant.

(d) On 22.03.2023, Y took X for medical check up to the Government Hospital. The next day, when Y was not present in the house, X was taken away from the house by the Block Development Officer and two others, who accompanied him.

(e) X was thereafter taken to the District Social Welfare Officer, who in turn took X to the Child Welfare Committee (CWC). The Child Welfare Committee placed X in a home



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(Vallalar Illam). Till this point, no information was given to the parents of X and the admission into the home was made by CWC.

(f) On 24.03.2023, the parents of Y informed the parents of X that X was taken away and the parents of X went to meet X at the home. They had requested that X should be allowed to accompany them to their house. However, since CWC had already taken a decision to keep X in the home, X was not allowed to go along with her parents. The parents also did not give any complaint against Y for the above said incident.

(g) The Block Development Officer gave a complaint before AWPS on 25.04.2023 which is nearly after a month after X was placed in the home. Based on the complaint, F.I.R. came to be registered. The 164 statement of X was recorded by the District Munsif cum Judicial Magistrate, Pennagaram on 08.05.2023. A careful reading of the 164 statement only confirms whatever has been stated supra and it is also clear that it was X who had put pressure on Y to take her away and



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marry and Y had no such intention to elope with X or to marry her, since both of them were under 18 years.

(h) X was kept in the home for nearly one month and she was released only after a week after the F.I.R. was registered. On some pretext, she was retained in the home and she was not sent with her parents. It is quite unfortunate that these events took place and more particularly when X was pregnant at the relevant point of time.

(i) Y was asked to come to the police station for enquiry on 02.06.2023. He was accompanied by his father and both of them were in the police station for almost the whole day and it is stated that Y was produced before the Juvenile Justice Board, Dharmapuri at about 11.30 p.m. and the member after putting some questions to Y asked Y and his father to come the next day.

(j) On 03.06.2023, Y and his father appeared before the Juvenile Justice Board, Dharmapuri and an order was passed



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directing Y to be kept in Home and since Y had turned 18 by then, he was admitted in the Place of Safety (POS).

(k) Y was kept in POS for nearly 14 days and he was produced before the Juvenile Justice Board for bail hearing. Since the concerned Magistrate was on leave, the bail petition was not able to be taken up immediately. In the meantime, we had passed an order on 16.06.2023 seeking for a report regarding this case.

(l) Ultimately on 21.06.2023, Y was released from the POS and was sent along with his parents. By then, Y had spent nearly 20 days in the POS.

11. The sequence of events, that we have recorded *supra*, is a sample case which illustrates the fact that the instructions given by the Hon'ble POCSO Committee and the circular issued by the Director General of Police have not percolated into the system. If really the instructions and the guidelines were followed in letter and spirit, there was no reason as to why X had to spend nearly a month in the home and Y had to spend nearly 20 days in the POS. What is even more shocking is that both X and Y are



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“child” in the eye of law and whereas, X was treated as a victim and Y was treated as a child in conflict with law.

12. This case must be taken to be a wakeup call to ensure that such incidents atleast do not happen in the future. It is sad that none of the stakeholders were sensitive to the fact that both the boy and the girl were under 18 years and both of them are categorised as child under the relevant enactment.

13. We have carefully gone through the entire Case Diary and we have also heard Mrs.Vidhya Reddy, who was requested to assist this Court and also the learned Additional Public Prosecutor appearing on behalf of the respondent police. We were also informed that the parents of the X were not interested in giving a police complaint and both the parents of X and Y wanted to get them married after they reach their marriageable age prescribed by law. We are convinced that the criminal proceedings pending in Crime No.10 of 2023, on the file of AWPS, Pennagaram is an abuse of process of law and the continuation of such proceedings will adversely affect the interest and future of both X and Y. Both of them have already undergone mental trauma and we do not want to prolong the agony faced by them at such a



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young age. In view of the same, we are inclined to exercise our jurisdiction under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. and the F.I.R. in Crime No.10 of 2023, pending on the file of AWPS, Pennagaram is hereby quashed.

14. In the earlier order we had directed the Director General of Police to provide us particulars regarding the case details pending before the Courts/Juvenile Justice Board pertaining to victims and the children in conflict below the age of 18 years. Accordingly, the Additional Director General of Police, Crimes against Women and Children, O/o. DGP, Chennai – 600 004 has filed a status report along with a comprehensive report and supporting documents (5 volumes). We carefully went through the status report and also the materials placed before us. The data has been gathered by taking into account the pending cases from 2010 to 2013, City wise and Zone wise. Data has also been gathered from the Railways. For the period from 2010 to 2013, a total of 1728 cases were registered. Out of these, 1274 cases are pending. The pendency has been categorized under three heads, viz., cases which are under investigation, cases where investigation has been completed and the final report is yet to be taken on file and cases where the trial is pending.



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15. We are able to see that a lot of effort has gone into the preparation of the report and we place on record our appreciation for the efforts taken by the Director General of Police and also the Additional Director General of Police, Crimes against Women and Children, O/o. DGP, Chennai. The report gives a fair idea as to the number of cases which are actually pending in the State of Tamil Nadu. Having gathered this data, the next step to be taken is to ascertain all those cases falling under the category of consensual relationship. Out of the 1274 cases, it has to be ascertained as to how many cases fall under the category of consensual relationship. If those cases are segregated from the pending cases, it will be easy for this Court to deal with them and in appropriate cases, this Court can also exercise its jurisdiction and quash the proceedings if the proceedings are ultimately going to be against the interest and future of the children involved in those cases and it is found to be an abuse of process of Court / abuse of process of law.

16. Pursuant to our earlier order, the learned Public Prosecutor of Puducherry also submitted a memo along with the details of the pending cases in the Union Territory of Puducherry. On going through the same, we



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find that there are totally 21 cases which are pending at Puducherry either at the stage of investigation or pending trial. Similarly, we find 6 cases pending in Karaikal and two cases pending in Yanam either at the stage of investigation or pending trial.

17. While passing the earlier order, we requested the learned Amicus Curiae, Mrs.Vidhya Reddy, Executive Director of Tulir and also the counsel who was appearing for the petitioner in H.C.P.No.2182 of 2022, to identify various issues which requires to be addressed by this Court and also the suggestions putforth by them. Accordingly, Mr.E.V.Chandru has filed a separate note. Likewise, Ms.Deepika Murali, Advocate has filed a separate note. Suggestions have also been placed before this Court by Mrs.Vidya Reddy, Executive Director of Tulir. A copy of all these suggestions have been furnished to the learned Additional Public Prosecutor and also to the learned Additional Advocate General.

18. The learned Additional Advocate General appearing on behalf of Principal Secretary, Government of Tamil Nadu, Health and Family Welfare Department and Additional Chief Secretary, Government of Tamil Nadu, Social Welfare and Women Empowerment Department submitted that



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pursuant to the judgment of the Hon'ble Apex Court in ***Shailendra Kumar***

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Rai case, instructions have been given to the head of departments of all Medical Colleges and the Chief District Obstetricians and CMO of the Secondary Grade Institutions to adhere to the guidelines for medical examination and reporting of sexual violence. The check list for conducting the medical examination and reporting of sexual violence was also produced before this Court. Learned Additional Advocate General submitted that the directions issued by the Hon'ble Apex Court in ***Shailendra's*** case will be strictly followed and that if any medical officer is found to violate the same, departmental action will be initiated.

19. We conclude today's proceedings by issuing the following directions:

(a) The reports submitted by the Amicus Curiae, Mrs. Vidhya Reddy, Executive Director of Tulir and also Ms. Deepika Murali, Advocate shall be taken into account and the respondents are directed to come up with the plan of action to be taken on each issue that has been flagged in the reports filed before this Court.



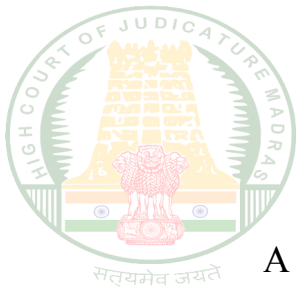
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(b) The copy of the reports filed before this Court shall also be circulated to the respective Bar Associations both in the Principal Seat as well as the Madurai Bench in order to enable the Bar to come up with their suggestions and to assist this Court.

(c) There will be a direction to the Director General of Police to identify cases involving consensual relationship from among the 1274 pending cases and a separate list shall be placed before this Court. While identifying those cases, a brief note on the facts of the case shall be prepared in order to enable this Court to understand and take a decision accordingly. The brief note shall also be accompanied with the 164 statement recorded from the victim.

(d) The same exercise shall be done by the Director General of Police, Puducherry from out of 29 pending cases placed before this Court.

(e) We find that there is lack of sensitivity / empathy on the part of CWC and the Juvenile Justice Board, in some of the cases.

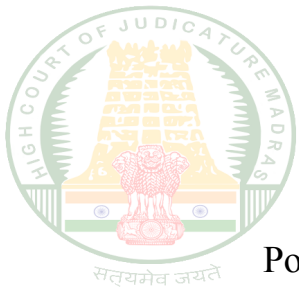


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A victim girl is mechanically detained in a home when it is not warranted and when such victim girl can be sent along with her parents. Similarly, the child in conflict with law is sent to the Juvenile Home or the POS, as the case may be, mechanically and they are detained when it is not warranted and the child in conflict can be sent along with the parents by collecting a bond from the parents and imposing necessary conditions to ensure future appearance. The Social Welfare Officers and the Police seem to be acting as per the directions of CWC and Juvenile Justice Board without any independent say. Hence, the CWCs and the Juvenile Justice Boards must be sensitized. The sensitization programs must be conducted by the Legal Services Authority and the State Judicial Academy. Hence, the orders passed by this specially constituted Bench must be marked to the Member Secretary, Tamil Nadu State Legal Services Authority and the Director, Tamil Nadu State Judicial Academy.

(f) We want to ensure that the Two-Finger Test and the Archaic Potency Test are discontinued. There shall be a direction to the Director General of Police to instruct the Inspector General of



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Police of various Zones to collect a data by going through the medical reports prepared in all cases starting from 01.01.2023, involving sexual offence and see if any report given makes reference to the Two-Finger Test. If any such report is identified, it shall be collected and shall be brought to the notice of this Court. On receipt of the same, we will pass further orders. Likewise, the Potency Test that is done in cases involving sexual offence, carries a mechanism of collecting sperm from the offender and this is a method of the past. Science has improved metes and bounds and it is possible to conduct this test by just collecting the blood sample. Such advanced techniques are being followed across the world and we should also fall in line. Hence there will be a direction to the respondents to come up with a standard operating procedure for conducting Potency Test by merely collecting the blood sample. On receipt of the report, we will pass further orders.

20. A copy of this order shall be marked to the Bar Associations both in the Principal Bench as well as in the Madurai Bench.



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N. ANAND VENKATESH, J.
and
SUNDER MOHAN, J.

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21. Post this case on 11.08.2023 at 2.15 p.m.

J.]

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[N.A.V., J.]

[S.M.,

07.07.2023

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