



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MAY, 2023

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BEFORE

THE HON'BLE MR JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION NO. 1294 OF 2020

BETWEEN:

...PETITIONER

(BY SRI. B. LETHIF, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY VIRAJAPET RURAL POLICE STATION,
KODAGU DISTRICT,
REP. BY SPP, HIGH COURT BUILDING,
BANGALORE - 560001.

...RESPONDENTS

(BY SMT. K. P. YASHODHA, HCGP FOR R1;
R2 IS SERVED, ADVOCATE)

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by PADMAVATHI
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Location: HIGH
COURT OF
KARNATAKA





THIS CRL.P IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN SPL.C.C.NO.5025/2019 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU-MADIKERI SITTING AT VIRAJAPET FOR THE OFFENCE P/U/S.363, 376, 114, 34 OF IPC AND SEC.4, 5L, 6, 17 OF POCSO ACT.

THIS PETITION, COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question proceedings in Spl.C.C.No.5025/2019 registered for the offences punishable under Sections 363, 376, 114 and 34 of IPC and Sections 4, 5L, 6 and 17 of the Protection of Children From Sexual Offences Act, 2012, (hereinafter referred as "POCSO Act" for short).

2. Shorn off unnecessary details, facts in brief are as follows:

The petitioner is accused No.5. It is the case of the prosecution that a complaint is registered by the 2nd respondent, with whom 17 year old victim was residing, that on 25-10-2019 the victim had gone missing. Based upon the said complaint, on the score that the victim was below 18 years, a



crime comes to be registered initially for offences punishable under Section 363 of the IPC. The narration in the complaint was that the victim had gone missing from 25.10.2019. The Police on registration of the crime traces the victim on 27-10-2019. The statement of the victim was then recorded on 28-10-2019 and the petitioner along with others comes to be arrested. The offences under Sections 376, 114 r/w 34 of the IPC along with Section 363 are added to Crime No.104 of 2019 along with Sections 4, 6 and 17 of the POCSO Act. The Police after investigation file a charge sheet against all the accused including the petitioner/accused No.5 and the case is now pending as Special Case No.5025 of 2019. Pursuant to the said proceedings, the petitioner is knocking at the doors of this court in the subject petition.

3. Heard learned counsel appearing for the petitioner and learned HCGP appearing for respondent No.1-State. Respondent No.2 served and unrepresented.

4. Learned counsel Sri B Lethif representing the petitioner would contend with vehemence that the petitioner had got nothing to do with the crime. The allegation in entirety is



against accused Nos.1, 2, 3 and 4. The petitioner is dragged into the web of crime for the afore-quoted offence only on the score of the petitioner dropping the victim to her grandmother's place after all the incident was over, on the instruction of accused No.1. Till such time, accused No.5/petitioner was nowhere in the picture. He would submit that it would not make out any offence against what is alleged under Section 114 of IPC.

5. Learned counsel would submit, what at best can be alleged against the petitioner is abetment. It cannot be a case of abetment against the petitioner even as he springs into the picture only after the entire incident was over only to drop the victim to her grandmother's house.

6. Learned HCGP though would seek to refute the submission made by learned counsel for the petitioner, on verification of the records would submit that the statement rendered by the victim on 28.10.2019 does not, in specific, name the petitioner and statement recorded before the Magistrate under Section 164 of Cr.P.C. also does not divulge



the name of the petitioner and therefore submit, appropriate orders be passed.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. What triggers registration of crime at the outset was the victim/CW-2 going missing on 25-10-2019. It is then the crime for offence punishable under Section 363 IPC comes to be registered in Crime No.104 of 2019. The Police investigate, trace the victim on 27-10-2019 and record her statement on 28-10-2019. The statement recorded under Section 161 of the Cr.P.C. insofar as it concerns the petitioner reads as follows:

“ನಾವು ರೆಡಿಯಾದ ನಂತರ ನನಗೆ ಹಾಗೂ ಸಿಜುಗೆ ನಿನ್ನೆ ಬಂದ ವ್ಯಾನಿನಲ್ಲಿ ಅಭಿಲಾಷ್ ಮತ್ತು 3 ಜನ ಅವರ ಸ್ನೇಹಿತರು ಪೊನ್ನಪ್ಪ ಸಂತೆಯ ನಮ್ಮ ಅಜ್ಜಿ ಲೀಲಾರವರ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಬಿಟ್ಟರು. ಆ ದಿನ ರಾತ್ರಿ ನಾವು ಅಲ್ಲೇ ಉಳಿದುಕೊಂಡಿದ್ದೆವು. ಈ ದಿನ ದಿನಾಂಕ 27.10.2019ರಂದು ಬೆಳಿಗ್ಗೆ ಎದ್ದು ಮನೆಯಲ್ಲಿರುವಾಗ ಸಿಜು ಥೋಮಸ್ ನನ್ನ ಬಳಿ ಬಂದು ನಾವಿಬ್ಬರು ಒಟ್ಟಿಗೆ ಬದುಕಲು ಬಿಡುವುದಿಲ್ಲ.”

After the aforesaid statement, a further statement of the victim was recorded on 12-11-2019. The further statement



does not go beyond what is stated in the earlier statement by the victim. A perusal at the statement in its entirety would indicate that the narration in the statement is against accused 1 to 4. Insofar as it concerns the petitioner/accused No.5, the statement is as afore-extracted. After the said statement the victim tendered her statement before the learned Magistrate under Section 164 of the CrPC. The statement so tendered insofar it pertains to accused No.5 reads as follows:

“ನಂತರ ರೂಮ್‌ಗೆ 1ನೇ ಆರೋಪಿಯು ಮತ್ತು ನಾನು ಮಾತ್ರ ಹೋಗಿರುತ್ತೇವೆ. ಅವರ ಸ್ನೇಹಿತರು ಅಂದರೆ 2 ಮತ್ತು 3ನೇ ಆರೋಪಿತರು ನಮಗೆ ಉಟವನ್ನು ತಂದುಕೊಟ್ಟಿರುತ್ತಾರೆ. ನಂತರ ನಾವಿಬ್ಬರೂ ರೂಮ್‌ನಲ್ಲಿ ಮಲಗಿರುತ್ತೇವೆ. ಆ ಸಮಯದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯು ನನ್ನ ವೈಯನ್ವೆಲ್ಲಾ ಮುಟ್ಟಿರುತ್ತಾನೆ. ನಂತರ 1ನೇ ಆರೋಪಿಯು ನನ್ನನ್ನು ಬಲಾತ್ಕಾರವಾಗಿ ಲೈಂಗಿಕ ಸಂಬೋಗ ಮಾಡಿರುತ್ತಾನೆ. ನಂತರ ಬೆಳಿಗ್ಗೆ 1ನೇ ಆರೋಪಿಯು ಆತನ ಸ್ನೇಹಿತರಿಗೆ ದೂರವಾಣಿ ಕರೆ ಮಾಡಿ ತಿಂಡಿಯನ್ನು ತಂದುಕೊಡಲು ಹೇಳಿರುತ್ತಾನೆ. ನಂತರ ಆರೋಪಿ 2 ಮತ್ತು 3ರವರು ನಮಗೆ ತಿಂಡಿಯನ್ನು ತಂದುಕೊಟ್ಟಿರುತ್ತಾರೆ. ತಿಂಡಿ ತಿಂದ ನಂತರ ಆರೋಪಿ 1ರವರು ನಾವಿಬ್ಬರೂ ಬೆಂಗಳೂರಿಗೆ ಹೋಗೋಣ ಎಂದು ತಿಳಿಸಿರುತ್ತಾನೆ. ನಂತರ 1ನೇ ಆರೋಪಿಯು ಆತನ ಸ್ನೇಹಿತರಿಗೆ ದೂರವಾಣಿ ಕರೆ ಮಾಡಿ ಸಾಯಂಕಾಲ ಕಾರು ತೆಗೆದುಕೊಂಡು ಬರುವಂತೆ ತಿಳಿಸಿರುತ್ತಾನೆ.

ನಂತರ ನಾವು ಬೆಂಗಳೂರಿಗೆ ಹೊರಡುವ ಸಮಯದಲ್ಲಿ 1ನೇ ಆರೋಪಿಯು ತಂದೆ ಹಾಗೂ ದೊಡ್ಡಪ್ಪ ಬಂದಿರುತ್ತಾರೆ. ಸದರಿ 1ನೇ ಆರೋಪಿಯು ತಂದೆ ಮತ್ತು ದೊಡ್ಡಪ್ಪರವರು ನನ್ನನ್ನು ಬಾಳೆಲೆಯ ನಮ್ಮ



ಚಿಕ್ಕಮ್ಮನ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಬಿಟ್ಟಿರುತ್ತಾರೆ. ನಂತರ 1ನೇ ಆರೋಪಿಯು ಮತ್ತು ಆತನ ಸ್ನೇಹಿತರು ಆತನ ತಂದೆ ಮತ್ತು ದೊಡ್ಡಪ್ಪರವರು ಮೈಸೂರಿಗೆ ಹೊರಟು ಹೋಗಿರುತ್ತಾರೆ. ನಂತರ 1ನೇ ಆರೋಪಿಯು ನಮ್ಮ ಚಿಕ್ಕಮ್ಮನ ಮನೆಗೆ ಬಂದಿದ್ದು, ನನಗೆ ನಾವಿಬ್ಬರೂ ಒಟ್ಟಿಗೆ ಜೀವಿಸಲು ಆಗುವುದಿಲ್ಲ. ನಾವು ಸತ್ತು ಹೋಗೋಣ ಎಂದು ತಿಳಿಸಿರುತ್ತಾನೆ

ನಂತರ 1ನೇ ಆರೋಪಿಯು ಹೋಗಿ ವಿಷವನ್ನು ತೆಗೆದುಕೊಂಡು ಬಂದಿರುತ್ತಾನೆ. ನಂತರ ಇಬ್ಬರೂ ವಿಷವನ್ನು ಚಹಾದಲ್ಲಿ ಬರೆಸಿ ಕುಡಿದಿರುತ್ತೇವೆ. ನಂತರ ನಮ್ಮಿಬ್ಬರನ್ನೂ ಬಾಳೆಲೆಯ ಸರ್ಕಾರಿ ಆಸ್ಪತ್ರೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ. ನಂತರ ಆ ಸಮಯದಲ್ಲಿ ನಮ್ಮ ತಂದೆ ತಾಯಿ ಹಾಗೂ ಪೊಲೀಸರು ಆಸ್ಪತ್ರೆಗೆ ಬಂದು ನಮ್ಮನ್ನು ವಿರಾಜಪೇಟೆಯ ಸರ್ಕಾರಿ ಆಸ್ಪತ್ರೆಗೆ ದಾಖಲು ಮಾಡಿಕೊಂಡಿರುತ್ತಾರೆ. ನಂತರ ಈ ದಿನ ಬೆಳಿಗ್ಗೆ ನಮ್ಮಿಬ್ಬರನ್ನು ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ. ನಂತರ ಪೊಲೀಸರು ನಾವಿಬ್ಬರೂ ತಂಗಿದ್ದ ನಾಪೋಕ್ಟುವಿನ ರೂಮ್‌ಗೆ ನಮ್ಮನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ. ಆ ಸಮಯದಲ್ಲಿ ಪೊಲೀಸರು ನಾವು ಉಪಯೋಗಿಸಿದ ಬೆಟ್‌ಶೀಟ್ ಮತ್ತು ಕಂಬಳಿಯನ್ನು ಅಮಾನತ್ತು ಪಡಿಸಿಕೊಂಡಿರುತ್ತಾರೆ. ನಂತರ ಅಲ್ಲಿಂದ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಆರೋಪಿಗಳ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಳ್ಳಬೇಕೆಂದು ಈ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಪ್ರಾರ್ಥಿಸಿಕೊಳ್ಳುತ್ತೇವೆ.”

The statement does not name the petitioner. It is again against accused Nos. 1 to 4. If the complaint, statement under Section 161 Cr.P.C., further statement under Section 161 Cr.P.C. and the statement before the learned Magistrate under Section 164 of the Cr.P.C. are juxtaposed to each other and



read in tandem what can be unmistakably inferred is that the role of the petitioner nowhere figures before the crime, in preparation for the crime or during the crime. The only place where the name of the petitioner figures is in the statement initially recorded by the Police on 28-10-2019 wherein the victim narrates that the petitioner drove the car from Coorg to Ponnampet to drop the victim to the house of her grandmother. This in the charge sheet reveals that, that was on the instructions of accused No.1. Therefore, the petitioner emerges in the alleged episode of crime only after all the acts are over and drops the victim in the house of her grand-mother.

9. In the teeth of the aforesaid offences clearly pointing out at accused Nos. 1 to 4 as all the four had conspired to commit the offence, whether the petitioner could be allowed to undergo the rigmarole of trial. The contention of the learned High Court Government Pleader is that there are offences under Section 17 of the POCSO Act and Section 114 of the IPC alleged against the petitioner. He would, therefore, contend that the offence of abetment can always be alleged against the petitioner. In the teeth of the said submission, it is necessary to



notice those provisions of law. Section 17 of the POCSO Act reads as follows:

“17. Punishment for abetment.—Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.”

Section 17 of the POCSO Act deals with punishment for abetment and its ingredients are found in Section 16. Section 16 of the POCSO Act reads as follows:

“16. Abetment of an offence.—A person abets an offence, who—

First.—Instigates any person to do that offence; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or



procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.—Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.—Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.”

A perusal at Section 16 would indicate that if a person instigates any person to do the offence, intentionally aids for commission of the offence or employs, harbours, receives or transports a child by means of threat or use of force or other forms of coercion or abduction would become an offence under Section 17 for abetment. If the afore-quoted statements, facts obtaining in the case at hand are considered on the touch-stone of ingredients of Section 16 it nowhere points at any offence against the petitioner. The petitioner neither aided the commission of offence employed, harboured nor transported the child by coercion by aiding the commission of crime. The



commission of crime is pointed out at accused Nos. 1 to 4. Therefore, the offence under Section 17 cannot be laid against the petitioner.

10. The other offence is under Section 114 of the IPC.

Section 114 of the IPC reads as follows:

“114. Abettor present when offence is committed.—Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.”

Section 114 of the IPC requires the abettor to be present when the offence is committed. The allegation is against accused Nos. 1 to 4 who have allegedly been a part of the commission of offence. The petitioner was not even present during the commission of offence or in the scene of alleged crime. The petitioner comes into the picture after everything is over and only for the purpose of driving the victim back to her grand-mother’s house. No other allegation is made against the petitioner. Therefore, the petitioner cannot even be thought of hauling for offences under Section 114 of the IPC.



11. In the teeth of the aforesaid facts which lead to no offence alleageable against the petitioner, as is alleged in the charge sheet, if further proceedings are permitted to continue, it would result in miscarriage of justice, as in our criminal justice system, it is not the end result of the proceedings, that is agonizing, it is the rigmarole of proceedings which by itself can become a punishment. If in the facts of the case at hand such process is permitted to continue, it is doubtless that it would become an abuse of the process of the law and degenerate into harassment. Therefore, I deem it appropriate to exercise jurisdiction of this Court under Article 482 of the CrPC and obliterate the proceedings against the petitioner.

12. For the aforesaid reasons, the following;

Order

- i) The Criminal Petition is allowed.
- ii) The proceedings in Spl.C.C.No.5025/2019 on the file of the II Additional District and Sessions Judge, Kodagu-Madikeri, Sitting at Virajpet, *qua* the petitioner – accused No.5, stands quashed.



- iii) It is made clear that the observations made in the course of this order is only for the purpose of consideration of the case of the petitioner under Section 482 of Cr.P.C. and it would not become applicable to any other accused.

In view of disposal of main petition, I.A.No.1/2020 does not survive for consideration and is also disposed.

**Sd/-
JUDGE**

MV
List No.: 1 Sl No.: 77