

**Prasad A A Vs. The State Of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/1234607](http://sooperkanoon.com/1234607)

**Court :** Karnataka

**Decided On :** May-25-2023

**Judge :** M.Nagaprasanna

**Appeal No. :** CRL.P 1294/2020

**Appellant :** Prasad A A

**Respondent :** The State Of Karnataka

**Judgement :**

- 1 - CRL.P No.1294 of 2020 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE25H DAY OF MAY, 2023 BEFORE THE HON'BLE MR JUSTICE M.NAGAPRASANNA CRIMINAL PETITION No.1294 OF 2020 BETWEEN: PRASAD A. A. S/O APPAJI AGED ABOUT27YEARS, R/AT NEAR SHALIMAR COFFEE CURING MILL NAPOKLU VILLAGE, MADIKERI TALUK, KODAGU DISTRICT - 573 231 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.

2. SMT. T. P. SUNITHA W/O PURUSHOTHAMA AGED ABOUT33YEARS R/AT AMBATTI VILLAGE VIRAJAPET TALUK KODAGU DISTRICT - 573 231 RESPONDENTS (BY SMT. K. P. YASHODHA, HCGP FOR R1; R2 IS SERVED,

ADVOCATE) - 2 - CRL.P No.1294 of 2020 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 - 3 - CRL.P No.1294 of 2020 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 - 4 - CRL.P No.1294 of 2020 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 - 5 - CRL.P No.1294 of 2020 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: grAiiz Avg U U dU Az C v 3 d Cg vg AvAi Cf gg U PgzP Aq V lg. D gw C GzPARz. F AP 27.10.2019gAz U Jz AigU d x Az g MnU zP q. After the aforesaid statement, a further statement of the victim was recorded on 12-11-2019. The further statement - 6 - CRL.P No.1294 of 2020 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 Cr PC. The statement so tendered insofar it pertains to accused No.5 reads as follows: Avg giU 1 Dg Ai v iv Vgv. Cg vg CAzg 2 v 3 Dgvg U HI vAzP ngvg. Avg g gi Vgv. D Aiz 1 DgAi Ai ngv. Avg 1 DgAi vgV AVP AU irgv. Avg U 1 Dg Ai Dv vjU zgt Pg ir wArAi vAzP q gv. Avg Dg 2 v 3gg U wArAi vAzPngvg. wAr wAz Avg Dg 1gg g AU jU U t JAz wgv. Avg 1 DgAi Dv vjU z gt Pg ir AiAP Pg vUzP Aq gAv wgv. Avg AU jU gg Aiz 1 DgAi vAz U z q Agvg. zj 1 DgAi vAz v zqgg Ai - 7 - CRL.P No.1294 of 2020 aP U PgzP Aq V ngvg. Avg 1 DgAi v Dv vg Dv vAz v zqgg jU gl Vgvg. Avg 1 DgAi aP U Az, U g MnU f DU. v U t JAz wgv Avg 1 DgAi V vUzPAq Agv. Avg Eg Zz g Prgv. Avg g Ai Pj DvU PgzPAq Vgvg. Avg D Aiz vAz v U g DvU Az gdmAi Pj DvU zR irP Argvg. Avg F U g ouU PgzPAq Vgvg. Avg g g vAVz P giU PgzPAq Vgvg. D Aiz g GAIvz m m v PAAi Civ rPArgvg. Avg CAz ouU PgzPAq Vgvg. DzijAz DgU gz P P PU PAz F Aii Ai z yPv. 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 - 8 - CRL.P No.1294 of 2020 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 grand- mother. 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 - 9 - CRL.P No.1294 of 2020 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 - 10 - CRL.P No.1294 of 2020 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 - 11 - CRL.P No.1294 of 2020 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-mothers 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.-. 12 - CRL.P No.1294 of 2020 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 Cr PC 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.-. 13 - CRL.P No.1294 of 2020 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. SI No.:

7.

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