

Muniyappa vs the State of Karnataka

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Court : Karnataka Orders

Decided On : Aug-31-2024

Judge : M.Nagaprasanna

Appeal No. : CRL.P/2418/2024

Appellant : Muniyappa

Respondent : The State of Karnataka

Judgement :

Reserved on : 22.08.2024

Pronounced on : 31.08.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2024 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA CRIMINAL PETITION No.2418 OF 2024 BETWEEN: MUNIYAPPA S/O PILLAPPA AGED ABOUT 46 YEARS DRAWING TEACHER, MORARJI DESAI RESIDENTIAL SCHOOL, CHIKKAYALAVAHALLI VILLAGE, TEKAL HOBLI, MALUR TALUK - 563 103. RESIDING AT ATTIGIRIKOPPA

VILLAGE, KASABA HOBLI, BANGARPET TALUK - 563 114 KOLAR DISTRICT. ... PETITIONER (BY SRI S.P.KULKARNI, SR.ADVOCATE A/W SRI VASANTHAKUMAR K.M., ADVOCATE) AND:

1. THE STATE OF KARNATAKA REPRESENTED BY MASTHI POLICE, KOLAR DISTRICT, NOW REPRESENTED BY STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA BUILDING, BENGALURU - 560 001.

2. SRI M.SRINIVASAN

THE JOINT DIRECTOR, SOCIAL WELFARE DEPARTMENT, KOLAR DISTRICT KOLAR - 563 101. ... RESPONDENTS (BY SRI B.N.JAGADEESHA, ADDL.SPP) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR IN CR.NO.209/2023 DATED 17.12.2023 REGISTERED BY THE MASTHI POLICE STATION, MALUR TALUK, KOLAR SUB DIVISION COMING WITHIN THE JURISDICTION OF ADDL. DISTRICT AND SESSIONS JUDGE, FTSC-1 (POCSO), KOLAR DISTRICT, AGAINST THE PETITIONER FOR THE OFFENCE P/U/S 12 OF POCSO ACT BEING FALSE ERRONEOUS AND NOT SUSTAINABLE IN LAW AND BEING WITHOUT JURISDICTION. THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.08.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:- CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner is before this Court calling in question registration of a crime in Crime No.209 of 2023 for offences punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

2. Facts, in brief adumbrated, are as follows:-

The petitioner is appointed as a drawing teacher in Murarji Desai Residential School, Tekal Hobli, Malur Taluk, Kolar District and continues in the said post as on today. The Joint Director of Social Welfare Department on 15-12-2023 is said to have received a complaint about the petitioner through the control room which then becomes a crime in Crime No.209 of 2023 for offence punishable under Section 12 of the POCSO Act. The reason for registering the crime is the alleged act of the petitioner in recording videos and clicking photographs of minor girl students in the residential school when they were changing their dresses. The moment the crime is registered and investigation taken up, the petitioner has knocked at the doors of this Court in the subject petition.

3. Heard Sri S.P.Kulkarni, learned senior counsel appearing for the petitioner and Sri B.N. Jagadeesha, learned Additional State Public Prosecutor for the respondents.

4. The learned senior counsel appearing for petitioner would

seek to contend that the petitioner has not done anything wrong. Even before registration of crime, the 2nd respondent was contacted on 15-12-2023 itself, after a complaint was received at the control room. The mobile phones of the petitioner were seized and then the crime was registered. Therefore, it is in violation of law as investigation has taken place prior to registration of crime. He would, therefore, seek quashment of entire proceedings. It is his further contention that Officers of Social Welfare Department also questioned the petitioner and indicated that the act of the petitioner has been broadcasted in several TV channels. He would submit that what are the TV channels are not indicated in the complaint nor there is any compliance with Section 65B of the Indian Evidence Act, 1872 for the contents in the mobile phone, as it is electronic evidence.

5. Per contra, the learned Special State Public Prosecutor

would refute the submissions of the learned senior counsel for the petitioner, to contend that the petitioner has indulged in those acts which would clearly become an offence under Section 12 of the POCSO Act. He has shot videos and taken photographs of girls/children of Morarji Desai Residential School while they were

changing their dress. How he has taken them and stored them is all a matter of evidence. He is not cooperating with the investigation as one of the mobile phones which has several data is not being unlocked by the petitioner. All other mobile phones have been locked and micro SD images in the mobile phones are all sent to FSL, which confirm the allegation against the petitioner. He would contend that the charge sheet is ready to be filed and would be filed any moment.

6. The learned senior counsel for the petitioner would join

issue to contend that the complaint so registered before the Police is full of corrections. The words changing clothes are added and the words TV channels are 3150 added. Therefore, he would submit that it is a complaint that is registered to wreak vengeance against the petitioner, for he had complained the school authorities using the

children to clean water and sewerage tanks of the school.

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 entire issue has now sprung from the registration of

complaint. The reason for registration of complaint is found in the contents of the complaint. The complaint reads as follows: , DOCKED . -- ;- 5500

. 62 0 1) 15-12-2023 9.30 (Control room group) Ticket No. WQ 61 . CLT DF DI, / 17-12-2023 .

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. The complaint narrates that on 15-12-2023, helpline of the Social Welfare Department receives a complaint and on the _ said complaint, the Joint Director of Social Welfare Department conducts an inspection and found that the petitioner has shot videos and taken photographs of girl students and the complaint further narrates that videos shot by the petitioner were being broadcasted in the media and, therefore, seeks action to be taken at the hands

of the jurisdictional police. It then becomes a crime for offence punishable under Section 12 of the POCSO Act. The summary of the crime as found in column No.10 of the FIR reads as follows:

"-17-12-2023 5-00 . . . 54 , , , , , 15-12-2023 9-30 ... DI BIA . :17-12-2023 . . ?

The issue is whether the crime registered under Section 12 of the POCSO Act has its ingredients in the contents of the complaint so registered.

9. Section 12 of the POCSO Act makes an offence of the

person who would commit sexual harassment upon a child. What is sexual harassment is defined under Section 11 of the POCSO Act. Sections 11 and 12 of the POCSO Act read as follows: 11. Sexual harassment.-A person is said to commit sexual harassment upon a child when such person with sexual intent-

(i) utters any word or makes any sound, or makes any

gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or

fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.-Any question which involves sexual intent shall be a question of fact.

12. Punishment for sexual harassment.-Whoever,

commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Section 11 directs that whoever makes a child exhibit his body or any part of his body so as it is seen by such person or any other person would be committing sexual harassment. Further even if he utters any word or makes any gesture or exhibits any object or part of body is said to be committing sexual harassment. This becomes punishable under Section 12 of the POCSO Act. If the complaint is noticed, it becomes unmistakably clear that the ingredients as obtaining under Section 11 of the Act are undoubtedly present in the case at hand.

10. The learned Additional State Public Prosecutor has placed

on record the papers of investigation. At the time of investigation certain material was seized from the hands of the petitioner. The articles seized were sent to Forensic Science Laboratory (FSL). The report of FSL is a part of investigation material. What is shocking is that the petitioner has 5 mobile phones of different brands. All the mobile phones are seized and sent to FSL. Each of the mobile phone has close to 1000 images and several hundreds of videos. The petitioner is a drawing teacher. Why he is in possession of 5 mobile phones, and what are the videos and pictures therein, are all a matter of investigation. The very fact that he is a drawing teacher in Morarji Desai Residential School and holds 5 mobile devices is inexplicable, which can be thrashed out only in an investigation or a full blown trial. Each of the mobile phone has a secure digital card (SD card), which again has lot of material according to the report.

11. If the complaint, the statements of the petitioner

recorded during the investigation and the report of FSL are noticed, what would unmistakably emerge is, non-entertainment of the petition, as the offence against the petitioner is a shade more than being horrendous. More than horrendous, I say, for the reason that the petitioner is a teacher; being a teacher it is indecorous

on the part of the petitioner to have allegedly shot the videos and taken pictures of girl children at the time when they are changing their dress, the alleged offence is unpardonable, albeit prima facie. If this cannot become a crime, it is ununderstandable as to what else can be. It is for the petitioner to come out clean in a full blown trial, as any entertainment of the petition at this juncture, at the stage of registration of crime, would be putting a premium on the illegal activities of the petitioner/ teacher.

12. In the result, finding no merit in the petition, the petition stands rejected. Consequently, I.A.No.1 of 2024 also stands disposed. Sd/- (M. NAGAPRASANNA)
JUDGE Bkp CT:MJ

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