

ORDER

The petitioner is before this Court calling in question entire proceedings in Special C.C.No.138 of 2022 connected with Special C.C.No.982 of 2019 arising out of a crime registered in Crime No.101 of 2019 on a reference being made in P.C.R.No.25 of 2019 by the learned Sessions Judge for offences punishable under Sections 354, 354A, 370, 504 and 509 of IPC r/w Sections 7, 8, 9, 10, 11 & 12 of Protection of Children from Sexual Offences Act, 2012 r/w Juvenile Justice (Care and Protection of Children) Act, 2000.

2. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

One (xxxxxx) D/o of the 2nd respondent is the complainant. The 2nd respondent and Smt. Shruthi Cauvery Iyer got married on 26-04-2007. On 06-05-2008 a child is born from the wedlock. On 17-04-2017, on the ground that the relationship between the 2nd respondent and the mother of the child turned sore, it ended up in a divorce pursuant to a settlement agreement entered into between the two in M.C.No.5160 of 2015. The agreement was to the effect

that the custody of the child was to remain with the mother and the 2nd respondent/husband had visitation rights. The further term of the settlement was, in the event one of the parents was travelling, the child would remain in the custody of non-travelling parent. This was for the reason that the mother of the child had to visit United States for studies.

3. After drawing up of the aforesaid terms of settlement, the mother of the child leaves to United States on 30-12-2018 to complete her further studies. At that point in time, the child stayed with the 2nd respondent/father for over five months. The mother returns to India and on 05-05-2019 called upon the 2nd respondent to hand over the child to her custody in terms of the settlement agreement. This appears to have been refused by the 2nd respondent. Not stopping at that, the 2nd respondent on 27-05-2019 filed Guardian and Wards case in G & WC No.149 of 2019 before the Family Court seeking custody of the child. The mother then files an execution petition in E.P.No.108 of 2019 seeking restoration of custody of her daughter in terms of the

settlement agreement. Therefore, two proceedings sprang from one act of the 2nd respondent not returning the child to the mother.

4. On 04-06-2019 the 2nd respondent/father files a private complaint against the petitioner and other accused in P.C.R.No.25 of 2019 before the L Additional City Civil and Sessions Judge, Bengaluru alleging offences punishable under Sections 354, 354A, 370, 504 and 509 of IPC r/w Sections 7, 8, 9, 10, 11 & 12 of POCSO Act, 2012 r/w Juvenile Justice (Care and Protection of Children) Act, 2000. The learned Sessions Judge refers the matter for investigation which becomes a crime in crime No.101 of 2019 before the Cubbon Park Police Station for the aforesaid offences. Later, the 2nd respondent files a memo before the concerned Court seeking to include the mother of the child as accused No.3 in the FIR. The 1st respondent/Police filed a charge sheet against accused No.2 and drops the name of the petitioner who was arrayed as accused No.1 and the mother accused No.3 from the array of accused in the charge sheet. The Special Court takes cognizance of the offence against accused No.2 for offences punishable under

Sections 9(m), 11 and 12 of POCSO Act in Special Case No.982 of 2019.

5. The 2nd respondent/complainant files a protest petition on 06-09-2019 against dropping of the names of accused Nos. 1 and 3 and the protest petition comes to be allowed by the Special Court and a direction was issued for further investigation against the petitioner and the mother of the child, accused No.3. On further investigation, the respondent/Police again submit a 'B' report insofar as it concerns the petitioner and the mother of the child which leads the 2nd respondent to file a protest petition yet again. All along the child was with the father/2nd respondent as he had not returned the child in terms of the settlement agreement and had also registered G & W case seeking custody of the child. It transpires that on 15-12-2020 the child leaves the company of the father and returns to the custody of the mother. On the same day, the mother of the 2nd respondent registers a complaint against the mother in Crime No.313 of 2020 for offences punishable under Section 363 of IPC alleging that the mother had kidnapped the child. The learned Sessions Judge by his order dated 24-01-2022,

on considering the 'B' report so filed by the Police against accused Nos.1 and 3 and the protest petition filed by the 2nd respondent/husband, rejects the complaint insofar as the mother of the child is concerned and directs registration of crime against the petitioner herein who was accused No.1 for offences punishable under Section 11 and 12 of the POCSO Act read with Section 509 of IPC and this was directed to be tried along with Special C.C.No.138 of 2022. Aggrieved by registration of crime in Crime No.101 of 2019 and the proceedings in C.C.No.982 of 2019 for offences punishable under Sections 11 and 12 of the POCSO Act r/w Section 509 of IPC, the petitioner is knocking at the doors of this Court in the present petition.

6. Heard Sri Nitin Ramesh, learned counsel appearing for the petitioner, Smt. K.P.Yashodha, learned High Court Government Pleader appearing for respondent No.1 and Sri S.Mahesh, learned counsel appearing for respondent No.2.

7. The learned counsel appearing for the petitioner would contend with vehemence that the complainant who is the father of the child is using the child to settle his scores on the petitioner who

is the third husband of the mother of the child. It is his case that G & W case was filed on 27-05-2019 ten days before registration of private complaint and there was no whisper of any offence being alleged under the POSCO Act against the petitioner. The concerned Court has erroneously taken cognizance of the offence against the petitioner who has nothing to do with any of the ingredients of the offence alleged therein. He would submit that the statement of the child taken for the second time would clearly reveal the truth in the matter and, therefore, would submit that the entire proceedings are being used by the father of the child against the petitioner to settle his personal scores.

8. On the other hand, the learned counsel representing the 2nd respondent would contend that what is alleged is offences punishable under the POCSO Act. Section 29 raises a presumption against the accused and, therefore, the presumption will have to be undone only by conduct of trial. There is no warrant for this Court to interfere at this juncture on the plea of the petitioner. Therefore, he would submit that the petitioner has to come out clean in the trial.

9. The learned High Court Government Pleader would also toe the lines of the learned counsel representing the 2nd respondent/complainant to contend that since the offences are the ones under the POCSO Act, it is for the petitioner to come out clean from those offences.

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

11. The afore-narrated facts are not in dispute. The marriage between the 2nd respondent/father and Shruthi Cauvery Iyer, mother of the child takes place on 26-04-2007. The child is born on 06-05-2008. The relationship between the 2nd respondent and mother of the child turned sore and, therefore, on turning sore they were before the Family Court in M.C.No.5160 of 2015 seeking a decree of divorce. In the said proceedings an agreement is entered into between the 2nd respondent and the mother of the child. The settlement depicted that the custody of the child was to remain with the mother and the father had visitation rights. This is the story of the mother and father of the child. The petitioner was the husband

of Smt. Shruthi Cauvery Iyer. These are the protagonists in the story of crime. The settlement agreement between the complainant and the mother of the child was to the effect that if one parent travels, the child was to remain in the custody of non-travelling parent. The mother travels to United States between 30-12-2018 and May 2019 to complete her studies at Harvard University, United States, at which point in time the child was in the custody of the father in terms of the settlement agreement.

12. After the mother leaves to United States, it appears that some harassment mails were communicated by the 2nd respondent/complainant which led to two criminal complaints being lodged by the present petitioner and the mother of the child before the Police Department at Cambridge and the Criminal Court at Massachusetts on 17-02-2019 and 20-03-2019 seeking to pass restraint order against the 2nd respondent from harassing the petitioner. The order was passed on 27-03-2019 restraining the 2nd respondent from harassing the petitioner. Holding those orders in

hand, the mother of the child directs the 2nd respondent/complainant to hand over the child to her custody as she was then back into the shores of the nation. The complainant then brings up a new story that the child was not comfortable to live with the present husband of the mother of the child. This leads the mother to file a writ petition invoking habeas corpus jurisdiction of this Court in Writ Petition (HC) No.58 of 2019 which comes to be withdrawn reserving liberty to avail of such remedy as is available in law. It is then, the mother registers a complaint against the 2nd respondent/complainant alleging offences punishable under Sections 504 and 509 of the IPC in Crime No.81 of 2019. This is pending consideration before the competent Court.

13. After all the aforesaid proceedings initiated by the mother of the prosecutrix, the complainant registers G & W.C.No.149 of 2019 seeking custody of the child. Till that day, the 2nd respondent in terms of the agreement had not returned the child to the mother. The mother then files an execution petition in Execution No.108 of 2019 before the Family Court seeking restoration of custody of the daughter to her in terms of the agreement so arrived at. This leads

the 2nd respondent taking recourse to extreme step of filing a private complaint against the present petitioner and one B.K. Chinnappa, maternal uncle of the child in P.C.R.No.25 of 2019 invoking Section 200 of the Cr.P.C. The learned magistrate, refers the matter for investigation, which becomes a crime in Crime No.101 of 2019 for offences punishable under Sections 354, 354A, 370, 504, 509 and Sections 7, 8, 9, 10, 11 and 12 of the POCSO Act.

14. On 15-06-2019, in the aforesaid crime, Section 164 statement of the child was recorded. In the FIR since the name of the mother was not added, the complainant files a memo before the concerned Court seeking inclusion of the mother of the child to be accused No.3. This was acceded to and investigation was carried on by the police. The police then file a charge sheet against accused No.2 and drops the petitioner and mother of the child. Accused No.2 was the maternal uncle of the child. The concerned Court takes cognizance of offences punishable under Section 9(m), 11 and 12 of the POCSO Act and registers C.C.No.982 of 2019. The complainant/2nd respondent files a protest petition against dropping

of names of the petitioner and mother of the child. The concerned Court directs further investigation against this petitioner and the mother of the child. The further investigation leads to filing of 'B' report and again a protest petition before the concerned Court by the 2nd respondent/complainant. One more story would emerge. On 10-09-2020 it is alleged that the petitioner and the mother of the child took away the prosecutrix with the help of 20 – 25 goons. This was brought to the notice of the Family Court by the 2nd respondent/complainant and the Family Court had to pass an order restraining the petitioner and mother of child not to disturb custody of the child with the 2nd respondent/complainant. On 07-12-2020, the Family Court directs the child to be kept present before the Court. Between the dates 07-12-2020 and 19-12-2020, the next date of hearing before the Family Court, another crime emerges. The mother of the 2nd respondent i.e., the grand-mother of the child registers a complaint in Crime No.313 of 2020 that the granddaughter/prosecutrix had been abducted by the petitioner and mother of the child.

15. When things stood thus, proceedings before the concerned Court were taken up further and on 04-02-2021 the child gives her Section 164 Cr.P.C. statement in Crime No.313 of 2020 which was dealing with abduction of the prosecutrix. It is here the child volunteers to render a statement that she was unhappy with the 2nd respondent as he had forcibly made her to memorize false statement against her mother, the petitioner and the maternal uncle. The statement of the child tendered before the learned Magistrate reads as follows:

"I wanted to live with my mother because I missed her lot. I was unhappy at my father's house because he used to leave house for one month time. My father used to scream if I talk to my mother and he would make me to memorize false statement of my mother, step father and uncle. I was feeling lonely. I messaged my mother through instagram and asked her to come and pick me up. I was on the way near Burn Fitness and I went in a car along with my mother"

(Emphasis added)

The child was 12 years at the time when the statement was recorded. It bears testimony of what the child has undergone with the 2nd respondent. It is the statement of the child that she wanted to live with her mother. She was unhappy with the complainant/2nd respondent. It is also her statement that she was made to

memorize false statements against the mother, step father and the uncle. In the meantime, the police who had conducted investigation in Crime No.101 of 2019 which arose out of P.C.R.No.25 of 2019 where the offences were under the POCSO Act filed a 'B' report against accused No.1, the present petitioner and accused No.3, the mother of child. On 18-11-2021 the child who was with the custody of the mother, who had been voluntarily given to the mother, is attempted to have been abducted by the 2nd respondent which becomes a crime in Crime No.298 of 2021 for offences punishable under Sections 511, 506, 34, 323 and 363 of the IPC. Here again the child gives her statement under Section 164 of the Cr.P.C., that the complainant tried to grab her and pushed her into the car and assaulted the present petitioner. It is then the concerned Court dismisses the complaint against the mother/accused No.3 and directed FIR to be registered against the petitioner, for offences punishable under Sections 11 and 12 of the POCSO Act r/w Section 509 of the IPC. The Court takes cognizance of the offence on 17-03-2022 and registers Special C.C.No.138 of 2022. The proceedings move on.

16. The matter reached this Court in the subject petition alleging that the child is being used to settle scores between the mother of the child and the present petitioner, who is the third husband of the mother of the child and that the complainant was the 2nd husband. This Court passed slew of orders. On 21.04.2022 this Court had passed the following order:

"Heard the learned counsel Sri.Nitin Ramesh, appearing for the petitioner at length and the learned High Court Government Pleader in the matter.

Several issues galore in the case at hand and would require a deeper consideration and due to paucity of time, the matter cannot be heard and concluded. Therefore, on issuing notice to the respondent No.2, I deem it appropriate to stall further proceedings in Spl.C.C.No. 138/2022.

It is made clear that stalling of further proceedings in Spl.C.C.No.138/2022 will not mean stalling of Spl.CC.No.982/2019 registered by the very same complainant. Accordingly, I.A.No.1/2022 stands disposed.

List this matter on 30.05.2022."

Again on 29-06-2022 this Court passed the following order:

"This Court by an order dated 21.04.2022 has passed the following order:

"Heard the learned counsel Sri.Nitin Ramesh, appearing for the petitioner at length and the learned High Court Government Pleader in the matter.

Several issues galore in the case at hand and would require a deeper consideration and due to

paucity of time, the matter cannot be heard and concluded. Therefore, on issuing notice to the respondent No.2, I deem it appropriate to stall further proceedings in Spl.C.C.No.138/2022.

It is made clear that stalling of further proceedings in Spl.C.C.No.138/2022 will not mean stalling of Spl.CC.No.982/2019 registered by the very same complainant. Accordingly, I.A.No.1/2022 stands disposed.

List this matter on 30.05.2022."

Pursuant to the order so passed, the trial in Spl.C.C.No.982/2019 was in progress and on 10.06.2022, the concerned Court has passed the following order:

"CW.1 present. However, the regular PO is on leave. Hence, evidence of CW.1 is not recorded. Mother of the victim girl present and submitted that the Monday the school of the victim girl will be started.

Sri. BS Advocate filed power for Accused along with NOC of previous Counsel.

The Learned counsel for Accused submitted that the connected Spl.C.No.138/2022 was posted to 13.06.2022. Hence, prays to post this case along with Spl.C.C.No.138/2022. Hence, call on 13.6.2022."

The matter was directed to be listed on 13.06.2022. On 13.06.2022, the concerned Court again passed the following order:

"Case called. Accused present. C.W.1 victim present. Special PP again prays time to examine the victim and she submitted that victim has directly approached the court though summons has not been issued. I have perused the order sheet, which shows summons and B/W were continuously issued to victim from 16.10.2021 but same were not served. Later summons was duly served on the victim but she was absent and for this reasonailable warrants were also issued against the victim. As this case is of the year 2019 and victim is very much present before the

court, prayer of Special PP seeking time to examine the victim is rejected as mother of the victim who is present before the court submits that she cannot bring the victim again and again to the court. Hence, Special PP is directed to examine the victim today itself.

Case again called at 1.50 pm Sri. MKM appearing for Sri S.M. again submits that his senior is coming to convince the court by 2.45 pm. Victim is waiting in the court hall from 11.00 am. Under POCSO Act it is very clear that victim cannot be made to wait in the court hall without any valid reason. Special PP is not sure whether he is going to examine the victim today or not. As the mother of the victim is expressing her difficult to bring her daughter again and again to the court, this court feels that evidence of victim has to be discharge. In view of this observation C.W.1 is hereby discharged.

After passing this order Special PP filed application U/s 309 of Cr.PC seeking adjournment. I have perused the contents of the application and this court is of the opinion that the present application is not maintainable. Hence, application is dismissed. Further, minor victim present before the court submits that whenever she used to come to the court she has to apply leave and come and she feels difficulty to appear repeatedly. For all these reasons evidence of victim is hereby discharged.

Issue NBW to C.W.2 to 4 by 04.07.2022

Issue NBW to C.W.5 to 7 by 06.07.2022

Issue NBW to C.W.8 to 10 by 07.07.2022

Issue NBW to C.W.11 to 13 by 08.07.2022."

and closed the evidence of the victim on the score that the victim cannot be brought time and again.

Learned counsel for the petitioner takes this Court through two statements recorded under Section 164 of the Cr.P.C., of the child which are divergent to each other. Therefore, for the resolution of the dispute that is brought up before the concerned Court and the

offence so alleged, the evidence of the victim child is of paramount importance.

The victim has not yet been examined or cross-examined, is not in dispute. Since the entire case inter alia hinges upon the statement of the victim, I deem it appropriate to direct the presence of the victim on 07.07.2022, for recording of evidence, both examination-in-chief and cross-examination, if any, strictly in consonance with Section 33 of the POCSO Act, by way of questions being put through the Special Judge and the child answering through the Special Judge. Recording of evidence of the victim shall be concluded on the said date.

List the matter on 13.07.2022, after recording of the evidence of the victim."

(Emphasis supplied)

By the aforesaid order, noticing the fact that the victim/child had not yet been examined or cross-examined as also the fact that there were two divergent statements recorded of the child for resolution of the dispute, this Court directed evidence of the victim child to be taken by the concerned Court on 07-07-2022, both examination and cross-examination. On 07-07-2022 the examination and cross-examination of the victim child happens. A complete examination and cross-examination of the victim who was by then 14 years is as follows:

"1 ನೇ ತ್ವರಿತಗತಿ ವಿಶೇಷ ನ್ಯಾಯಾಲಯ (POCSO OFFENCES) ಬೆಂಗಳೂರು

ಸ್ಟೆಪಲ್ ಸಿ.ಸಿ. ನಂ. 982/2019

ಸಾಕ್ಷಿದಾರರ ಹೆಸರು:	ನೊಂದಬಾಲಕಿ	ಪ್ರಮಾಣೀಕರಿಸಲಾದ
ತಂದೆ/ ಗಂಡನ ಹೆಸರು	-	ದಿನಾಂಕ: 07.07.2022
ವಯಸ್ಸು:	14 ವರ್ಷ	CW-1
ಉದ್ಯೋಗ:	ವಿದ್ಯಾರ್ಥಿ	PW-1
ವಾಸ:	ಬೆಂಗಳೂರು	

ಮುಖ್ಯ ವಿಚಾರಣೆ : ವಿಶೇಷ ಸರ್ಕಾರಿ ಅಭಿಯೋಜಕರಾದ ಶ್ರೀ ಎಸ್ ಎಂ ರವರಿಂದ :

1. ಈಗ ನನ್ನ ವಯಸ್ಸು 14. ನಾನು ಈಗ _____ ಶಾಲೆಯಲ್ಲಿ 9 ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದೇನೆ. ಈಗ ನಾನು ನನ್ನ ತಾಯಿ ಮತ್ತು ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದ ಶಿವಕುಮಾರ್ ರವರ ಜೊತೆ ವಾಸಿಸುತ್ತಿದ್ದೇನೆ.

2. 2019 ರಲ್ಲಿ ನೀವು ಈ ಕೇಸು ದಾಖಲಿಸುವ ಪ್ರಮೇಯ ಏಕೆ ಬಂತು ಎಂದರೆ ಸಾಕ್ಷಿಯು 2019ರಲ್ಲಿ ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ನನ್ನ ತಾಯಿಯ ಮೇಲೆ ವಿನಾಕಾರಣ ಹೊಟ್ಟೆಕಿಚ್ಚುವಷ್ಟು ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದ ಶಿವಕುಮಾರ್ ಮತ್ತು ಅಂಕಲ್ ಚಿನ್ನಪ್ಪ ಬಿ.ಕೆ ರವರ ಮೇಲೆ ಈ ಸುಳ್ಳು ಕೇಸು ಹಾಕುವಂತೆ ಒತ್ತಾಯ ಮಾಡಿ ಕೇಸು ಹಾಕಿಸಿರುತ್ತಾರೆ. ಸಾಕ್ಷಿಯು ಆಗ ನಾನು 5ನೇ ತರಗತಿ ಓದುತ್ತಿದ್ದೆ ನನಗೇನೂ ಗೊತ್ತಾಗುತ್ತಿರಲಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ.

3. 15.06.2019 ರಂದು ನಾನು ಮತ್ತೊಂದು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಮತ್ತೊಬ್ಬ ನ್ಯಾಯಾಧೀಶರ ಮುಂದೆ ಹೇಳಿಕೆ ಕೊಟ್ಟಿದ್ದೇನೆ. ಸಾಕ್ಷಿಯು 15.06.2019 ರಂದು ಮ್ಯಾಜಿಸ್ಟ್ರೇಟ್ ರವರ ಮುಂದೆ ಕೊಟ್ಟ ಹೇಳಿಕೆಯ ತನ್ನ ಸಹಿಯನ್ನು ಗುರುತಿಸಿದ್ದು ಅದನ್ನು ನಿಜ-1 ಎಂದು ಸಾಕ್ಷಿಯ ಸಹಿಗಳನ್ನು ನಿಜ- 1 ಎ ಯಿಂದ ನಿಜ-2 ದಿವರೆಗೂ ಗುರುತಿಸಲಾಯಿತು ಸಾಕ್ಷಿಯು ಇದೇ ರೀತಿ ಹೇಳಿಕೆ ಕೊಡುವಂತೆ ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ನನಗೆ ಒತ್ತಾಯ ಮಾಡಿದ್ದರು ಎನ್ನುತ್ತಾರೆ.

(ಈ ಹಂತದಲ್ಲಿ ಮಾನ್ಯ ಪಿ.ಪಿ.ರವರು ಸಾಕ್ಷಿಯನ್ನು ಪ್ರತಿಕೂಲ ಸಾಕ್ಷಿಯೆಂದು ಪರಿಗಣಿಸಿ ಪಾಟೀಸವಾಲು ಮಾಡಲು ಅನುಮತಿ ಕೇಳಿದ್ದು ಸಾಕ್ಷಿಯ ಸಾಕ್ಷ್ಯ ವನ್ನು ಪರಿಶೀಲಿಸಿ ಅನುಮತಿ ನೀಡಲಾಯಿತು).

ಪಾಟೀಸವಾಲು : ವಿಶೇಷ ಸರ್ಕಾರಿ ಅಭಿಯೋಜಕರಾದ ಶ್ರೀ ಎಸ್ ಎಂ ರವರಿಂದ :

1. 15.06.2019 ರಂದು ನಾನು ಮ್ಯಾಜಿಸ್ಟ್ರೇಟ್ ರವರ ಮುಂದೆ ಹೀಗೆ ಹೇಳಿಕೆ ಕೊಡಬೇಕೆಂದು ನನ್ನ ತಂದೆ ನನಗೆ ಒತ್ತಾಯ ಮಾಡಿರಲಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಒತ್ತಾಯ ಮಾಡಿದ್ದರು ಎನ್ನುತ್ತಾರೆ. 15.06.2019 ರಂದು ನಾನು ನನ್ನ ತಾಯಿ ಮತ್ತು ಆಕೆಯ 3 ನೇ ಗಂಡ ಗೋವಿಂದಶಿವಕುಮಾರ್ ರವರ ಜೊತೆ ವಾಸಿಸುತ್ತಿದ್ದೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಇಲ್ಲ ನನ್ನ ತಂದೆ ನನ್ನ ತಾಯಿ ಮತ್ತು

ಗೋವಿಂದಶಿವಕುಮಾರ್ ರವರನ್ನು ನೋಡಲು ಬಿಡುತ್ತಿರಲಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ಈಗ ನಾನು ನನ್ನ ತಾಯಿ ಮತ್ತು ಗೋವಿಂದಶಿವಕುಮಾರ್ ರವರ ಜೊತೆ ವಾಸಿಸುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. 2018 ರ ನಂತರ ನೀವು ನಿಮ್ಮ ತಾಯಿ ಮತ್ತು ಗೋವಿಂದಶಿವಕುಮಾರ್ ರವರ ಜೊತೆ ವಾಸಿಸುತ್ತಿದ್ದೀರಿ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಡಿಸೆಂಬರ್ 2018 ರಲ್ಲಿ ನನ್ನ ತಾಯಿ ಹೊರಗೆ ಟ್ರಾವೆಲಿಂಗ್ ಹೋಗಬೇಕಾಗಿತ್ತು ಹಾಗಾಗಿ ನಾನು ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ರವರ ಜೊತೆ ವಾಸಿಸುತ್ತಿದ್ದೆ ಮೇ 2019 ರಲ್ಲಿ ನನ್ನ ತಂದೆ ನನ್ನನ್ನು ಫುನ್ ನನ್ನ ತಾಯಿಯ ಬಳಿಗೆ ಕಳುಹಿಸಬೇಕಾಗಿತ್ತು ಆದರೆ ಕಳುಹಿಸಲಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ನೀವು ಯಾವಾಗ ನಿಮ್ಮ ತಾಯಿ ಮತ್ತು ಗೋವಿಂದಶಿವಕುಮಾರ್ ರವರ ಜೊತೆ ವಾಸಿಸುತ್ತಿದ್ದೀರಿ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಅವರಿಬ್ಬರು ಮದುವೆ ಆಗಿದ್ದು 2017 ರಲ್ಲಿ ಹಾಗಾಗಿ 2017 ರಿಂದ ನಾನು ಅವರ ಜೊತೆ ವಾಸಿಸುತ್ತಿದ್ದೇನೆ ಎನ್ನುತ್ತಾರೆ.

2. ನಿಜಿ-1 ಮ್ಯಾಜಿಸ್ಟ್ರೇಟ್ ರವರ ಮುಂದೆ ಕೊಟ್ಟ ಹೇಳಿಕೆಯ ಪ್ಯಾರಾ 3 ರಲ್ಲಿ ನೀವು Govinda Shivakumar is the third husband of my mother namely Shruthi Cauvery Iyer and I call him as Shiv. My biological father name is Rajesh Cariappa Prior to Dec. 2018, I was residing with my mother along with his third husband at various houses at RETREAT, Casa Lavallo and Chartered house. In each houses, my mother and her third husband used to reside nearly 10-12 months. My mother and her third husband were on dating from May 2015 to April 2017. In the said period my moms third husband used to touch me and I did not like it. My mom's third husband used to stay in my private room whenever I used to change my cloths and taking baths ಎಂದು ಹೇಳಿದ್ದೀರಿ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಹೌದು ಆದರೆ ಅದು ನಿಜವಲ್ಲ ಎನ್ನುತ್ತಾರೆ.

3. ನಾನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ನನ್ನ ತಾಯಿ ಮತ್ತು ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದ ಶಿವಕುಮಾರ್ ರವರ ಜೊತೆ ಬಂದಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ ಸಾಕ್ಷಿಯು ನನ್ನ ತಾಯಿಯ ಜೊತೆ ಬಂದಿದ್ದೇನೆ ಎನ್ನುತ್ತಾರೆ. ಈಗ 2-3 ತಿಂಗಳ ಹಿಂದಿನಿಂದ ನಾನು ಆರೋಪಿ ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದಶಿವಕುಮಾರ್ ರವರ ವಕೀಲರ ಕಚೇರಿಗೆ ಹೋಗಿ ಅವರನ್ನು ಭೇಟಿ ಮಾಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಈ ದಿನ ನನ್ನ ವಿಚಾರಣೆ ಪ್ರಾರಂಭವಾಗುವ ಮುಂಚೆ ಸಹ ನನ್ನ ತಾಯಿ ಮತ್ತು ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದಶಿವಕುಮಾರ್ ಹಾಗೂ ಚಿನ್ನಪ್ಪ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸರಕಾರಿ ಅಭಿಯೋಜಕರು ಕೇಳುವ ಪ್ರಶ್ನೆಗೆ ಹೀಗೆ ಉತ್ತರಿಸಬೇಕೆಂದು ಹೇಳಿಕೊಟ್ಟಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ. ಅದೇ ರೀತಿ ನಿಜಿ-1 ಮ್ಯಾಜಿಸ್ಟ್ರೇಟ್ ರವರ ಮುಂದೆ ಕೊಟ್ಟ ಹೇಳಿಕೆಯನ್ನು ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ಒತ್ತಾಯ ಮಾಡಿ ಹೇಳಿಸಿದ್ದಾರೆಂದು ಹೇಳುವಂತೆ ಸಹ ಹೇಳಿಕೊಟ್ಟಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ.

4. ಮ್ಯಾಜಿಸ್ಟ್ರೇಟ್ ರವರ ಮುಂದೆ ಕೊಟ್ಟಿರುವ ನಿಜಿ- 1 ಹೇಳಿಕೆಯ ಪ್ಯಾರಾ 4 ರಲ್ಲಿ **My mother told me in the presence of Shiv that I was born on IVF**

process, my mother got conceived out of sperm of my biological father and Shiv. My mother and Shiv had hid the gun behind curtains in the living room. One fine day after my wake from the bed, I went upstairs and saw that my mother and Shiv were in naked position, I was scared and ran down. When myself, my mom and Shiv shifted to Chartered house, I could notice bullets in the kitchen. My mother used to leave me with Shiv and she used to attend latenight parties and during that time, Shiv step father used to take me to movies. When we were in chartered house, my mother's younger brother by name B.K. Chinnappa and I used to call him as Chinnu mama, one day, when I was sleeping in living room, my uncle came and slept on me and I was breathless and I tarted restricting him, but he forced me by putting the force on my body, when I intimated the same to my mom, she said it was a joke. Inspite of it, whenever she used to visit abroad, she used to leave me with Chinnu mama. Both Chinnu mama and Shiv used to get chocolates and sweets to me. During the datings of my mother and Shiv, when we used to go to Agra, Cochin, Jaipur, Delhi, Goa etc., we all three used to stay in a common room and during that time, after the bath, when I came out he was in the same room ಎಂದು ಹೇಳಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಯು ನಿಜ-1 ಮ್ಯಾಜಿಸ್ಟ್ರೇಟ್ ರವರ ಮುಂದೆ ಕೊಟ್ಟ ಹೇಳಿಕೆಯು 4 ನೇ ಪ್ಯಾರಾದಲ್ಲಿ ಹೇಳಿರುವುದನ್ನು ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ಒತ್ತಾಯ ಮಾಡಿ ಹೇಳಿಸಿದ್ದಾರೆ ಎನ್ನುತ್ತಾರೆ.

5. ಈ ದೂರು ಕೊಟ್ಟ ನಂತರ ಪೊಲೀಸರು ನನ್ನ ಬಳಿ ಬಂದು ಹೇಳಿಕೆ ಪಡೆದಿದ್ದರು ಇಲ್ಲವೂ ನನಗೆ ನೆನಪಿಲ್ಲ. ಈ ಘಟನೆಯ ಬಗ್ಗೆ ದಿ: 12.06.2019 ಮತ್ತು 5.08.19 ರಂದು ಪೊಲೀಸರ ಮುಂದೆ ನಾನು ಹೇಳಿಕೆ ಕೊಟ್ಟಿದ್ದೇನೆ ಎಂದರೆ ನೆನಪಿಲ್ಲ. 12.06.2019ರಂದು ಪೊಲೀಸರ ಮುಂದೆ ನಾನು "ನಾನು ಡಿಸೆಂಬರ್ 2018 ರಿಂದ _____ ಆಕೆಗೆ ಹೇಳಿಕೊಂಡಿರಲಿಲ್ಲ ಹಾಗೂ ನಾನು ಪೊಲೀಸರ ಮುಂದೆ " 2016ರ ಫೆಬ್ರವರಿ ತಿಂಗಳಲ್ಲಿ ನಾನು ನನ್ನ ತಾಯಿಯ ಜೊತೆ _____ ಸಹಿ ತಿಂಡಿಗಳನ್ನು ಕೊಡಿಸುತ್ತಿದ್ದರು ಎಂದು ಹೇಳಿರುವುದಿಲ್ಲ ಮುಂದುವರೆದು " ನೀನು ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿದ್ದಾಗ ನಿನಗೆ ಯಾರಿಂದ ಯಾವ ರೀತಿಯ ಲೈಂಗಿಕ ಕಿರುಕುಳ ಆಗುತ್ತಿತ್ತು? ನಾನು ಚಾಟರ್ ಹೌಸ್ ಅಪಾರ್ಟ್ ಮೆಂಟ್ ನಲ್ಲಿ ಇರುವಾಗ ಮಾವ ಚಿನ್ನಪ್ಪ ರವರು ಒಂದು ದಿನ ನಾನು ಲಿವಿಂಗ್ ರೂಂ ನಲ್ಲಿರುವಾಗ್ಗೆ ನನ್ನ ಮೇಲೆ ಬಂದು ಮಲಗಿದ್ದರಿಂದ ನನಗೆ ಉಸಿರುಗಟ್ಟಿದ್ದಂತಾಗಿ ಮೈಕ್ಕೆ ನೋವು ಉಂಟಾಗಿರುತ್ತೆ " ಎಂದು ಹೇಳಿಕೆ ಕೊಟ್ಟಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. " ನಿನ್ನನ್ನು ನಿನ್ನ ತಾಯಿ ಮತ್ತು ಶಿವು ರವರು _____ ನನ್ನ ಮೇಲೆ ಲೈಂಗಿಕ ಕಿರುಕುಳ ಎಸಗಿದ ಸ್ಥಳ ಮತ್ತು ಮನೆಯನ್ನು ತೋರಿಸುತ್ತೇನೆ ಎಂದು ಹೇಳಿಕೆ ಕೊಟ್ಟಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ ಸದರಿ ಹೇಳಿಕೆಯನ್ನು ನಿಜ-2 ಎಂದು ಗುರುತಿಸಲಾಯಿತು.

6. 05.08.2019 ರಂದು ಪೊಲೀಸರ ಮುಂದೆ ಹೇಳಿಕೆ ಕೊಡುವಾಗ 2016 ರ ಪೆಬ್ರವರಿ ತಿಂಗಳಲ್ಲಿ _____ನನ್ನ ತಾಯಿಯ 3 ನೇ ಗಂಡನಾದ ಶಿವು ರವರ ಮೇಲೆ ದೂರನ್ನು ಕೊಡಿಸಿರುತ್ತಾರೆ ಎಂದು ಹೇಳಿಕೆ ಕೊಟ್ಟಿಲ್ಲ ಸಾಕ್ಷಿಯ ಹೇಳಿಕೆಯನ್ನು ನಿಜ-3 ಎಂದು ಗುರುತಿಸಲಾಯಿತು. ಮ್ಯಾಜಿಸ್ಟ್ರೇಟ್ ರವರ ಮುಂದೆ ಮತ್ತು ಪೊಲೀಸರ ಮುಂದೆ ಕೊಟ್ಟಿರುವ ಹೇಳಿಕೆಗಳು ಸತ್ಯವಾಗಿದ್ದರೂ ಸಹ ನನ್ನ ತಾಯಿ, ನನ್ನ ಮಲತಂದೆ. ನ್ಯಾಯಾಲಯದ ಮುಂದಿರುವ ಆರೋಪಿ ಚೆನ್ನಪ್ಪರವರಿಗೆ ಸಹಾಯ ಮಾಡಲು ಈ ರೀತಿ ಹೇಳಿಕೆಗಳನ್ನು ಕೊಟ್ಟಿಲ್ಲ ಎಂದು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

7. ನಾನು ಆರೋಪಿಯ ವಿರುದ್ಧ ಸತ್ಯಾಂಶ ಹೇಳಿದರೆ ನನ್ನ ತಾಯಿ ಮತ್ತು ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದಶಿವಕುಮಾರ್ ನನ್ನನ್ನು ಮನೆಯಿಂದ ಆಚೆ ಹಾಕುತ್ತಾರೆ ಎನ್ನುವ • ಭಯಕ್ಕೆ ನಾನು ಘಟನೆ ನಡೆದಿದ್ದರೂ ಏನು ನಡೆದಿಲ್ಲವೆಂದು ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

8. ಈ ಕೇಸಿನ ಆರೋಪಿ ಚೆನ್ನಪ್ಪ ಮತ್ತು ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದಶಿವಕುಮಾರ್ ರವರು ನನ್ನ ಮೇಲೆ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯವೆಸಗಿದ ವಿಷಯವನ್ನು ನನ್ನ ತಾಯಿಗೆ ಹೇಳಿದ್ದರೂ ಸಹ ಆಕೆ ಏನೂ ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಲಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಸುಳ್ಳು ಚೆನ್ನಪ್ಪ ಮತ್ತು ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದಶಿವಕುಮಾರ್ ನನ್ನ ಮೇಲೆ ಯಾವುದೇ ರೀತಿಯ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯ ನಡೆಸಿಲ್ಲ ಎನ್ನುತ್ತಾರೆ. ನನ್ನ ತಾಯಿ ಆ ರೀತಿ ಯಾವುದೇ ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳದಿದ್ದಾಗ ನಾನು ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ರವರ ಬಳಿ ಹೋಗಿ ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದ ಶಿವಕುಮಾರ್ ನನ್ನ ಮೇಲೆ ನಡೆಸುತ್ತಿದ್ದ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯದ ಬಗ್ಗೆ ಹೇಳಿಕೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಅದೇ ರೀತಿ ಆರೋಪಿ ಚೆನ್ನಪ್ಪ ನಮ್ಮ ಮನೆಗೆ ಬಂದಾಗಲೆಲ್ಲಾ ನನ್ನ ಮೈಮೇಲೆ ಮಲಗಿ ತಬ್ಬಿಕೊಳ್ಳುತ್ತಿದ್ದರು ಮತ್ತು ಅದರಿಂದ ನನ್ನ ದೇಹಕ್ಕೆ ನೋವಾಗುತ್ತಿತ್ತು ಎಂದು ನನ್ನ ತಂದೆಗೆ ಹೇಳಿದ್ದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ತಾಯಿ ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪನ ವಿರುದ್ಧ ನನ್ನ ಮುಂದೆ ಕೆಟ್ಟದಾಗಿ ಮಾತನಾಡಿ ನನಗೆ ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪನ ಮೇಲೆ ದ್ವೇಷ ಬರುವಂತೆ ಮಾಡುತ್ತಿದ್ದಳು ಎಂದರೆ ಸರಿಯಲ್ಲ. ಹಾಗಾಗಿ ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪನ ಗೋವಿಂದಶಿವಕುಮಾರ್ ಮತ್ತು ಚೆನ್ನಪ್ಪರವರ ವಿರುದ್ಧ ದೂರು ಸಲ್ಲಿಸಿದರು ಎಂದರೆ ಸಾಕ್ಷಿಯು ಹೌದು ಆದರೆ ಅದು ಸುಳ್ಳು ದೂರು ಎನ್ನುತ್ತಾರೆ. ನನ್ನ ತಾಯಿ, ಆರೋಪಿ ಚೆನ್ನಪ್ಪ ಮತ್ತು ಮಲತಂದೆ ಗೋವಿಂದಶಿವಕುಮಾರ್ ರವರನ್ನು ಬಚಾವ್ ಮಾಡಲು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸುಳ್ಳು ಸಾಕ್ಷ್ಯ ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

ಪಾಟೀಸವಾಲು - ಆರೋಪಿ ಪರ ಎಂ ಎಸ್ ವಕೀಲರಿಂದ

1. ನನಗೆ ಕನ್ನಡ ಓದಲು ಬರೆಯಲು ಬರುವುದಿಲ್ಲ. ನಾನು ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪನ ಜೊತೆ ಇದ್ದಾಗ ಆತ ಬಹಳಷ್ಟು ದಿನ ನನ್ನನ್ನು ಒಬ್ಬಳನ್ನೇ ಬಿಟ್ಟಿದ್ದರು ಎಂದರೆ ಸರಿ. ಅದೇ ರೀತಿ ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ನನ್ನ ಊಟ ಸಹ ಕೊಡುತ್ತಿರಲಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನೀವು ನಿಮ್ಮ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪನ ಮನೆಬಿಟ್ಟು ಏಕೆ ನಿಮ್ಮ ತಾಯಿಯ ಬಳಿ ಬಂದಿರಿ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಆತ ತಿಂಗಳುಗಟ್ಟಲೆ

ನನ್ನನ್ನು ಮನೆಯಲ್ಲಿ ಒಬ್ಬಳನ್ನೇ ಬಿಟ್ಟು ಹೋಗುತ್ತಿದ್ದರು ನನಗೆ ತಿನ್ನಲು ಊಟ ಸಹ ಇರುತ್ತಿರಲಿಲ್ಲ ಮನೆಯ ಹೊರಗಿನಿಂದ ಬೀಗ ಹಾಕಿಕೊಂಡು ಹೋಗುತ್ತಿದ್ದರು ಹಾಗಾಗಿ ನನ್ನ ತಾಯಿಯ ಬಳಿ ಬಂದೆ ಎನ್ನುತ್ತಾರೆ. ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ನನ್ನನ್ನು ಒತ್ತಾಯ ಪೂರ್ವಕವಾಗಿ ನನ್ನ ತಾಯಿ, ನನ್ನ ಮಲತಂದೆ ಗೋವಿಂದಶಿವಕುಮಾರ್ ಹಾಗೂ ಅರೋಪಿ ಚಿನ್ನಪ್ಪರವರ ವಿರುದ್ಧ ಸುಳ್ಳು ದೂರು ಕೊಡುವಂತೆ ಮಾಡಿದರು ಎಂದರೆ ಸರಿ. ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ಸಲ್ಲಿಸಿದ್ದ ಪಿಸಿಆರ್ 25/2019 ರಲ್ಲಿ ಏನು ಬರೆಯಲಾಗಿದೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ.

ಮರುವಿಚಾರಣೆ : ವಿಶೇಷ ಸರ್ಕಾರಿ ಅಭಿಯೋಜಕರಾದ ಶ್ರೀ ಎನ್ ಎಂ ರವರಿಂದ :

15.06.19 ರಂದು ನಾನು ಮ್ಯಾಜಿಸ್ಟ್ರೇಟ್ ರವರ ಮುಂದೆ ಹೇಳಿಕೆ ಕೊಡುವಾಗ ನನ್ನ ಜೊತೆ ನನ್ನ ತಾಯಿ ಇದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ ಸಾಕ್ಷಿಯು ನನ್ನ ತಂದೆ ರಾಜೇಶ್ ಕಾರಿಯಪ್ಪ ಇದ್ದರು ಎನ್ನುತ್ತಾರೆ.

ಮರುವಿಚಾರಣೆ - ಇಲ್ಲ

(ನನ್ನ ಉಕ್ತಲೇಖನದ ಮೇರೆಗೆ ಮುಕ್ತ ನ್ಯಾಯಾಲಯದಲ್ಲಿ (ಇನ್ ಕ್ಯಾಮರಾ ಪ್ರೊಸೀಡಿಂಗ್) ಮೂಲಕಬೆರಳಚ್ಚು ಮಾಡಿಸಲಾಯಿತು).

ಓ.ಹೆ.ಕೆ.ಸ.ಇ

ಸಹಿ/-

(ರೂಪ ಕೆ.ಎನ್).

ನ್ಯಾಯಾಧೀಶರು

1 ನೇ ತ್ವರಿತಗತಿ ವಿಶೇಷ ನ್ಯಾಯಾಲಯ, ಬೆಂಗಳೂರು."

(Emphasis added)

The child spoke against the prosecution and therefore, was treated hostile and cross-examined. In the cross-examination the child clearly narrates the circumstances in which she was tutored to tender statement against the present petitioner and her mother by

the former husband of mother of the child, the narration is in great detail.

17. What would unmistakably emerge from what is quoted hereinabove is that the child/prosecutrix is being used to manipulate evidence by tutoring the child when she was in the custody of the 2nd respondent. If these allegations by the 2nd respondent are to be taken note of, a step back in time would become necessary, as the complaint is filed by the 2nd respondent alleging offences punishable under the provisions of the POCSO Act on 04-06-2019 in P.C.R.No.25 of 2019. The contents of the P.C.R No.25 of 2019 which forms the fulcrum of the allegations are as follows:

"....

7. *The Complainant submits that when the Accused No 2 visited the minor child around February 2017 at the aforesaid shared household, the Accused No 2 slept horizontally on top of the minor child, a physical contact and advance, involving unwelcome and explicit sexual overture. The Complainant also submits that the Accused No. 2 is 6 feet tall and is heavily built, weighing in excess of 100 kilos, and when he Accused No. 2 thrust his huge body into the frail and fragile body of the minor child who was 9 years then, and during the said incident the minor child incurred bodily injury and severe body pain following the assault. The Complainant submits that despite the minor child bringing it to the attention to her mother –*

(xxxxxxx), it was brushed aside as a mere joke. The Complainant minor child submits that she felt very embarrassed and insulted that when the minor child's modesty was outraged in such a blatant manner, and when her own mother refused to deal with the situation and take appropriate steps against Accused No. 2, the perpetrator of such a daring attempt to sexually assault the minor child at home. The minor child submits that besides injuring her and causing severe pain, the said incident has immensely affected her self esteem and confidence.

8. *The Complainant submits that both Accused No. 1 and 2 had lured, induced and coerced the minor child through gifts, chocolates, clothes and food. During unseemly occasions when Child's mother Shruthi Cauvery Iyer has been regularly going out alone for late night parties and returning only after midnight, the Complainant minor child submits that she was taken out for late night movie shows, alone by the Accused No. 1.*
9. ***The Complainant also submits that the minor child was unable to report the aforesaid abuse, as the Accused No. 1 is the third husband of the minor child's mother and Accused No. 2 is brother of the minor child's mother living in the said shared household. The Complainant child submits that she therefore came to a conclusion that no one will believe her. The Complainant also submits that the minor child was afraid that the Accused may harm her, and she was also afraid that she will lose the love and affection of her mother if she reports about the mother's third husband and brother; and as such, the minor child, the Complainant here, could not muster courage to disclose the abuse and harassment. The Complainant submits that the minor child is extremely distressed by such abuse and harassment by the Accused.***
10. *The minor Complainant also submits that the Accused No 1 and her mother Shruthi Cauvery Iyer who are in possession of an unlicensed rifle / gun along with ammunition, will use their gun to forcibly take the minor*

child away from the jurisdiction of this Court, and may not continue to participate in court and police proceedings instituted against them.

11. *The Complainant submits that the POCSO Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. The attempt to commit an offence under the POCSO Act has also been made liable for punishment. It has also been held that looking lecherously at a child is also punishable under the POCSO Act. The POCSO Act includes the words 'constantly watching a child with sexual intent' in the definition for 'sexual harassment of a child', therefore, watching a child with sexual intent is covered by the POCSO Act. The POCSO Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence. The POCSO Act makes it mandatory to report commission of an offence and also the recording of complaint and failure to do so would make a person liable for punishment of imprisonment and with fine. It is also a Punishable action if Police / Special Juvenile Police Unit fail to report a commission of the offence under the POCSO act. The burden of proof under the POCSO Act is on the accused in view the greater vulnerability and innocence of children."*

(Emphasis added)

The P.C.R. is preferred by the child through the 2nd respondent/complainant. What forms the allegation is quoted hereinabove. A week before registration of the said complaint, the very complainant had preferred a case in G & W.C. 149 of 2019 seeking custody of the child. The said petition is appended to the present

petition. The reason for seeking custody of the child *inter alia* is as follows:

"

53. The Petitioner further submits that his minor child would greatly benefit from having contact with his family members also. The Respondent is estranged from her own parents and has no family ties with them. The parents of the Respondent have a good opinion about the Petitioner, and they continue to maintain cordial relationship with the Petitioner. The child is completely cut off from her parental and maternal relations and this is not in the interest of her emotional and psychological welfare and wellbeing as the Petitioner was always close to the child, and it was the Petitioner who was/is taking care of the minor child in all respects. The Petitioner has been meeting all the financial needs of the minor child for her education and all other personal needs. The Respondent on the other hand is incapable of looking after the child by herself or bringing her up without causing her trauma.

....

61. The cause of action for this petition arose 1) on 6.5.2008, when the child of the Petitioner and Respondent by name Leia Cariappa was born; 2) On 17.01.2017, when the Respondent deceived this Hon'ble Courts and the Petitioner by entering into the settlement agreement in bad faith;p 3) on 28.04.2017, when the Respondent changed her name and married for the third time, One Govind Shivkumar within 9 days of the Divorce Decree signed by this Hon'ble Court on 17.04.2017; 4) On 30.12.2018, when the Respondent left to the United States to deliver an American anchor baby on 17.03.2019; 5) On 05.04.2019, when the minor child was resident with the Petitioner in Benagaluru and when the Respondent fraudulently and illegally obtained an order for custody of our child Leia Cariappa from the Trial Court of Massachusetts, USA; 6) on 06.05.2019 when the Respondent's third husband Govind Shivkumar

along with the Respondent's brother BK Chinnappa came to the Petitioner's residence and created nuisance and intimidated the minor child Leia Cariappa and his elderly mother; 7) On 07.05.2019 when a complaint was filed by the minor child Leia Cariappa against the Respondent's third husband Govind Shivkumar with the Ashoknagar Police Station - Bengaluru for threatening, intimidated the minor child and creating nuisance at the residence of the Petitioner, 8) On 10.05.2019 when the Hon'ble High Court of Karnataka at Bengaluru did not restore the custody of our minor child (xxxxxxx) to the Respondent; 9) On 11.05.2019, when a complaint was filed by the minor child (xxxxxxx) and the Petitioner against the respondent with the Cubbgon Police Station - Bengaluru for the illegal possession of an unlicensed gun and catridges; 10) On 19.05.2019 when the Respondent filed a false complaint with the Cubbon Park Police Station that the minor child Leia Cariappa is missing.

... .. "

(Emphasis added)

The entire story from the date of birth of the child till filing of the petition is narrated. Nowhere there is even a whisper about the petitioner sexually harassing the child. On the same day, the mother of the child files execution petition seeking restoration of custody of the daughter to her position in Execution No.108 of 2019. Therefore, two proceedings sprang on the same day – one the afore-quoted G & W.C and the other execution petition seeking restoration of child's custody.

18. Immediately, thereafter, the 2nd respondent twines a heuristic story of the child being sexually abused by the present petitioner and her maternal uncle. Both the aforesaid contradictory contentions – one being placid and the other being gory if taken note of and juxtaposed with the statement tendered by the prosecutrix – not ones but twice – one prior to the order passed by this Court (*supra*), a statement that was tendered on 04-02-2021 and the examination and cross-examination conducted on 07-07-2022 pursuant to the order of this Court (*supra*) would completely demolish the allegation against the petitioner. This Court is not pronouncing any allegation against the maternal uncle as charge sheet is filed and trial is on and concern of the Court is the present petitioner who is the third husband of the mother of the prosecutrix. This cannot but be inferred that an innocent child is being used by the 2nd respondent, ex-husband of the mother of the child to settle scores against the mother and the present petitioner, the 3rd husband of the mother of the child.

19. Though this Court would be *loathe* to interfere in proceedings which involve maze of facts, in a petition, under

Section 482 of the Cr.P.C., what merits acceptance is, the contention of the petitioner that right from registration of private complaint in P.C.R.No.25 of 2019 ***mala fides galore, personal vendetta shrouds the registration of crime and wrecking vengeance pervades the entire issue in the impugned proceedings. Victim is the child.*** The child is projected as a victim of sexual activity of the step father, the 3rd husband of the mother of the child. This is clearly negated or demolished by the statement of the child herself that she was tutored throughout. If what is aforesaid is challenged before the learned Magistrate, further proceedings if permitted to continue against the present petitioner, it would be permitting a classic illustration of abuse of the process of law by the 2nd respondent/complainant to continue. Innocence of the child is tampered, her emotions are being used and abused by a warring parent.

20. **It is for this reason that when the parents begin to wrangle, who is at pain is the child.** The facts, in the case at hand, become a classic picture of parents using the child, to settle their scores to the extent of alleging the step father indulging in

activities, falling under Sections 7, 8 and 9 of the POCSO Act. It is, therefore, the Apex Court in the judgment of **MAHMOOD ALI v. STATE OF U.P.**¹ has directed that the High Court examining case under Section 482 Cr.P.C. is required to read between the lines, go beyond the complaint and make efforts to gather the real intent hid in the complaint, as the complaint is generally cleverly worded. The observations of the Apex Court in the aforesaid judgment read as follows:

"ANALYSIS

9. *Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the FIR bearing No. 127 of 2022 should be quashed?*

10. *We are of the view that even if the entire case of the prosecution is believed or accepted to be true, none of the ingredients to constitute the offence as alleged are disclosed. It is pertinent to note that the FIR in question came to be lodged after a period of 14 years from the alleged illegal acts of the appellants. It is also pertinent to note that in the FIR no specific date or time of the alleged offences has been disclosed.*

11. *The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : AIR 1992 SC 604. The parameters are:—*

¹ **2023 SCC OnLine SC 950**

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. We are of the view that the case of the present appellants falls within the parameters Nos. 1, 5 and 7 resply of Bhajan Lal (*supra*).

13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the

background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

14. In *State of Andhra Pradesh v. Golconda Linga Swamy*, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:—

"5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. **When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.**

6. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) **where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.**

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death....."

(Emphasis supplied in the original)

15. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court of Judicature at Allahabad is hereby set aside. The criminal proceedings arising from FIR No. 127 of 2022 dated

04.06.2022 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed."

(Emphasis supplied)

The facts obtaining in the case at hand would fit into what the Apex Court has held in the aforesaid judgment, as the complaint is so cleverly worded and projected that it is a clear case of sexual abuse of the child, while the intent of the complainant is to use the child to settle his personal scores.

21. It becomes apposite to refer to identical circumstance posed before the High Courts of Kerala and Madras. The judgment of the Kerala High Court reported in ***DR.JASEER ABOOBACKER v. STATE OF KERALA***² was a case concerning grant of anticipatory bail. The allegation against the accused therein was that he had sexually abused a boy of 9 years studying in 5th standard. The Court while granting bail, records as follows;

"...."

7. It is true that this Court while considering the bail application of an accused who has violated the provisions of the POCSO, 2012 will not be justified in conducting a mini trial. I am also not unmindful of the statutory presumption

² **2018 SCC OnLine Ker.3111**

available to the prosecution under §29 of the Act. At the same time, this Court will not be justified in shutting its eyes to the factual allegations and the contention of the applicant that he has been wrongfully accused of having committed a very grave crime on his own child.

8. *In Subhash Kasinath Mahajan (Dr.) v. State of Maharashtra [(2018) 6 SCC 454] the Hon'ble Supreme Court had occasion to consider the issue of reverse burden vis-a-vis the human rights of an accused. Relying on the decision of the Apex Court in Noor Aga v. State of Punjab [(2008) 16 SCC 417], it was observed as follows in paragraph No. 65 of the report.*

"65. Presumption of innocence is a human right. No doubt, placing of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or Court. In Noor Aga v. State of Punjab, [(2008) 16 SCC 417], it was observed:

"33. Presumption of innocence is a human right as envisaged under Art. 14(2) of the International Covenant on Civil and Political Rights, it, however, cannot per se be equated with the fundamental right and liberty adumbrated in Art. 21 of the Constitution of India, It, having regard to the extent thereof, would not militate against other statutory provisions (which, of course, must be read in the light of the constitutional guarantees as adumbrated in Art. 20 and Art. 21 of the Constitution of India),

xxxx xxxx xxxx

35. A right to be presumed innocent, subject to the establishment of certain foundational facts and burden of proof, to a certain extent, can be placed on an accused, It must be construed having regard to the other international conventions and having regard to the fact that it has been held to be constitutional. Thus, a Statute may be constitutional but a prosecution thereunder may not be held to be one, indisputably, civil liberties and rights of citizens must be upheld.

XXXX XXXX XXXX

43. *The issue of reverse burden vis - a - vis the human rights regime must also be noticed. The approach of the common law is that it is the duty of the prosecution to prove a person guilty. Indisputably, this common law principle was subject to parliamentary legislation to the contrary. The concern now shown worldwide is that Parliaments had frequently been making inroads on the basic presumption of innocence. Unfortunately, unlike other countries no systematic study has been made in India as to how many offences are triable in the Court where the legal burden is on the accused. In the United Kingdom it is stated that about 40% of the offences triable in the Crown Court appear to violate the presumption. (See "The Presumption of Innocence in English Criminal Law", 1996, CRIM. L. REV. 306, at p. 309.)*

44. *In Art. 11(1) of the Universal Declaration of Human Rights (1948) it is stated:*

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law..."

Similar provisions have been made in Art. 6.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and Art. 14.2 of the International Covenant on Civil and Political Rights (1966).

XXXX XXXX XXXX

47. *We may notice that Sachs, J. in State v. Coetzee, 1997 (2) LRC 593 explained the significance of the presumption of innocence in the following terms:*

"There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become. The starting point of any balancing enquiry where constitutional rights

are concerned must be that the public interest in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences massively outweighs the public interest in ensuring that a particular criminal is brought to book. ... Hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in the enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the givens, against which the presumption of innocence is pitted from the beginning, not a new element to be put into the scales as part of a justificatory balancing exercise, if this were not so, the ubiquity and ugliness argument could be used in relation to murder, rape, car - jacking, housebreaking, drug-smuggling, corruption ... the list is unfortunately almost endless, and nothing would be left of the presumption of innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases."

*In view of the above, an accused is certainly entitled to show to the Court, if he apprehends arrest, that case of the complainant was motivated. If it can be so shown there is no reason that the Court is not able to protect liberty of such a person. There cannot be any mandate under the law for arrest of an innocent. The law has to be interpreted accordingly.
(emphasis supplied)*

As held in Dr. Subhash Kasinath Mahajan (supra), an accused is certainly entitled to show to the Court, if he apprehends arrest, that case of the complainant was falsely motivated. If there are materials which prima facie show that the complaint is motivated for extraneous reasons, there is no reason why the court should not protect the person, who has

been wrongfully accused from being arrested and detained.

9. It is evident from the prosecution records that the parents of the child are well educated and well-placed in life. Their only son is of tender age. It appears that the child has been made a weapon of choice by one of the parent to put up a fight against the other parent. There cannot be any doubt that their unusual fight and the levelling of very grave allegations of sexual abuse against the father would have a huge emotional toll on the psyche of the minor child. It is appalling to note that the parents, in their determination to fight with each other, have intentionally or otherwise failed to protect their child from the damaging emotional consequences that would be caused to him.

10. After having considered the entire materials, I am of the considered view that the contention of the applicant that such serious allegations have been levelled for securing a favourable order in the petition for custody pending before the Family Court cannot be nonchalantly brushed aside. The prosecution has no case that the applicant is involved in other similar offenses or that he is likely to make himself scarce. The child is in the custody of the mother. In view of the above, the custodial interrogation of the applicant does not appear to be necessary for an effective investigation. It is made clear that the observations made above are made for the purpose of deciding this bail application. The investigation may be proceeded with subject to the directions given in this order. The observations shall have no bearing before the court below, if and when the case comes up for trial."

(Emphasis supplied)

The High Court of Madras in **N.CHANDRAMOHAN v. STATE**³ has held as follows:

"This is one of those unfortunate cases where the wife has resorted to giving a complaint against her husband alleging that he has committed sexual assault against their daughter, who is aged about 11 years.

2. *The 2nd respondent has given a complaint to the respondent police stating that she married the petitioner in the year 2003 and out of the said wedlock, two girl children were born and they are aged about 11 years and 1½ years respectively. The complaint proceeds as if there is an illicit relationship between the petitioner, who is the father and the daughter, who is aged about 11 years and the 2nd respondent is said to have warned the petitioner regarding the same. The 2nd respondent proceeds to allege that she was able to see some bodily changes of her elder daughter and goes to the extent of saying that the elder daughter also became pregnant and the same was terminated by giving native medicine. Therefore, the 2nd respondent has removed both the daughters from the custody of the petitioner and handed them over to the Government Home.*

...

...

...

6. *This Court categorically found that the defacto complainant lodged a false complaint with an ulterior motive to threaten the petitioner and thereby granted anticipatory bail to the petitioner.*

7. *The present petition has been filed seeking to quash the FIR on the ground that the FIR itself is an abuse of process of law and is being used as an instrument to threaten the petitioner and to wreck vengeance against the petitioner.*

8. *This Court summoned the 164 statement recorded by the learned Additional Family Court Judge, Egmore, from*

³ 2019 SCC OnLine Mad 3666

the victim girl. While questioning, the victim girl has clearly narrated the entire incident and it can be seen that the defacto complainant was attempting to take the daughters into her custody and for that purpose she has cooked up a false story against the petitioner. The victim girl has gone to the extent of saying that she and her younger sister wanted to go with their father, when enquired by the learned Judge.

9. The victim girl has taken a very consistent stand both at the time of giving statement under Section 164 of Cr.P.C. and at the time when she was personally enquired by this Court, at the time of considering the anticipatory bail petition filed by the petitioner. It is clear that the allegations made by the 2nd respondent is completely false and she has given the complaint with an ulterior motive against the petitioner. Unfortunately she has gone to the extent of casting aspersion against the petitioner as if he has illicit relationship with his own daughter aged about 11 years.

10. This case has shocked the conscience of this Court and it is unbelievable that the mother just for the sake of taking custody of her child, can go to the extent of making such serious allegations against her husband by alleging that he is having physical contact with his own daughter.

11. There were instances when the attention of this Court was drawn to similar such incidents, where false complaint were given as if the husband has committed an offence under POCSO Act against the daughter and it was informed to this Court that such cheap tactics are adopted in the family court cases, just to arm twist the husband and make him fall in line. This Court was not willing to believe that such instances can happen and this case is an eye opener for this Court. This Court was made aware, the extent to which POCSO Act can be misused.

12. The object of the POCSO Act was to protect children from offence of sexual assault, sexual harassment, etc., and that is why the Act specifically provides for a legal

presumption as to the commission of the offence and the culpable mental state, once a prosecution is launched under this Act. The burden of proof is upon the accused to prove that he had no such mental state with respect to the Act charged as an offence in that prosecution. The consequences of prosecuting a person under this Act are very serious and apart from providing for stringent punishments, the person who is prosecuted virtually comes down in the eyes of the society at large and he is virtually shunned from the main stream of the society.

13. Fortunately in this case, the concerned child was able to express herself very clearly both before this Court as well as the Court below and therefore on the face of it, this Court was able to find that the Act has been misused by the 2nd respondent. If that had not happened, the petitioner would have been forced to go through the rigour of a trial and the situation would have turned even more murkier.

14. In the considered view of this Court, the prosecution against the petitioner should not continue even for a minute more and it has to be immediately interfered and the FIR has to be quashed, in order to bring to an end a malicious prosecution which is of monstrous proportions. The 2nd respondent even without caring for the future of her own daughter, has proceeded to give a complaint alleging illicit relationship between her husband and daughter, just to make the petitioner fall in line and to get the daughters into her custody. This is the worst type of false prosecution a Court can ever encounter.

15. In the considered view of this Court, the 2nd respondent should not be let off and she should be made to suffer the consequences for having given a false complaint against her husband at the cost of her own daughter. The respondent police is directed to immediately proceed against the 2nd respondent under Section 22 of the POCSO Act for having given a false complaint and take action against her in accordance with law. This case should be a lesson for all those

who attempt to misuse the provisions of this Act, just to satisfy their own selfish ends.

16. In the result, the F.I.R. in Crime No. 11 of 2018 is quashed in so far as the petitioner is concerned and the respondent police is directed to alter the FIR based on this order and proceed against the 2nd respondent/defacto complainant under Section 22 of the Protection of Child from Sexual Offences Act, 2012."

(Emphasis supplied)

The Madras High Court was considering the petition under Section 482 of the Cr.P.C. Statements recorded of the victim therein under Section 164 were placed before the Court. The Court taking note of the statements recorded of the victim before the learned Magistrate under Section 164 of the Cr.P.C., quashed the proceedings holding that this was a worst type of false prosecution a Court can ever encounter. **The case at hand is no less.** It is clearly in gross abuse of the penal provisions by the complainant to settle his idiosyncratic scores with the mother of the child, who had left him and married the petitioner. It is unfortunate that the provisions of the POCSO Act which are meant to protect the child from abuse are being misused by a **protagonist** of the crime in the case at hand. Several crimes are registered against each other for the custody of the child. Stories are twined to retain the custody or to take

custody of the child. If regard is had to what is noted hereinabove, this becomes a classic illustration of what is emerging as a trend called '**malicious parent syndrome**'. It is in public domain by several competent analysts/psychologists that a malicious parent engages in attempts to punish the other parent by alienating their children and involving other persons or the Courts in action to separate the other parent and the child; seeks to deny child visitation, communication with the other parent and the other parent's involvement in the child's school or extra curricular activities; lies to their children and other persons repeatedly and would also at times engage in violations of law, all of these are found in the case at hand.

22. A **caveat**, the aforesaid observation is rendered on the facts of the case. It cannot be construed that this Court, is applying the **fresco** to every case of this kind, they would be on a case to case basis depending on its facts. The emerging trend is what has become worrisome. The wrangling parents forget that they are projecting their own child to have been a subject of such assault. The tune of negative impact of such projection on the

psyche of the child, is unimaginable. The parents should therefore ponder and introspect before making such allegations. If it is true, law will take its course, but if it is projected for the purpose of custody, as is done in the case at hand, there can be no bigger sin, that the parents can commit. It is these circumstances and for the aforesaid reasons, permitting further proceedings would become gross abuse of the process of law.

23. The Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL**⁴ has held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

⁴ 1992 Supp (1) SCC 335

- (2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) ***Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.***
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

(Emphasis supplied)

The Apex Court holds that a crime itself can be obliterated at the stage of investigation if the Court finds that the crime is registered out of *mala fides* or to wreck vengeance. In the case at hand the investigation and the statements recorded of the prosecutrix clearly reveal that impugned crime is registered with *mala fide* intentions and only to wreck vengeance against the petitioner. Therefore, permitting further proceedings would run counter to the judgments rendered by the Apex Court *supra* and result in patent injustice to the petitioner, abuse of the process of law and putting a premium on the complaint so registered by the 2nd respondent.

24. For the aforesaid reasons, I pass the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) The proceedings in Special C.C.No.138 of 2022 c/w Special C.C.No.982 of 2019 pending before the L Additional City Civil & Sessions Judge, Fast Track Court-1, Bangalore stand quashed *qua* the petitioner.

- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before any other *fora*.

This Court places its appreciation for the able assistance rendered by Miss. Sonia Singh R., Law Clerk cum Research Assistant attached to this Court.

**Sd/-
JUDGE**

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CT:SS