

HON'BLE SMT. JUSTICE T. MADHAVI DEVI

CRIMINAL PETITION No.495 of 2024

ORDER:

In this Criminal Petition, the petitioner is seeking quash of the proceedings against him in Crime No.158 of 2023 on the file of Srikonda Police Station, Nizamabad District, registered for the alleged offences under Section 376(2)(n) IPC, Section 5 r/w 6 of POCSO Act and Section 9 of PCM Act.

2. Heard learned counsel for the petitioner and also the learned Assistant Public Prosecutor.

3. A complaint was given by the Additional Child Development Project Officer, Bheemgal, Nizamabad District, (for short 'ACDPO') on 17.10.2023 that she has received information that the petitioner has contracted a second marriage with a minor girl by name Bangla Sindhu and they also gave birth to twins. Therefore, a request was made to take action against the petitioner for marrying a minor girl. Basing on the said complaint, the Police have registered a case in Crime No.158 of 2023 on the file of Srikonda Police Station, Nizamabad District, for the alleged offences under Section 376(2)(n) IPC, Section 5 r/w 6 of POCSO Act and Section 9 of PCM Act.

4. Learned counsel for the petitioner submitted that the marriage of the petitioner was performed with one Sindhu on 01.6.2022 and the date of birth of his wife was 19.11.2003. He further submitted that the marriage was performed with the consent of the said girl and that they are happily married and are blessed with twins. It is further submitted that the Sections mentioned in the F.I.R. are not attracted to this case. He has drawn the attention of this Court to the affidavit given by the said Sindhu stating that her date of birth is '19.11.2003', but as per the school records and Aadhar Card, her date of birth is mentioned as '19.11.2005' which is not correct. She also submitted that the marriage was performed on 01.06.2022 with her consent without any pressure or force and she was aged 19 years at the time of marriage and now she is blessed with two children. Learned counsel for the petitioner, therefore, submitted that the Police have not conducted proper enquiry and proper investigation and registered a complaint only on the basis of the complaint given by the ACDPO.

5. Learned Assistant Public Prosecutor submitted that the petitioner has not filed any documents in support of her contention that her date of birth is 19.11.2003 and the Birth Certificate produced by the petitioner cannot be relied upon as it was not dated. He produced a photostat copy of the school record wherein the date of birth of the said Sindhu was recorded as

19.11.2005. He, therefore, submitted that the investigation should be permitted to go on.

Having regard to the above contentions of both parties, this Court finds that this is a case where the petitioner is alleged to have married a minor girl and therefore, the provisions of POCSO Act are also added to the FIR. Whether the correct date of birth of the said Sindhu is '19.11.2003' or '19.11.2005' is yet to be ascertained. Even if it is found that she was aged below 18 years at the time of marriage, under the Hindu Marriage Act, it is a voidable marriage at the option of the girl after she attains the age of majority. The said Sindhu is happily married with the petitioner and she begot two children out of the wedlock with the petitioner and therefore, no useful purpose would be served at this stage by investigating into her age when there are no allegations of any abuse against her either by the husband or her in-laws. Therefore, this Court is inclined to quash the aforesaid Crime against the petitioner.

Accordingly, the Criminal Petition is allowed. The proceedings against the petitioner in Crime No.158 of 2023 on the file of Srikonda Police Station, Nizamabad District, are hereby quashed.

Miscellaneous applications, if any pending, shall also stand closed.

JUSTICE T.MADHAVI DEVI

11.01.2024
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