

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.37 of 2024

and

CrI.M.P No.79 of 2024

S.Harish
S/o.Santhanam

...Petitioner

Vs.

1.The Inspector of Police,
AWPS – Ambattur,
Chennai – 600 053.

2.V.Ramani
Inspector of Police,
AWPS - Ambattur,
Chennai - 600 053.

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in Spl.SC.No.170 of 2023 pending on the file of the Sessions Judge, Mahila Neethi Mandram (Fast Track Court), Tiruvallur District and quash the same against the petitioner.

For Petitioner : Mr.J.N.Naresh Kumar

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor [R1]

ORDER

This petition has been filed to quash the proceedings pending in Spl.SC.No.170 of 2023 on the file of Sessions Judge, Mahila Neethi Mandram (Fast Track Court), Tiruvallur District.

2. The case of the prosecution is that a letter was received from the Additional Deputy Commissioner of Police (Crime against women and children). In that letter, it was mentioned that the petitioner had downloaded in his mobile phone pornographic materials pertaining to children. On receipt of the letter, the second respondent had registered a First Information Report in Crime No.03 of 2020 on 29.01.2020 for offences under Sections 67-B of Information Technology Act, 2000 and 14(1) of Protection of Child from Sexual Offences Act, 2012.

3. In the course of investigation, the mobile phone belonging to the petitioner was seized and it was sent to the Forensic Science Department for analysis. A report was given by the analyst specifically identifying two files which contain child pornography content. In those two videos, boys (under teen) were found involved in sexual activity with an adult

woman/girl. In the light of the materials that were seized during the course of the investigation, a final report came to be filed before the Court below and the same was taken on file in Spl.SC.No.170 of 2023. The Court below took cognizance for the offences under Section 67-B of Information Technology Act, 2000 and Section 14(1) of Protection of Child from Sexual Offences Act, 2012. Aggrieved by the same, the proceedings have been put to challenge in the present quash petition.

4. Heard Mr.J.N.Naresh Kumar, learned counsel for the petitioner and Mr.A.Damodaran, Additional Public Prosecutor, appearing for first respondent.

5. When the matter came up for hearing on 04.01.2024, this Court directed the learned counsel for the petitioner to ensure that the petitioner is present before this Court at the time of hearing today. Accordingly, when the matter was taken up for hearing, the petitioner was present before this Court.

6. This Court enquired the petitioner and he stated that his date of birth is 13.11.1995 and that he has an elder brother. After a lot of persuasion, the petitioner admitted that during his teens, he had the habit of watching pornography. However, the petitioner made it clear that he had never watched child pornography. That apart, he also stated that he had never attempted to publish or transmit any of the pornographic materials to others. He had merely downloaded the same and he had watched pornography in privacy.

7. The petitioner further stated that he is now aged about 28 years and by passage of time, he was able to substantially get out of this habit. The petitioner was honest enough to admit that he cannot continue with this addiction anymore and that he will seek for counseling to get rid of the addiction.

8. This Court had the advantage of going through the entire CD file. The mobile phone that was seized from the petitioner did contain pornographic materials. However, for the purposes of this case, only two videos were identified as child pornography. Those two videos contain

boys (under teen) involved in sexual activity with an adult woman/girl. Admittedly, those two videos were downloaded and available in the mobile phone belonging to the petitioner and it was neither published nor transmitted to others and it was within the private domain of the petitioner.

9. To make out an offence under Section 14(1) of Protection of Child from Sexual Offences Act, 2012, a child or children must have been used for pornography purposes. This would mean that the accused person should have used the child for pornographic purposes. Even assuming that the accused person had watched child pornography video, that strictly will not fall within the scope of Section 14(1) of Protection of Child from Sexual Offences Act, 2012. Since he has not used a child or children for pornographic purposes, at the best, it can only be construed as a moral decay on the part of the accused person.

10. In order to constitute an offence under Section 67-B of Information Technology Act, 2000, the accused person must have published, transmitted, created material depicting children in sexual

explicit act or conduct. A careful reading of this provision does not make watching a child pornography, *per se*, an offence under Section 67-B of Information Technology Act, 2000. Even though Section 67-B of Information Technology Act, 2000, has been widely worded, it does not cover a case where a person has merely downloaded in his electronic gadget, a child pornography and he has watched the same without doing anything more.

11. The Kerala High Court had an occasion to deal with the scope of Section 292 IPC. That was a case where a person was caught watching porn videos and a First Information Report came to be registered against him. While dealing with this issue, the Kerala High Court held that, watching an obscene photo or obscene video by a person by itself will not constitute an offence under Section 292 IPC. This is in view of the fact that this act is done by the concerned person in privacy without affecting or influencing anyone else. The moment the accused person tries to circulate or distribute or publicly exhibits obscene photos or videos, then the ingredients of the offence starts kicking in.

12. In the considered view of this Court, the materials that have been placed before this Court does not make out an offence against the petitioner under Section 67-B of Information Technology Act, 2000 and Section 14(1) of Protection of Child from Sexual Offences Act, 2012.

13. The teenagers in today's world are facing a new challenge from the gadgets, which bombards them with all kinds of information without any censor, at the touch of a button. There are adult material, which also draws the attention of the children whose mental faculty is at a growing stage. There used to be addiction in smoking, drinking, etc. and there is a growing rise in addiction watching porn photos/videos. This, is in view of the fact that it is easily available in the electronic gadgets and by repeatedly watching the same, it becomes a habit and ultimately, the person gets addicted.

14. Porn addiction, like other substances or "things" that people can become addicted to, can be understood through principles of "operant conditioning". This is where a certain behavior, watching porn in this case, is "reinforced", or rewarded, which in turn makes you want

to do it again (and again). Lots of different things can be reinforcing, and thus influence our behavior, but porn can be especially reinforcing because the reward taps into a very basic instinctual drive - sex. Therefore, it is very easy to become addicted to porn - it is accessing a fundamental (and very enjoyable) natural drive. It is also much easier to obtain than going out and finding a "mate" to fulfill this drive.

15. Due to accessibility of sexually explicit material on the internet, porn addiction is becoming a growing concern in teenagers. With the click of a button they can be exposed to endless pages of adult content. A recent study brought out this Porn Statistics in Teens:

- 9 out of 10 boys are exposed to some form of pronography before the age of 18.
- 6 out of 10 girls are exposed to pornography before 18 years old.
- On average, a male's first exposure to pornography is at 12 years old.
- 71% of teens have done something to hide what they do online from their parents.
- Teenage boys, 12-17 years old, have the highest risk of developing a porn addiction.

16. Viewing pornography can have negative consequences on teenagers down the line, affecting both their psychological and physical well being.

17. The Generation Z Children are grappling with this serious problem and instead of damning and punishing them, the society must be mature enough to properly advice and educate them and try to counsel them to get rid of that addiction. The education must start from the school level since exposure to adult material starts at that stage itself. This Court advised the petitioner, who was present in person, to attend counseling, if he is still afflicted with this addiction. This Court hopes that the petitioner will listen to the advice and get rid of the addiction for a happy and healthy future. Quashing of the Criminal proceedings by itself will not help the petitioner and the petitioner has to help himself by getting rid of the addiction.

18. In the light of the above discussion, the continuation of the proceedings against the petitioner will amount to abuse of process of Court. That apart, it will be a stumbling block for the petitioner's career

in future. Therefore, this Court is inclined to quash the proceedings in Spl.S.C.No.170 of 2023 on the file of the Sessions Judge, Mahila Neethi Mandram (Fast Track Court), Tiruvallur District.

Accordingly, this Criminal Original Petition stands allowed and the proceedings in Spl.S.C.No.170 of 2023 on the file of the Sessions Judge, Mahila Neethi Mandram (Fast Track Court), Tiruvallur District, is hereby quashed. Consequently, connected criminal miscellaneous petition is closed.

11.01.2024

Index: Yes/No

Speaking order/Non-speaking Order

Neutral Citation: Yes/No

gm/mkn2

To

- 1.The Sessions Judge,
Mahila Neethi Mandram (Fast Track Court),
Tiruvallur District.
- 2.The Inspector of Police,
AWPS – Ambattur,
Chennai – 600 053.
- 3.The Public Prosecutor,
High Court, Madras.

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