



Crl.O.P.(MD).No.1403 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.01.2023

DELIVERED ON : 08.06.2023

CORAM

THE HON'BLE MR. JUSTICE G.ILANGO VAN

Crl.O.P.(MD).No.1403 of 2020

and Crl.M.P.(MD).Nos.649 & 650 of 2020 and 8673 of 2021

Pastor Gideon Jacob
S/o.Abraham Jacob,
Director,
M/s.Good Shepherd Evangelical Mission Pvt. Ltd.,
Anna Nagar,
Subramaniapuram,
Trichy – 620 020. .. Petitioner/Sole Accused

Vs.

1.State rep. by
The Inspector of Police,
C.B.I./SCB/Chennai,
FIR No.RCI (S) 157/2016 ... 1st Respondent/Complainant

2.M/s.Change India,
represented by its Director,
A.Narayanan,
No.7C, Daffodil,
Ceebros Gardens, Arcot Road,
Virugambakkam,
Chennai – 600 092. ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the impugned proceedings in S.C.No.48 of 2020 on the file of the Mahila Court, Tiruchirappalli and quash the



Crl.O.P.(MD).No.1403 of 2020

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same. (Prayer amended as per the order of this Court dated 07.08.2020 in Crl.M.P.(MD).No.3975 of 2020 in Crl.O.P.(MD).No.1403 of 2020)

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel for
Mr.K.Samidurai

For Respondents : Mr.Sudev Kumar for R1
Counsel for CBI

Mrs.Geetha for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the impugned proceedings in S.C.No.48 of 2020, on the file of the Mahila Court, Tiruchirappalli.

2.The case of the prosecution in brief:

One M/s.Good Shepherd Evangelical Mission Pvt. Ltd., was functioning at Subramaniapuram, Trichy. It was originally registered as a company with a Registrar of Company, Chennai in the name of The Siloam Evangelical Mission Private Limited, on 16.05.1974. The initial Directors of the company were A.Jacob and Ms.Elizabeth, W/o Jacob. A.Jacob, the petitioner herein was the founder. The main objectives of the company is to infuse the knowledge of Jesus Christ by means of



Crl.O.P.(MD).No.1403 of 2020

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Missions throughout India, without prejudice to the generality of the above or charitable work, to promote foster and aid orphanages, widow homes, destitute homes, to arrange for vocational training for the inmates and the others, to work for the leper patients, and aid and assist them by providing medicine and by giving other assistance they may need for rehabilitation.

3.On 21.07.1982, the name of the above said Siloam Evangelical Mission Private Limited was changed as M/s.Good Shepherd Evangelical Mission Pvt. Ltd. Mr.Gideon Jacob was the Director. The main unit of M/s.Good Shepherd Evangelical Mission Pvt. Ltd. is the Good Shepherd World Prayer Centre-Cum-Church situated in Subramaniapuram, Trichy. Mose Ministries Home is one of the units under M/s.Good Shepherd Evangelical Mission Pvt. Ltd. The object of Mose Ministries Home is to take abandoned / orphaned girl children in and around the Village of Usilampatti, Madurai, during the year 1994-1999. The Mose Ministries Home did not register for receiving girls under the Statutory provisions of Orphanages and other Charitable Home (Supervision and Control) Act, 1960, under the statutory provisions of Juvenile Justice Act, 2000



Crl.O.P.(MD).No.1403 of 2020

WEB COPY

and also under the statutory provisions of Tamil Nadu Hostel and Homes for Women and Children Regulation Act, 2014.

4.The second accused namely, Gideon Jacob is the Managing Director of M/s.Good Shepherd Evangelical Mission Pvt. Ltd. under which, the unit Mose Ministries Home is functioning.

5.In pursuance of the common order, dated 20.01.2016 passed by this Court in W.P.No.16273 of 2015, which was filed by M/s.Mose Ministries, rep. by its Administrator Shri Jeyam Abraham and in W.P.No. 20895 of 2015, which was filed by Change India (NGO), a regular case in Crime No.RC.1/(S)/2016/CBI/SCB/CHENNAI was registered on 11.02.2016 by CBI, SCB, Chennai, against M/s.Mose Ministries, Trichy rep. by its Administrator Shri Jeyam Abraham, Shri Jeyam Abraham, Administrator, M/s.Mose Ministries, Trichy and Shri Gideon Jacob, Director of M/s.Good Shepherd Evangelical Mission Pvt. Ltd. and unknown others, for the offences under Section 120-B, r/w 361, 368 and 201 IPC, Section 34 r/w 33 and 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 20 r/w 6 of Tamil Nadu



Crl.O.P.(MD).No.1403 of 2020

WEB COPY

Hostels and Homes for Woman and Children (Regulation) Act, 2014, taken up for investigation.

6.This Court directed the CBI to investigate the allegations of trafficking and other allegations of abuse of the in-mate girls of Mose Ministries run by Pastor Gideon Jacob, further ordered for identification of the parents of the in-mate girls by conducting DNA test with the assistance of experts from National Institute of Mental Health and Neuro Sciences, Bangalore. The case was monitored by the High Court from time to time.

7.The allegation is that the Managing Director Paster Gideon Jacob of Mose Ministries of M/s.Good Shepherd Evangelical Mission Pvt. Ltd. had procured 125 girl children from in and around Usilampatti under the guise of preventing them from female infanticide. Out of the 125 girl children so procured, only 89 are available now and the whereabouts of other 35 girls could not be revealed or disclosed by the Ministry. Those girls alleged to have been taken abroad by the accused and were kept by 5 Germans. Efforts were made by the District



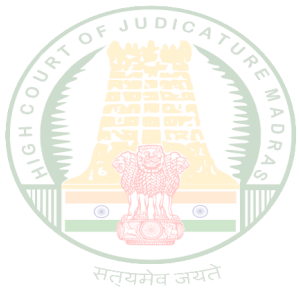
Crl.O.P.(MD).No.1403 of 2020

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authorities to get the documents showing the parentage of the children, were obstructed by the inmates at the instance of the Administrator. So the documents were either concealed or destroyed. So they were not in position to unite the abandoned children with their parents. It is the further allegation that Mose Ministries procured the children through a nurse working in the Government Hospital, Usilampatti.

8.Out of the above said 125 girls mentioned above, only 93 girls could be identified. Out of them, two girls were reported to be dead. Other two girls returned to their parents. Now remaining 89 girls were examined by the Doctors and they recommended engagement of Local Psychiatrists or Mental Health Professionals to entertain the children for finding out their parentage. During the investigation, parentage of 45 girls were established by DNA profiling.

9.During investigation, it was found that by deception, the accused received the minor girls and got the consent of their parents/guardians and harboured them for the purpose of servitude with the intention of exploiting. So they committed the offence under Section 370 and 370-A



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Crl.O.P.(MD).No.1403 of 2020

10.By giving false promise of providing good education, facilities and food, they were procured. The parents were given assurance that they can visit the children as and when required. He has also created a false agreement with the parents without their knowledge and consent. A condition has been imposed upon them to deposit Rs.10,000/- in the event of they claiming the children back. Without informing the parents, he shifted the Mose Ministries to Trichy. Thereafter, converted the children into Christianity by brain wash.

11.It is also alleged that the girl children were received through parents, grant parents, Aayas of the hospital and also through Doctors of maternity hospitals. The children were received by the German co-workers and the Indian co-workers by visiting the hospitals. At that time they got signatures and thumb impressions of the parents/grant parents in blank papers and thereafter, they inserted the above said condition of payment of Rs.10,000/- in the event of taking the children back.



Crl.O.P.(MD).No.1403 of 2020

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12.Next allegation is that they have not informed the competent authority about the procurement of the children. 10 girls were taken by him to Germany and made them to perform cultural shows on the road sides for the purpose of collecting donations. He also claimed himself as the guardian of the girl children and shows false photos before the Passport authorities. He was also giving false informations and contrary informations before the Courts and the Authorities. One of the inmates was sexually abused by second accused, while she was a minor. Due to poverty also, some of the parents handed over the baby girls to the Mose Ministries on the false promise or assurance when it functioned in Usilampatti, that the parents can visit the children at any time as mentioned above. Against that they shifted the same to Trichy without the knowledge of the parents. So taking the children out of the custody of the parents is an offence punishable under Section 363 of IPC.

13.Notice was also issued to the Moses Ministries to produce the details of the girl children. But he submitted only the names and age of the children. But did not produce the source or origin before the Child Welfare Committee. The District Social Welfare Officer also issued



Crl.O.P.(MD).No.1403 of 2020

WEB COPY

proceedings, dated 03.09.2015, directing the second accused to hand over the girls above 18 years, to Social Welfare Department and below 18 years to the Child Welfare Committee, that was not complied. So Inspection was conducted by the District Officials in the Mose Ministries on 11.12.2009 and 04.02.2010. But no recommendation was made for registration under the provisions of Juvenile Justice Care and Protection Act. Suspicious documents were also found in the Social Welfare Department regarding the above said 89 girls and also caused disappearance of evidence of the particulars. On 01.08.2014 on inspection conducted by officials, they found that the children were used for collecting donations. She was also threatened at knife point. He used to take the girl children out of the home in the nights and drop back in the late hours. One of the children is used by the second accused to clean the house. As mentioned above some 45 identified names were converted into Christianity.

14.The above said dishonest act was committed to create feeling of enmity between two religious groups. In the concluding portion of the final report, it is mentioned that the first accused represented by second



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accused committed the following offences.

1. “under Section 363, 368, 201, 370,370-A, 295-A & 153-A of Indian Penal Code, 1960,
2. under Section 24 r/w 13, 16 (3) of Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960,
3. Under Section 34 r/w 32 & 33 and 75 of Juvenile Justice Act, 2015 and
4. Under Section 20 r/w 6 and 12 of Tamil Nadu Hostel for Woman and Children (Regulation) Act, 2014.”

15.Heard Both sides.

16. “*The Road to hell is paved with good intentions*” - Proverb.

Let us test the correctness of this proverb in this case, since it is standing on this.

“14. Female foeticide has its roots in the social thinking which is fundamentally based on certain erroneous notions, egocentric traditions, perverted perception of societal norms and obsession with ideas which are totally



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Crl.O.P.(MD).No.1403 of 2020

individualistic sans the collective good. All involved in female foeticide deliberately forget to realise that when the foetus of a girl child is destroyed, a woman of the future is crucified. To put it differently, the present generation invites the sufferings on its own and alsosows the seeds of suffering for the future generation, as in the ultimate eventuate, the sex ratio gets affected and leads to manifold social problems. I may hasten to add that no awareness campaign can ever be complete unless there is real focus on the prowess of women and the need for women empowerment.”

- Observation made by the Honourable Supreme Court in the case of ***Voluntary Health Association Vs. Union of India and Others***, reported in ***AIR 2016 SC 5122***.

17.The learned Senior counsel for the petitioner wants to draw the analogy of this observation to the present facts and circumstances. He would submit that this prosecution is nothing but case of crucifixion of a Good Samaritan. Meaning of this argument is that, petitioner being a dutiful citizen and a religious person, wanted to save the female children from being killed in nearby Usilampatti areas, from foeticide. For his

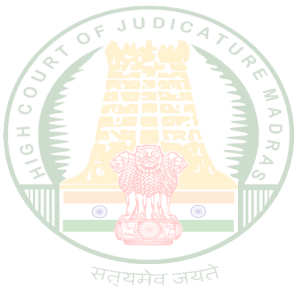


Crl.O.P.(MD).No.1403 of 2020

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Good Will human gesture, now he faces the criminal prosecution, according to him, it is nothing less than crucifixion of good intention.

18.To appreciate the issues involved in this matter a brief history may be kept in mind for better appreciation. Originally, the petitioner started and incorporated company called The Siloam Evangelical Mission Private Limited, in the year 1974. Later, the name was changed to Good Shepherd Evangelical Mission Private Limited on 21.07.1982 and a Fresh Certificate of Incorporation was also issued. In that company, this petitioner was a Director, Indian National and his wife is a Denmark National, who is another Director. The petitioner was the Managing Director and his wife was a Director. It started functioning from 1991. Later a resolution was adopted by the Board of Directors to run a home called Mose Ministries Home. The above said Mose Ministries Home is not a separate entity, but, one of the unit of Good Shepherd Evangelical Mission Private Limited. It adopted the resolution to open an Orphanage Home for children. There were no separate Bank Accounts or Books of Accounts.

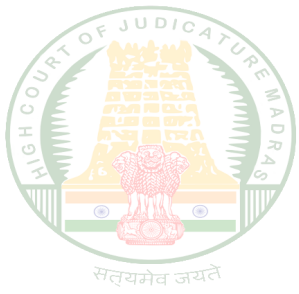


Crl.O.P.(MD).No.1403 of 2020

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19.It wanted to register the above Home under the provisions of Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960, with the District Collector, Tiruchirappalli. Accordingly, on 30.01.2008, a Temporary Certificate was issued. It also made a condition that it will be in effect till a Proper Certificate issued by the Board of Control formed under the Provisions of Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960, as mentioned above. Thereafter, problem started. With the support of the above said Temporary Certificate of registration, it started functioning, attracting or even taking female children from various areas. It originally started functioning in Usilampatti. How the above said children were admitted in the above said Orphanages is the issue. Now we will deal with this later part of this order.

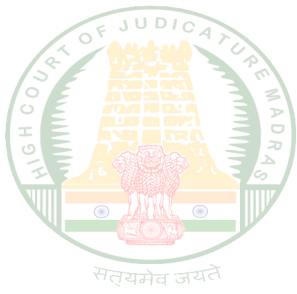
20.It started sending the children to Germany on Tour, etc., for which periodical and routine permissions were granted by the competent authorities. It went on till, request was made by the petitioner to grant a permanent certificate or recognitions as the case may be. So the process was started by the Social Welfare Department, Tiruchirappalli. The



Crl.O.P.(MD).No.1403 of 2020

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Director of Social Welfare Department directed the District Social Welfare Officer, Tiruchirappalli, to visit the orphanage and verify the records for processing the request. It is dated 30.04.2010. In the meantime, the Social Welfare Officer, treated this petitioner as a Guardian for the children, who were admitted in the orphanage, when Passport applications and permissions were made for sending the children on tour to Poland and Germany, etc. The above said direction was complied by the District Social Welfare Officer by making visit and enquiry. Finding some defects, the petitioner was directed to rectify all those as per the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 and the relevant Rules. The process went on. On 01.08.2014, again an Inspection was made and some sort of defects were pointed out with regard to non-maintaining of Registers for Admission, the source from which the children were procured or rescued and the particulars of parents, etc., One of the children was also found to be doing cooking work in the petitioner's house. No Wardens were appointed. Rectification and Explanation was offered by the petitioner by the letter, dated 01.09.2014. More specifically with regard to the particulars of the children, it was



Crl.O.P.(MD).No.1403 of 2020

WEB COPY

mentioned that those children were rescued from the areas around Usilampatti, several years back; Proper informations was submitted to the Social Welfare Department and temporary recognition or permission was also granted. Again rectification was sought for and the process went on as usual. And finally on 15.05.2015, a show cause notice was issued to the petitioner giving final opportunity to give the particulars and the rectification report. One of the main direction was to produce all the children before the Social Welfare Department for enquiry. Since no proper report was filed within the time stipulated, a complaint was registered at the instance of the District Social Welfare Officer on 25.08.2015 in Crime No.548 of 2015 by K.K.Nagar Police Station, Tiruchirappalli District under Sections 20(2) of Tamil Nadu Hostel and Home for Women and Children Regulation Act, 2014, Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2000, pointing out all the issues, which were raised by the Social Welfare Department and Office at the time of inspection. On the basis of the above said proceedings, a final order was passed on 03.09.2015 by the Social Welfare Department, Tiruchirappalli, directing the petitioner to hand over the children below 18 years of the age immediately. The above said



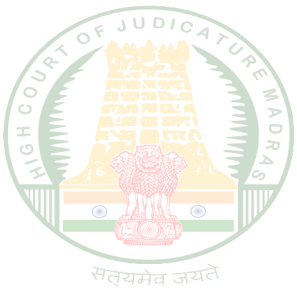
Crl.O.P.(MD).No.1403 of 2020

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order was challenged by the petitioner Mose Ministries by filing W.P. (MD).No.16273 of 2015 and consequential direction to register the Mose Ministries under the provisions of Juvenile Justice Care and Protection Act and other relevant Tamil Nadu Act.

21.In the mean time, another problem started by way of filing Public Interest Litigation by one Change India, seeking direction to the CBI to investigate human trafficking and confinement of 89 girl children by this petitioner Ministries.

22.The writ petition filed by this petitioner as well as the Public Interest Litigation were taken up jointly for hearing by the Division Bench of this Court on 20.01.2016. Periodical interim orders were also passed by the Division Bench. One of the main interim order was directing the petitioner to hand over all the Registers showing the particulars of the girl children, and their parents, etc., The above said Registers were not produced, but taken away by some people. The Division Bench has taken the above said issue seriously, observing that this petitioner has not approached the Court with clean hands. Doubting



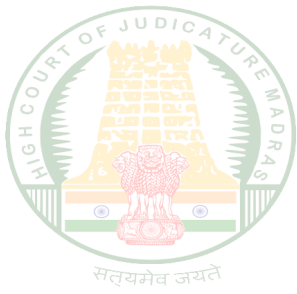
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Crl.O.P.(MD).No.1403 of 2020

the Commission of trafficking, the Joint Director of Central Bureau of Investigation was directed to depute a team headed by an Officer not below the rank of Deputy Superintendent of Police to investigate the allegation of trafficking and abuse. This is how the another FIR which is the subject matter of this petition came to be registered in R.C.1/(s) (2014) dated 10.11.2019. The matter was kept pending seeking periodical reports.

23.The final order came to be passed by the Division Bench on 30.11.2016. One of the order was to complete the investigation in this matter and finally to file the final report within a period of 9 months. Directing the District Superintendent of Police to hand over the investigation to a Lady Officer of Deputy Superintendent of Police rank and some other directions and orders were passed in the above said writ petition. The details of which, we will deal in the later part of the order.

24.Against the above said order Change India, who filed the PIL took up the matter to the Honourable Supreme Court and that was also dismissed and later one man committee was appointed appointing



Crl.O.P.(MD).No.1403 of 2020

WEB COPY

Honourable Justice K.N.Basha, as one man committee in SLP.No.1711 of 2018 to assess the willingness of the girls, who were found to be above 18 years to go along with the parents. In the meantime DNA profiling were taken for the children and some of the children are reunited with their parents and some other girls who were above 18 years were not willing to go along with their parents. The above said SLP was filed against the order that was passed by the Division Bench of this Court in W.P.(MD).No.8122 of 2017 filed by 86 inmates of the above said Ministries to set them free from their control and custody of the respondents namely the Social Welfare Department Department, Child Welfare Committee, etc., But the Mose Ministries was not added as a party. But CBI was added as 6th respondent suo motu by the Court. The order was passed on 11.12.2017 directing the respondent to shift the petitioners from the Mose Ministries to some other recognized Government or Suitable place and provide periodical counselling, the petitioners were given liberty to choose their further course of life. The interim report was ordered to be filed. Against that order the petitioners filed SLP before the Honourable Supreme Court. In the above said SLP, only one Man Committee was appointed as mentioned above. After



Crl.O.P.(MD).No.1403 of 2020

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taking on record the report filed by the One Man Committee, final order was passed by the Honourable Supreme Court issuing directions which we are not concerned here with. They were ordered to be left free, so that they can decide their own future. So far the children below 18 years are concerned, who are numbering about 7, the Division Bench directed the children to be kept under care and custody of a registered Home either run by the Government or by any other Organisation. With regard to the request made by the petitioner to register the home as per the provisions, direction was also issued to the petitioner Ministries to rectify all the defects pointed out by the Authorities.

25.Now coming back to the report of the Honourable Justice K.N.Basha the report reveals that some of the girls wanted to re-unite with the parents and some of the girls not. Some of the parents themselves were not willing to take the children back expressing their poverty and etc reasons.

26.After registration of the FIR, the petitioner filed a quash petition in Crl.O.P.(MD).No.4717 of 2019. Later it was withdrawn and a



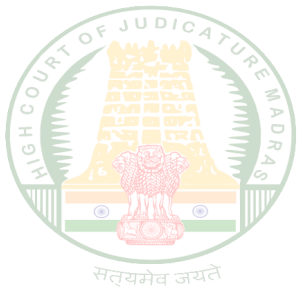
Crl.O.P.(MD).No.1403 of 2020

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direction was issued to the CBI to complete the investigation within the time stipulated and that order was complied, now a final report has been filed, which is now under challenge.

27.This is the brief history of the entire issue. The whole issue pulls down to a single issue as to the procedural violation that has been committed by the petitioner Ministries in opening and conducting the above said orphanage and other activities, which according to the respondent are illegal in nature.

28.With regard to the procedural violations, as stated above, the Division Bench of this Court has made an elaborate discussion. A simple answer to the allegation that has been made against the institution is that on 30.01.2008 itself, a temporary permission was granted by the competent authority under the provisions of Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960. According to the petitioner, since the above said recognition was granted till Certificate namely, the final Certificate is issued by the competent authority, it was in force. Later he took steps to register the same under



Crl.O.P.(MD).No.1403 of 2020

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the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006. The actual date of the opening of the home is 1994. So when the home was started, only Juvenile Justice (Care and Protection of Children) Act, 1986 was in force. As per the Act, no licence was required. That was his submission before the Division Bench. Only the abandoned children were taken and admitted in the home. There was no illegal procurement or abduction as the case may be. They were brought to the home when they were less than one year of the age. It was further submitted that the Juvenile Justice (Care and Protection of Children) Act, 2000, came into effect from 01.04.2001; Even as per the above said Act, no licence or permission was required. But on 22.08.2006, Section 34 of the Act was amended for registering the children's home; The Rule also came into effect from 26.10.2007 as per Section 29, the State Government must by itself or with the help of other Organizations can start separate home for the children, who were in need of care and protection.

29. So according to the petitioner, as per Rule 71 of the Juvenile Justice Care and Protection of Children Rules, 2007, he made the above



Crl.O.P.(MD).No.1403 of 2020

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said application for registration under Section 34(3) of the Act. It was further contended that Rule 56(A) of the above said Rule was brought in force only from 22.03.2012 making it mandatory for all the homes to be registered. So it was contended that those application was pending from 2010 and no order was passed so far.

30.Now the case of the Change India was that the children were illegally trafficked to Germany and other places and this petitioner home also made several violations. Also it sought a direction to restore the children to their parents and as I mentioned above, periodical interim orders were passed by the Division Bench. On 07.12.2015, the Court directed the Management to be handed over to the Committee comprising of the District Collector, Chairman of the Child Welfare Committee the Child Protection Officer, District Social Welfare Officer and two members from the Indian Council for Child Welfare, Tamil Nadu. Later, the Committee has taken over the Management of the Home.

31.Now coming to the violations, the observation of the Division Bench can be reproduced for better understanding.



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Crl.O.P.(MD).No.1403 of 2020

“27.At this juncture, it needs to be mentioned that with effect from 15.01.2016, the Juvenile Justice (Care and Protection of Children) Act, 2015, came into being repealing the Juvenile Justice (Care and Protection of Children) Act, 2000. Similarly, the Juvenile Justice (Care and Protection of Children) Rules, 2016 was also brought into force. But, these new Act and the Rules were not considered by the earlier Division Benches while passing interim orders as extracted supra.

28.While so, this matter came up before us (SNJ & MVMJ) on 26.10.2016, we passed the following interim order after hearing both sides:

“From the records available before us and from the submissions made by the learned counsel on either side, we find that Mose Ministries is not a registered Child Care Institution in terms of Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Though it is stated that the said institution was functioning even before coming into force of the said Act of the



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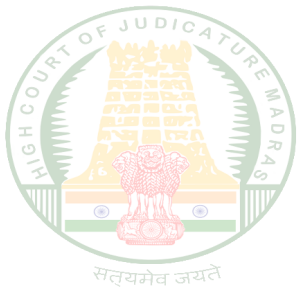


Crl.O.P.(MD).No.1403 of 2020

year 2015, there was no registration of the same under the Juvenile Justice (Care and Protection of Children) Act, 2000.

2.The learned Senior Counsel Mr.Isaac Mohanlal appearing for the institution would submit that as a matter of fact, a registration was made under Orphanages Act, on 30.01.2008. He would further submit that they would pay Rs.5 Lakhs to the institution for maintenance of the children. The said statement is recorded.

3.As per Sub Section 3 of Section 34 of the Juvenile Justice (Care and Protection of Children) Act, 2000, no institution to take care of the children will be conducted without a licence, notwithstanding anything contained in the order law for the time being in force. Thus, it is crystal clear that the Home in question has got no right to be as a Child Care Institution either under Section 41 of the Juvenile Justice (Care and Protection of Children) Act of 2015 or



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Crl.O.P.(MD).No.1403 of 2020

under the Juvenile Justice (Care and Protection of Children) Act of 2000. Therefore, in our considered view, since the Institution is an unregistered one, the Children cannot be kept in the same. As per the Juvenile Justice (Care and Protection of Children) Rules, 2016, there are several specifications prescribed for registering such a Home, such as Medical Aid, Safety, Security, etc. Since it is doubtful as to whether these facilities are available satisfying the specifications and since it is not a registered Child Care Institution, in our considered view, it may not be appropriate to allow the children to be kept in the same home. It is needless to state that even for the Government to run such a Home, Registration is absolutely necessary under Section 41 of the Act.”

32. But the Division Bench carefully avoided making any observation or opinion with regard to the violations of the Rules as to whether the pendency of the application will exonerate the criminal

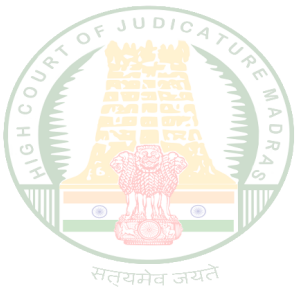


Crl.O.P.(MD).No.1403 of 2020

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liability already incurred. This is the matter for consideration by the trial Court as to whether, in the history of the case, the criminal liability already incurred will abate. So this Court is not expressing any opinion on that issue now.

33.Now with the primary points, let us go to the arguments advanced by the petitioner. Before we go into the other aspects, let us now first take up the arguments with regard to the non-compliance of the statutory provisions for sanction with regard to the offence under Sections 153 (A), 295 (A) of IPC. Similarly, there was a lack of sanction for the offence punishable under the provisions of the Orphanages Act, 1960. In reply to this argument, the respondent has produced the relevant sanction order in the form of typed-set of papers. By proceedings, dated 22.02.2021, the Secretary to Government accorded sanction for prosecuting the petitioner for the offence punishable under Section 153 (A) and 295(A) of IPC. The above said sanction was accorded as per Section 196(1) of Cr.P.C. Similarly, the competent authority namely, the District Collector, Trichy, has accorded sanction for prosecuting this petitioner under the Provisions of Orphanages and other Charitable



Crl.O.P.(MD).No.1403 of 2020

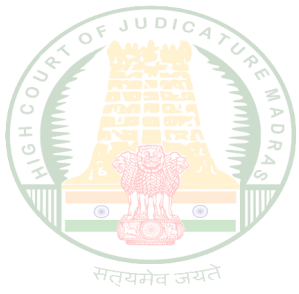
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Home (Supervision and Control) Act, 1960, which is dated 22.01.2021.

It appears that the above said sanction order has been passed pending these petitions. There is no bar for the competent authority to accord sanction pending these proceedings before this Court. So this will give answer to the first argument advanced by the petitioner. So, now these points are not available to them.

34.Now let us go back to the other penal provisions. The IPC offences that is alleged as against the petitioners are 363, 368, 201, 370, 370A, 153(A) and 295(A). Under Section 24 r/w 13, 16(3) of the Orphanages and Other Charitable Home (Supervision and Control) Act, 1960, under Section 34 r/w. 32, 33 and 75 of the Juvenile Justice Act, 2015, under Section 20 r/w. 6 and 12 of Tamil Nadu Hostel for Women and Children (Regulation), Act, 2014.

35.The learned Senior Counsel for the petitioner submitted that even if the allegations mentioned in the final report are taken on its face value these offence under Section 363 of IPC is not attracted. According to him, the ingredients are not satisfied. Here, only due to poverty, the



Crl.O.P.(MD).No.1403 of 2020

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children were handed over to the Ministries by the parents. So, the question of abducting, kidnapping and enticing the minor girls out of the lawful Guardianship will not and does not arise at all. No doubt that absolutely, there is no evidence on record or materials collected during the course of investigation that the minor girls were enticed or kidnapped out of the lawful guardianship of the children. Actually, in one occasion, the Government Department itself has requested the Mose Ministries to accommodate the children, who were abandoned near Thevar Statue, Madurai Road, since the parents or the guardian could not be traced out, the child was handed over to the Mose Ministries for care till some other alternative arrangement is made. The learned counsel for the petitioner submitted that even today, the above said child is under the care and custody of the Mose Ministries. The above said letter is dated 25.07.1997, much before the date of the arising of the issue. It is seen that the Child Welfare Committee was aware about the of running of the Mose Ministries for keeping the children for care. But, in the final report, some sort of allegation has been made to the effect that the parents of the children were duped by giving false promise, by obtaining some sort of indemnity bonds. These are factual aspects, which cannot be gone into by

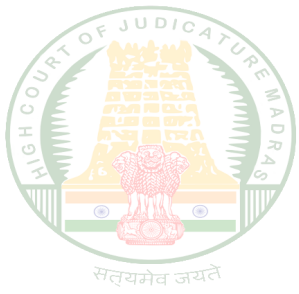


Crl.O.P.(MD).No.1403 of 2020

WEB COPY

this Court at this stage. But, the fact remains that the Mose Ministries started for taking care of the abandoned female children. On the face of it, Section 363 IPC may not be attracted. Whether the consent of the guardians were properly obtained, is also a matter for consideration by the trial court. Here comes the violations of procedural law for running the above said Institution. Even though the petitioner relied upon the Judgment of the case *Parkash Vs. State of Haryana* reported in (2004) 1 **SCC 339**, I am not going to the aspect, now for the reasons as stated above.

36. So far Section 368 IPC is concerned, it has been contended that charges under Sections 363 IPC and 368 IPC may not go together. According to the learned counsel for the petitioner, since the first essential ingredients of kidnapping itself is not attracted, Section 368 of IPC also cannot be invoked. Here, as I mentioned earlier, there is no question of kidnapping or concealing the minor children away from the lawful guardians. Here, the accusation against the petitioner is that against the promise to some of the parents, they shifted the home over night, to Trichy, without informing the parents or guardians, as the case

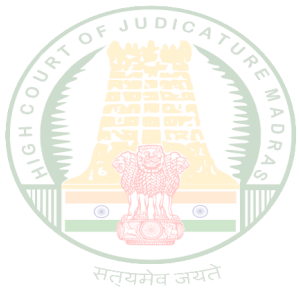


Crl.O.P.(MD).No.1403 of 2020

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may be. They were also be concealed from the parents. But, as I mentioned earlier, the fact remains that even though it was originally started in Usilampatti, later, it was shifted to Trichy, due to administrative reasons and that even running the Institution on temporary certification or licence, as the case may be. So, the question of concealment will not arise at all. This penal provision will also may not attract. Even though we accept the accusation on its face value, herein, the relevancy of the arguments that has been advanced by the learned Senior Counsel for the petitioner assumes importance, he says that for his good will, humanitarian approach, he has been penalized. Now, the State wants to prosecute him for the offence under Sections 363 & 368 of IPC. No doubt, that it was started with a good intention. But as I mentioned earlier, some sort of procedural violations has been committed by the petitioner, for which, they have to face the prosecution. But, certainly, not for the offence under Sections 363 & 368 of IPC.

37. Other penal provision is Section 201 of IPC. Here, the accusation is that the details of the 89 girls of the Mose Ministries were found in suspicious circumstances in the District Welfare Department

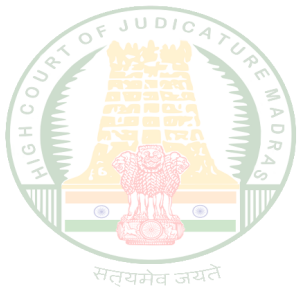


Crl.O.P.(MD).No.1403 of 2020

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Office. Now, the learned Senior Counsel for the petitioner submitted that even if the offence under Section 201 of IPC is attracted, there must be sufficient material to show that some offence has been committed. Here according to him, no offence alleged to have been committed by the petitioner. When the primary ingredients itself is absent, Section 201 of IPC is not attracted. Here comes the relevancy of the interim order that was passed by the Division Bench of this Court with regard to the taking away or concealment of the Registers showing the particulars of the children, their address, parents description, etc., I did not repeat the above said interim order once again here. Whether the particular Register, which ought to have been maintained by the petitioner even as per the provisions of the Orphanages Act, was alleged to have been taken away by one of the persons belonging to the Ministries and whether the document is available even now or not, may not be the matter for consideration by this Court. It is a factual issue.

38.The Admission Register is the primary document, which will give the particulars of the children admitted and why that document was taken away when the Department officials visited the place is not

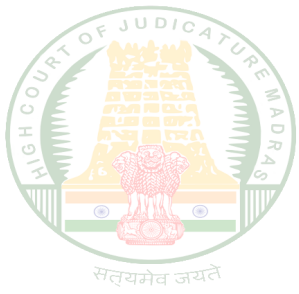


Crl.O.P.(MD).No.1403 of 2020

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explained by this petitioner in this petition in an acceptable manner. He has to take up the defence only during the Course of trial. Even though in the final report, the above said document is mentioned but from the perusal of records, the main document itself was alleged to have been taken away. So it will *prima facie* amount to concealment of evidence or disappearance of evidence, as the case may be. Who is responsible for that, is a matter for consideration by the trial Court. But *prima facie*, the petitioner being a person in Management, is responsible for it. So the offence under Section 201 of IPC, cannot be said that it is not attracted. I am not convinced on this point, which has been advanced by the petitioner. For the above said reasons, I am not also relying upon Judgment relied on by the petitioner in the case of ***Dinesh Kumar Kalidass Patel Vs. The State of Gujarat*** reported in ***(2018) 3 SCC 313***. The factual circumstances are entirely different here.

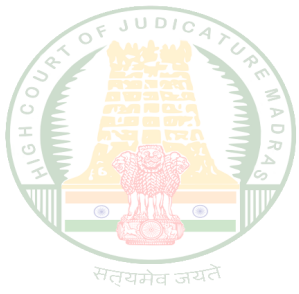
39.Next comes to 370 of IPC. Here, as I mentioned earlier, the Division Bench of this Court directed the CBI to look into whether any human trafficking has been taken place. The learned Senior Counsel for the petitioner would submit that this offence was introduced with effect



Crl.O.P.(MD).No.1403 of 2020

WEB COPY

from 03.02.2013 as per the Criminal Law Amendment Act, 2013. But here, the act said to have been happened between 1994 and 1999. So, no such penal provision was in force during the above said period. As per the Article 20(1) of the Constitution of India, a person cannot be convicted for an act, which was not an offence at the time of its starting. Similarly, Section 370 A was also introduced with effect from 03.02.2013. According to the learned Senior Counsel, both these offences are not attracted and no charge can be framed against the petitioner. On the face of it, the arguments that has been advanced by the petitioner may appear to be correct. But the transcribed conversation that alleged to have taken place between some of the inmates and another third party has been produced by the learned Additional Public Prosecutor in the typed set of papers. Reading of the above said transcribed conversation shows that some sort of serious allegation has been made against the petitioner allegedly for having sexual abuse or exploitation to some of the inmates, more particularly, on one female child by name, xxxx. Answer to this argument by the petitioner is that the above said xxxx, during the course of investigation has not made any allegation against this petitioner with regard to the above said alleged



Crl.O.P.(MD).No.1403 of 2020

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sexual exploitation or abuse and this has been introduced by the Investigating Officer with an ulterior motive. The petitioner has produced a letter alleged to have been written by the above said xxxx to the counsel on record for her, which is, dated 23.02.2020, wherein, it has been stated that she was married to one Amole Subash on 11.08.2020 and with the consent of her husband's family, they are living together as husband and wife peacefully. By referring to this letter, it is contended by the petitioner to the effect that the entire allegation that has been made in the final report is nothing but an act of victimization that was made with the help of one of the Erstwhile employee of the Ministries. But, the question which arises for consideration is whether this sort of letters can be taken into account at this stage.

40.The learned senior counsel for the petitioner would submit that since the above said xxxx got married and settled in life, continuation of the prosecution will spoil her life also, in the light of the letter addressed by her. But, sitting under Section 482 Cr.P.C. jurisdiction, this Court cannot go into the factual aspects. The transcription of oral conversation that took place between the above said inmates and another person has

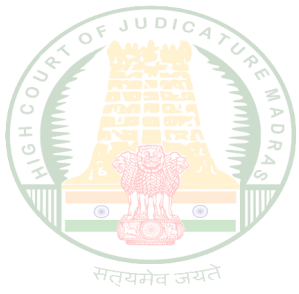


Crl.O.P.(MD).No.1403 of 2020

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been scientifically verified through the Forensic Laboratory Examination and Expert Statement was also recorded, which is available in the case records. According to the learned Additional Public Prosecutor, when we go through the above said conversation, it gives some sort of ugly affairs that was prevailing in the Ministries. According to him, when such sort of serious allegation has been made and also verified by collecting sufficient materials, that too, in the form of Expert Opinion, quashment of the proceedings is not at all permissible.

41.As I mentioned earlier, whether the above said conversation was depicting or disclosing the real State of affairs prevailing in the Ministries or whether the letter written by the above said xxxx, who was alleged as one of the victims, sexually abused or exploited allegedly by this petitioner is true or not, cannot be matter for consideration by this Court. Absolutely, it is a factual aspect, which at no stretch of imagination, this Court can decide the veracity. I am not not convinced with the argument that was advanced by the petitioner on this aspect and it is rejected out-right. Whether in the factual circumstances of case, Sections 370 and 370 A will be attracted is also a matter for consideration



Crl.O.P.(MD).No.1403 of 2020

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42.The other offences are 153(A) and 295(A) of IPC. The allegation is that the children were christened with the Christian names and raised as Christian, used to study theology and to do Ministries' and Evangelical Work. Whether the inmates were forced to study theology is also matter for consideration by the trial Court. Certainly, it may not be matter for consideration by this Court, while exercising the jurisdiction under Section 482 Cr.P.C. But *prima facie*, it is seen that all the children were not only given basic education but, they are also provided with training in arts and crafts, tailoring, etc. No doubt, that over all personal development training was also imparted upon the inmates. But, whether this particular allegation of forcible imparting of religious theology is true or not, can also a matter for consideration only by the trial Court. But *prima facie*, it appears that there was no intention on the part of the petitioner to promote dis-harmony or leads an enmity, hatred or ill-will between different religious groups. On the face of it, Section 153 (A) of IPC is also not attracted.

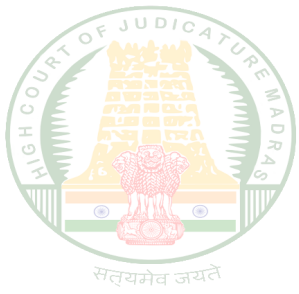


Crl.O.P.(MD).No.1403 of 2020

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43. For the offence under Section 295(A) of IPC, I am not convinced that *prima facie* this offence is not attracted. Even without knowing the religion to which the above said children belong, they have been imparted with study of theology and Ministries' and Evangelical Work. So whether in the factual circumstances of the case, this offence is attracted, is also matter for consideration by the trial Court. I am not convinced that *prima facie* Section 295A is not attracted.

44. Regarding the Special Act offence namely, Section 24 r/w 13, 16(3) of the Orphanages and Other Charitable Home (Supervision and Control) Act, 1960, now the prosecution shows that without proper certification, the above said Orphanage was running and location was also changed without the Board consent. No doubt as mentioned above a temporary certificate was obtained. But, proper Registers and others were not properly maintained at the time of inspection, which, I mentioned earlier. Now, as I mentioned earlier, for prosecuting the petitioner under Section 24 of the Act, the sanction under Section 25 of the Act has been obtained. So, I am not convinced with this offence is also not attracted.



Crl.O.P.(MD).No.1403 of 2020

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45.Regarding the Juvenile Justice (Care and Protection of Children) Act, 2015, now the penal provisions that are mentioned in the final report are Sections 32, 33, 34 and 75. With regard to the Registration, as I mentioned above, a direction was issued by this Division Bench to the petitioner to rectify the defects pointed out by the Officials and whether now all these defects have been rectified and recognition has been granted or not is not known. It is submitted by the petitioner that as per the order of the Court in W.P.(MD).No.16273 of 2015, dated 07.12.2015, the Home was taken over by the Government on 09.12.2015. Sections 32, 33 and 34, came into effect only on 15.01.2016 and so those offences cannot be made attracted. So this point has also been addressed by the Division Bench. It is contended that even as per the report submitted by the One Man Committee namely Justice K.N.Basha, no cruelty, harassment or ill-treatment was made upon the inmates. So the offence under Section 75 of the Act is not attracted. No doubt, that in the light of the report submitted by the One Man Committee to the Honourable Supreme Court, offence under Section 75 of the Act may not be attracted.

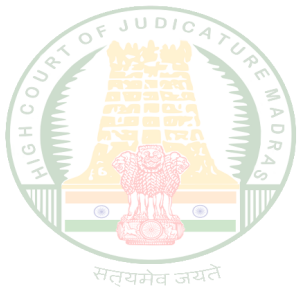


Crl.O.P.(MD).No.1403 of 2020

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46. With regard to the violations, whether Section 111 (2) of the Act, comparative tabulation is furnished by the second respondent in the typed set of papers. Only temporary recognition was granted to the petitioner. But, it appears that no steps were taken by the petitioner to obtain a permanent permission till 2010. Further, as on the date of the Inspection, which was undertaken by the Department Officials, there was no proper maintenance of Observation of Rules and Records. So whether the Section 111 (2) of the Act will apply can also be a matter for consideration by the trial Court. I am not convinced with regard to the arguments that Sections 32, 33, 34 are not attracted.

47. Regarding the offence under Section 20 r/w 6 and 12 of Tamil Nadu Hostels and Homes for Women and Children Act, 2014, the allegation is that no proper licence was obtained under Section 5 or 6. The learned counsel for the petitioner would submit that Section 3 of the Act, specifically excludes the Homes for neglected Women and Children governed by any law, since the petitioner's home was governed by the Orphanages and Other Charitable Home (Supervision and Control) Act, 1960, Tamil Nadu Hostels and Homes for Women and Children Act,



Crl.O.P.(MD).No.1403 of 2020

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2014, is not also attracted. Another contention is that Rules were framed under the provisions of the above said Act only on 21.02.2015. Home was taken over by the Department on 09.12.2015. The FIR was registered on 28.05.2015 in Crime No.548 of 2015. The above said FIR was also clubbed along with this FIR and CBI taken over investigation in both the matters. So it is contended that no Rules were available, even the offence under Section 5 and 6 are not attracted. No doubt that Home was taken over by the Government on 09.12.2015. Rules came into force on 21.02.2015. But whether in the above said circumstances, Tamil Nadu Hostels and Homes for Women and Children Act, 2014 is attracted or not, can also a matter for consideration by the trial Court. Because only temporary licence was granted under the Provisions of the Orphanages Act, as mentioned above, no proper steps have been taken by the petitioner to obtain permanent licence till 2010. No doubt that the Tamil Nadu Hostel and Homes for Women and Children Act, came into effect only in 2014. Since already the petitioner applied for the licence or permission under the Provisions of Tamil Nadu Juvenile Justice (Care and Protection of Children) Act, 2015, another licence is required under the Provisions of Tamil Nadu Hostels and Homes for Women and



Crl.O.P.(MD).No.1403 of 2020

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Children Act, 2014, cannot be required. *Prima facie* Section 20 r/w Section 6 and 12 of the Tamil Nadu Hostels and Homes for Women and Children Act, 2014 cannot be attracted.

48.Now we are coming to the concluding portion of the order. In the light of the above said discussion the final point to be answered is whether quashment of the final report is permissible under law, since some of the penal provisions which as mentioned in the final report are not attracted.

49.On both sides, number of judgments have been cited and before that as mentioned above, even at the time of the investigation, an attempt was made by the petitioner to quash the proceedings. But, later he withdrew the petition and requested the Court to give a time frame for filing the final report. Now this is a second attempt that has been made by the petitioner after filing the final report. No doubt that law does not bar for filing of the quash petition after filing the final report. But on what ground the first attempt was made by the petitioner is not known, since copy of that petition is not made available to this Court by either of



Crl.O.P.(MD).No.1403 of 2020

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the parties. Only order copy is made available. For exercising the jurisdiction under Section 482 Cr.P.C., in this case, on the side of the petitioner the following Judgments were cited.

(i) The Judgment of the Honourable Supreme Court in the case of State of *Haryana Vs. Bhajan Lal* reported in *1992 Suppl (1) SCC 335 para 102*, following the Judgment in the case of *State of J & K Vs. Romesh Chander* reported in *1997 (1) SCC 90*,

(ii) in the case of *Zandu Pharamaceutical Vs. Mohd. Sharaful* reported in *2005 (1) SCC 122*,

(iii) in the case of *Chandran Ratnaswami Vs. KC Palanisamy* reported in *2013 (6) SCC 740*,

(iv) in the case of *Joseph Salvaraja Vs. State of Gurajat* reported in *2011 (7) SCC 59* and

(v) in the case of *Vineet Kumar Vs. State of UP* reported in *2017 (13) SCC 369*.

50. On the side of the respondent the following Judgments have been relied upon.

1. The Judgment of Honourable Supreme Court of India in the case



Crl.O.P.(MD).No.1403 of 2020

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of ***G.S.Bansal Vs. The Delhi Administration***, reported in ***AIR 1963 Supreme Court 1577***,

2. Judgment of Honourable Supreme Court of India in the case of ***Lakhwant Singh Vs. Jasbir Singh and Ors.***,
3. Judgment of Honourable Supreme Court of India in the case of ***State of Punjab and Others Vs. Inder Mohan Chopra and others*** reported in ***(2009) 3 SCC 497***,
4. Judgment of the Honourable Delhi High Court, in the case of ***Om Prakash Shrivastava @ Babloo ... Vs. State of NCT of Delhi and others***,
5. Judgment of the Honourable Supreme Court of India in the case of ***Umesh Kumar Vs. State of A.P and another***, and
6. Judgment of the Madras High Court in the case of ***Smt.Soodamani Dorai Vs. The Joint Director of Enforcement***.

51. We need not bother much about the power of this Court under Section 482 Cr.P.C. which is now more or less well settled. The ultimate aim or the purpose of Section 482 Cr.P.C. has also been more or less now well settled. That power can be exercised only with one motive i.e., to



Crl.O.P.(MD).No.1403 of 2020

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secure the ends of justice. Here comes the opening para of discussion.

Whether the prosecution tries to crucify the petitioner for his good intention, is a matter for consideration by the trial Court. Even during the course of the proceedings before the Division Bench of this Court and during the investigation, it appears that Media trial was also going on simultaneously, even some of the inmates tried to communicate in the internet. A print out copy is also placed before this Court. They have also detailed the events as well as the affairs how they were treated by the petitioner. But one thing remains, is that this Country is ruled by Rule of law and not by any other considerations Even if an act is done in a humanitarian ground, it must be done as per the law and if any violation is noticed, then that person has to face the prosecution. If any violation of the Rules are noticed, more particularly, running of a Child Home must be in conformity with the Rules and Regulations. But whether the above said Rules and Regulations have been violated as I mentioned earlier, is a matter for consideration by the trial Court in the peculiar facts and circumstances of the case. Similarly, if there was any abuse of the minor children is also be the matter for consideration by the trial Court. This Court cannot take into account the private communications that was



Crl.O.P.(MD).No.1403 of 2020

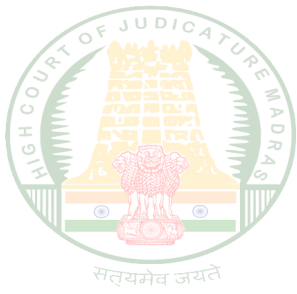
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taken by the victim through the internet or through private correspondent with their counsels. Such sort of document cannot be taken into account at all. Because while considering the petition under Section 482 Cr.P.C., only the documents, which are of sterling quality can be taken into account and nothing more or nothing less. So the documents, which are relied on by the petitioner are not of such quality and character. So those things cannot be taken into account.

52.Now coming back to the Proverb, it all started with good intentions, but, mid way it slipped. So the Proverb stands correct.

53.In the light of the above said discussion, I am of the considered view that only some of the penal provisions are not attracted, as stated above. In respect of the other penal provisions charges must be properly framed and trial must be undertaken.

54.Since the petitioner herein facing the prosecution for several years and also frequently visiting German, his personal appearance alone is dispensed with the following condition.



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Crl.O.P.(MD).No.1403 of 2020

(i)The petitioner shall appear before the Mahila Court, Tiruchirappalli, within a period of 15 days from the date of receipt of a copy of this order and file an undertaking affidavit, by affixing his recent passport size photograph, to the effect that he will appear before the trial Court as and when required and must ensure his proper representation through Advocate.

55. With the above said liberty, this petition stands dismissed to the extend as stated above. Consequently, connected miscellaneous petitions are closed.

08.06.2023

Index : Yes/No
Internet : Yes/No
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To

1. The Judge, Mahila Court,
Tiruchirappalli.
2. The Inspector of Police,
C.B.I./SCB/Chennai,
FIR No.RCI (S) 157/2016
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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CrI.O.P.(MD).No.1403 of 2020

G.ILANGO VAN,J.

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PRE-DEIVERY ORDER MADE IN

CrI.O.P.(MD).No.1403 of 2020

08.06.2023