

Crl.O.P.No.14485 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 01.08.2024

Pronounced on: 07.08.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.14485 of 2024

Mr.G.Venkateshan. Petitioner/Accused
/versus/

1. The State Rep. by,
The Inspector of Police,
Keevalur Police Station,
Nagapattinam.
(Crime No.258 of 2021). ... Respondent

2. S.Bagyalakshmi. Respondent/Defacto Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C.,
to call for the records pertaining to charge sheet in C.C.No.189 of 2024 on the
file of the Learned District Munsif cum Judicial Magistrate, Kivelur,
Nagapattinam District and quash the same.

For Petitioner : Mr.C.Emalias

For R1 : Mr.K.M.D.Muhilan,
Government Advocate (Crl.Side)

For R2 : Mr.J.Chandran Sundar Sashikumar

For R3 : Mr.R.John Sathyan, Senior Counsel,
Assisted by. Mr.C.K.Chandrasekhar, Standing Counsel,
for T.N.S.L.S.A



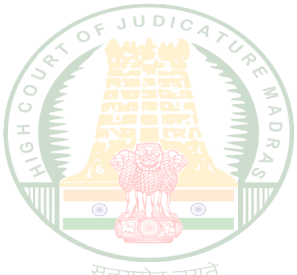
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ORDER

Against the petitioner G.Venkateshan, Keevalur Police, Nagapattinam registered a case in Crime No.258/2021 on 02/04/2021 for offences under sections 173, 294(b), 323, 342, 353, 427 of I.P.C and Section 4 of Tamil Nadu Prohibition of Women Harassment Act on the complaint given by Tmt.Bagyalakshmi, aged 53 years working as Junior Bailiff at District Court, Nagapattinam.

2. According to the complainant, on 02/04/2021 at about 2.00 p.m she went to the residence of the Village School Headmistress Smt.Geetha W/o.Venkateshan, to serve the garnishee summon in connection with Salary attachment of one Mrs.Libiya Margaret in E.P.No.15/2019 in ARC No.144/2016. When Smt.Geetha refused to receive the warrant and insisted the Junior Bailiff to record "Door locked", the Junior Bailiff decline her request and insisted to receive the summon. At that time, the petitioner herein/ Mr.G.Venkateshan, the husband of Smt.Geetha came down from the upstairs of the house and prevented the bailiff from serving the Summons. He also started abusing the Junior Bailiff in filthy words. The Junior Bailiff, to record her

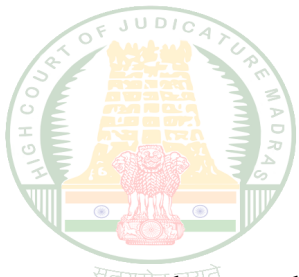


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attempt to serve the notice, took photograph in her cellphone given by the Court. Infuriated by this, the said G.Venkateshan repeatedly slapped the Junior Bailiff on her cheeks and torn her blouse. He twisted her hand and pushed her down. In the melee, the spectacle of the Junior Bailiff was broken. G.Venkateshan locked the gate of the house and wrongfully restrained her inside the house insisting to delete the photo and hand over the phone, if not she will not be allowed to go out. He snatched the summons and INSTEP copy and torn it. On hearing her scream, one of her relative Narayanamoorthy and others opened the gate and rescued her. Hence, the complaint.

3. The completion of investigation culminated in filing of final report and same was taken cognizance by the Learned Munsif cum Judicial Magistrate, Keelvelur, Nagapattinam in C.C.No.257/2022. The cognizance taken by the Judicial Magistrate was challenged by the accused G.Venkateshan under Section 482 of Cr.P.C in Crl.O.P.No.22477/2023. This Court on finding that the cognizance of offence taken without application of mind and contrary to the dictum laid by this Court in *Shanmugam and others -vs- The Inspector of Police and another* reported in *2019 (2) LW (Cri) 263*, interfered and quashed



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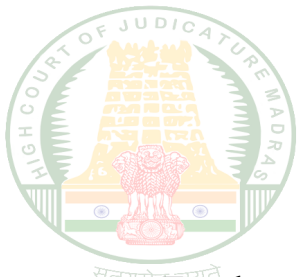
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the mechanical cognizance taken by the Judicial Magistrate. This Court remanded the matter back to the Judicial Magistrate with direction to apply its mind on the available materials and pass order strictly in accordance with law.

4. On remand, the Learned Judicial Magistrate closed C.C.No.257/2022. Thereafter, on perusal of the entire materials filed along with the final report, being satisfied that *prima facie* case is made out only for offences under Section 173, 294(b), 342, 353 and 427 of I.P.C, took for trial in C.C.No.189/2024. The Judicial Magistrate omitted offences under Section 323 I.P.C and Section 4 of TNPWH Act observing that those offences are not made out from the material placed by the prosecution.

5. The accused Mr.G.Venkateshan again revived his plea to quash, stating that the case was foisted against him due to the pressure of the defacto complainant and her colleagues in the Court. The complaint is made with suppression of the real fact happened in his house on the day of the occurrence.

6. According to the petitioner, his wife Smt.Geetha is the Headmistress of the Panchayat Union Middle School, Vandaloor. One of the

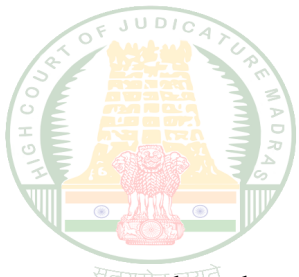


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Teacher by name S.Libiyamargret working in that School is the judgement debtor in ARC No.144/2016. As a garnishee, the Headmistress was asked to deduct the decree amount from the salary of S.Libiyamargret and remit it to the Court. The summon sought to be served on a public Holiday (Good Friday) by the defacto complainant. She was accompanied by one Narayanamoorthy, who is not a Court employee. The defacto complainant wanted the rubber stamp of the School to be affixed in the summons. Since the school premises was notified as a Booth for the ensuing Assembly Election scheduled on 06/04/2021, the School premises was under the control of Returning Officer. Hence, his wife was not able to get the school seal kept in the school premises. Meanwhile, the private person who accompanied the Junior Bailiff started taking photo of G.Geetha who was in her house coat. When this was objected, quarrel arose and the person who accompanied the Junior Bailiff name later known as Narayanamoorthy and a relative of the Junior Bailiff threatened to upload the morphed photo of his wife in the social media.

7. The petition for quash when came up for hearing on 21/06/2024, after hearing Mr.Emalias, the learned Counsel for the petitioner, this Court held



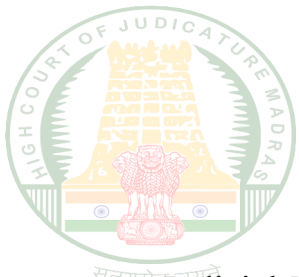
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that the statements of the witnesses and the evidence relied by the prosecution provides *prima facie* material to proceed against the petitioner. Hence, the Final Report cannot be quashed.

8. The Learned Counsel for the petitioner thereafter submitted that the petitioner has realised his mistake and he wants to apology for his conduct. Taking note of the said submission, this Court recorded that, if the petitioner wants to apology for his conduct, he can resort to Section 265 B Cr.P.C (application for plea bargaining). If any application is filed before the Trial Court under section 265 B of Cr.P.C, the Trial Court shall follow the procedure contemplated under Chapter XXI-A of the Code and proceed in accordance with law.

9. Had, the Trial Court entertained the application for plea bargaining and proceed in accordance with law, there would not have been any further order by this Court. It appears this had not happened. The petitioner herein by registered post addressing this Court had sent a memorandum, informing that he was not able to avail the benefit of plea bargain since the



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Judicial Magistrate refused to receive his application and directed him to meet the Secretary, District Legal Service Authority. When he met the District Legal Service Authority, they declined to help him since one of the charge against him is under Section 353 of I.P.C and the matter cannot be settled through Mediation. In his memorandum he has also accused that the defacto complainant has been demanding money to compromise and had expressed his displeasure that Court is not concern to his grievance since the defacto complainant is a staff in the District Judiciary.

10. This Court, therefore thought it fit to reopen the matter, to ascertain why procedure for plea bargaining not entertained as per the order of this Court dated 21/06/2024. Hence, the case was posted on 24/07/2024 under the caption, “For being mentioned”. The copy of the memorandum sent by the petitioner was given to Mr.Emalias. Mr.C.K.Chandrasekhar, the Learned Standing Counsel for the Tamil Nadu State Legal Services Authority was requested to assist the Court as *Amicus curiae*. He was also requested to take assistance of any designated Senior Advocate who can assist the Court to pass appropriate direction to the Courts below for purposeful enforcement of the



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Chapter XXI-A of the Cr.P.C (Section 265-A to 265-L) which is now Chapter XXIII (Sections 289 to 300) of BNSS, 2023.

11. Accordingly, Mr.John Sathyan, Learned Senior Counsel along with Mr.C.K.Chandrasekhar, Learned Standing Counsel for Tamil Nadu State Legal Services Authority were present and provided their valuable input about the case under consideration and about the lack of understanding of the advantage in plea bargaining. They also suggested for a guideline from the High Court either through judicial pronouncement or through administrative instruction to the Courts below, shall direct the Courts to inform the accused soon after framing charge and explore the possibility of applying for plea bargain wherever permissible.

12. Mr.Emalias, Learned Counsel for the petitioner submitted that, no Counsel in that Bar willing to appear on behalf of the petitioner since the complainant is a Court staff. Therefore, his client went to the Trial Court and produced the order of this Court dated 21/06/2024. The Learned Judicial Magistrate directed his client to get the legal assistance from Legal Service



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Authority and directed to meet the Secretary, Legal Service Authority. The staff at Legal Service Authority was no inclined to assist the petitioner for reason that the offence under Section 353 of I.P.C is not a compoundable offence.

13. Mr.Chandrasekhar, the Learned Standing Counsel for the Tamil Nadu State Legal Service Authority, stated that, the purpose of Legal Service Authority is to aid the needy litigants. The statement of the counsel for the petitioner that no advocate in the Bar are ready to appear for the petitioner is true, then such refusal amounts to denial of legal aid to the needy, a guarantee given under the Constitution. The refusal to provide legal assistance by members of the Bar is not in tune with the professional ethic. When, a litigant seek for aid and approach the Legal Service Authority, the Act mandates that he should be given proper legal assistance. The charge under Section 353 I.P.C is a bar for compounding but not a bar under the Legal Service Authority Act to extend legal aid. Therefore, he submitted that necessary instruction will be given to the concern Legal Service Authority to provide assistance to the petitioner if he seeks for any legal aid.



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14. The Learned Counsel Mr.C.K.Chandrasekhar further submitted that the statistic collected indicates only less than ½ % of the cases filed in the Judicial Magistrate Courts got disposed under the scheme of plea bargaining. The misunderstanding of the law and failure to percolate the information about the benefits are the major cause for under exploitation of the provision of plea bargaining. He further submitted that, if this chapter is understood properly and applied, nearly 75% of the cases pending before the Judicial Magistrate Courts in this State can get reduced, which will in turn save the valuable time of the Courts to concentrate on other serious offences which are not covered under Chapter XXII-A of the Code/Chapter XXIII of BNSS, 2023.

15. Mr.C.K.Chandrasekhar, Learned Standing Counsel further suggested that to popularise the benevolent provision, the Legal Services Authority at Taluk, District and State level should be utilised and if necessary a member from Legal Service Authority can also be involved to arrive at settlement under the Mutually Satisfactory Disposition (MSD). He also brought to the notice of this Court that the Legal Service Authority in this case has



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declined to entertain the representation of the petitioner since Section 353 I.P.C
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is a non compoundable offence. Probably the Magistrate also would not have entertained the plea bargain request because the defacto complainant is a woman. He therefore request, a general direction to the Courts below regarding plea bargaining which will go a long way to reduce the pendency in the Judicial Magistrate Court which suffers congestion and suffocation due to overload.

16. Mr.John Sathyan, Learned Senior Counsel submitted that, the scheme of plea bargaining under the Code as well as in BNSS is explicit and well laid. Comparing the Criminal Procedure Code and Bharatiya Nagarik Suraksha Sanhita (BNSS), he submitted that any person who not been convicted previously for the same offence entitled to avail the benefit of plea bargaining, provided the offence is punishable for a term less than 7 years and the offence is not against a woman or Child or the offence affecting the socio-economic conditions of the Country. The Central Government by notification has already determined the offences under the Law which shall be offences affecting the socio-economic condition of the Country.

17. Under Section 265 C of the Code/Section 291 of BNSS, 2023



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guidelines for Mutually Satisfactory Disposition (MSD) is provided. On the application of the accused for plea bargaining and the Court being satisfied that the accused is eligible to file application for plea bargaining and the application is filed voluntarily, it shall issue notice to the Public Prosecutor, the Investigation Officer of the Case, the Victim and the accused to participate in the meeting to work out satisfactory disposition of the case.

18. Mr.John Sathyan, Learned Senior Counsel submitted that since the act cast duty on the Court to ensure the participation by the parties is completely voluntary, the Court may take the assistance of the Para legal volunteers of Legal Service Authority or any Panel Counsels of Legal Service Authority to oversee the working of the Mutually Satisfactory Disposition process. He also highlighted that there is a misconception among the stake holders that, under Section 265 E of the Code, the Law imposes a sentence of minimum $1/4^{\text{th}}$ of the period prescribed in cases where sentence is extendable to certain period but no minimum sentence prescribed; and it is $1/2$ the period, if minimum sentence is prescribed. The correct interpretation of this provision to dispel the misconception is necessary.



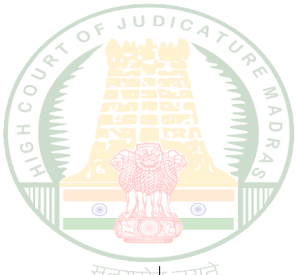
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19. Further, the Learned Senior Counsel comparing Section 265 E of the Code with Section 293 of BNSS submitted that the BNSS gives a concession for the first time offender if sentence is extendable to a period, the imprisonment shall be a maximum of $1/6^{\text{th}}$ of the period prescribed. According to the Learned Senior Counsel, the misconception that the sentence which will be imposed under the scheme of Mutually Satisfactory Disposition (MSD) is $1/4^{\text{th}}$ or $1/6^{\text{th}}$ as the case may be, if the sentence prescribed is extendable to a specific period can be dispelled taking the instant case as illustration.

20. In C.C.No.189/2024, the Judicial Magistrate has taken cognizance of offences under Sections 173, 294(b), 353, 342 and 427 IPC. The sentence prescribed for these offences are as below:-

| | |
|--------------------|---|
| Section 173 IPC | Simple Imprisonment extendable for a term which may extend to one month, or with fine which may extend to Rs 500/-, or with both. |
| Section 294(b) IPC | Punishment with imprisonment for either description for a term which may extend to three months, or with fine, or with both. |



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| | |
|-----------------|--|
| Section 353 IPC | Punishment with imprisonment for either description for a term which may extend to two years , or with fine, or with both. |
| Section 342 IPC | Punishment with imprisonment for either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. |
| Section 427 IPC | Punishment with imprisonment for either description for a term which may extend to two years , or with fine, or with both. |

21. Even if the accused choose to be tried, the Court after holding him guilty for the above offences can impose fine only or any sentence ranging from imprisonment till raising of the Court to two years. While so, the intention of the legislatures cannot be to impose a minimum sentence of imprisonment which may run to 1/4th of the period prescribed.

22. The Learned Senior Counsel Mr.John Sathyan, submitted that from reading of Section 265 E (c) of Cr.P.C or Section 293 (c) of BNSS, 2023 it is clear as crystal that only in cases where a minimum sentence prescribed, the sentence imposed shall be not less than ½ of the minimum sentence prescribed. Whereas, if the sentence prescribed for the offence is extendable upto 7 years without any minimum sentence, the Court while considering Mutually Satisfactory Disposition (MSD) under plea bargain, can either impose sentence of imprisonment for any term but not more than 1/4th sentence prescribed. It

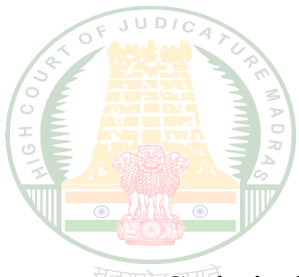


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may even be imprisonment till the raising of the Court. In case, if the Section prescribes imprisonment/or with fine or both, there is no impediment for the Court to impose fine alone. Under the Chapter Plea Bargaining nowhere there is a mandate that the sentences of imprisonment must be minimum 1/4th of the period of sentence which the Law prescribes for the said offence. Wherever the imprisonment is optional and extendable to a period less than 7 years, it is always open to the Court to render a judgement under Section 265 F of the Cr.P.C/Section 294 of BNSS without any imposition of sentence of imprisonment.

23. The Learned Senior Counsel also point out that the petitioner herein is the first time offender and the maximum punishment prescribed for these offences is 2 years (Section 427 of I.P.C). The offence is not against the socio-economic condition of the Country or has been committed against a child below the age of 14 years. However, the defacto complainant is a woman who has alleged that she was abused with filthy language and prevented from discharging her duty and was wrongfully restrained in the house of the accused. Whether such charges will fall under the scope and ambit of Section 265 A of



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Code is for the Learned Magistrate to consider when application under Section 265 B of Code is made. He also opined that, the expression “offence against a woman” in the contest of Section 265 A of the Code/Section 189 of BNSS should not be given a wide meaning but a restricted meaning which will cover only offences which are based on gender and not all the general offences committed against a woman.

24. Both the Learned Amicus suggest that for effective implementation of the plea bargain provision, the Criminal Justice System has to be more efficient, reliable and predictable with high rate of convictions, to allow an accused to make an informed choice for plea bargaining. Referring the order passed by the Hon'ble Supreme Court *In Re: Policy Strategy for Grant of Bail*, reported in *2022 SCC OnLine SC 1487*, they further suggest that the guidelines laid by the Hon'ble Supreme Court in this case to be followed scrupulously to achieve the desired result. It is also suggested that, to encourage plea bargaining, the Public Prosecutors as well the Judicial Officers must be appreciated by giving incentive in the service record or norms/units as the case may be.



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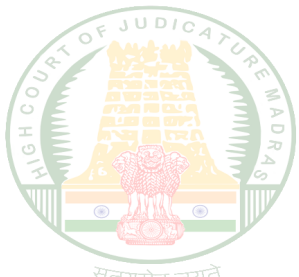
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25. The Learned Counsel appearing for the defacto complainant expressed his apprehension that, the defacto complainant may not come forward for Mutually Satisfactory Disposition (MSD) probable fearing of departmental action against her.

26. Heard the submission made by the Learned Counsels. Their valuable inputs were taken into consideration.

27. The object of introducing the Chapter on Plea Bargain, after much deliberation by the Law Makers was to ensure speedy trial, save litigation costs and relieve the parties from anxiety and to enable the offender make a fresh start of life as early as possible without being uncertain about the outcome of the criminal case.

28. A plea bargain process shall commence only on the application by the accused. At this stage, the wish of the victim/complainant is not material. If the case is instituted on police report, the Public Prosecutor and the Investigating Officer who represent the State have a pivotal role during the



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process of Mutually Satisfactory Disposition. Of course, the victim and the accused are the key players and they are entitled to participate in the process, if so desire either in person or through their Counsels. Whenever the satisfactory disposition of the case has been worked out under section 265 D of Cr.P.C/ Section 293 of BNSS, the Court can dispose the case in any one of the following manner:-

265 E:

265E. Disposal of the case.—Where a satisfactory disposition of the case has been worked out under section 265D, the Court shall dispose of the case in the following manner, namely:—

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of



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the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;

(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;

(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

29. It is appropriate for this Court at this juncture to clarify that, the offenders who apply for plea bargaining and go through the process of Mutually Satisfactory Disposition need not apprehend that he will be certainly imposed with sentence of imprisonment. The Act prescribes half the sentence of imprisonment in case of the offence where minimum sentence is prescribed. In



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all other cases where the sentence of imprisonment is extendable to a certain period, then the Court may not impose sentence of imprisonment, if the sentence prescribed for the said offence is 'may be imprisonment or with fine'. The Imprisonment, may be till Raising of the Court to the maximum of 1/4th period prescribed under the Act.

30. As far as the expression, '**offence committed against a woman**' or '**child below 14 years**' in the Code and the expression '**offence committed against a woman**', or a '**child**' in BNSS, a restricted interpretation has to be given which will sufficiently protect the woman victim who had been victimised because of her gender. This cannot extend to the offences which are for commission of a non-gender offences. The exclusion should apply only for gender centric offences.

31. This Court not oblivious of the fact that the BNS which has come into force from 01/07/2024 has made certain offences gender neutral. But, still they are offences gender centric and not non-gender offences. There is sharp difference between gender centric or gender neutral offence and a non-gender offence. To illustrate, offences like theft and cheating are non gender



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offences. Offences like harassment to woman under the Special Act or sexual offences, criminal force and assault against woman or offences related to marriage where the victim is the woman will fall under gender centric/gender neutral offences. Unlike I.P.C fortunately, the Bharathiya Nayaya Sanhita (BNS) has brought all these offences under one chapter and grouped in Chapter-V of BNS under the caption “of offences against woman and child.” In the considered view of this Court, only those offences will fall under gender centric or gender neutral offences to attract the expression “offence against a woman” and be excluded from the scope of plea bargaining.

32. In the case in hand, the offences are non-gender in nature.

Hence, the chapter XXII-A of the Cr.P.C will apply.

33. For effective implementation of the provisions under Chapter XXII-A of the Code/Chapter XXIII of the BNSS, in addition to the directions issued by the Hon’ble Supreme Court time to time in the pending case “In Re: Policy Strategy for Grant of Bail -vs- Respondent (s), this Court is of the view that the suggestions put forth by the Amicus will be helpful for the Courts in



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making the provision vibrant not dormant.

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34. Hence, the following suggestions are made to the Courts below for future guidance.

a) The Courts, soon after framing charges shall in writing inform the accused who are all eligible to invoke plea bargaining, about his right under the Chapter plea bargaining. If the accused answers in affirmative, necessary time to be given for him to file application. This will ensure, the accused to exercise his right before expiry of 30 days from the date of framing charges as prescribed under Section 290 of BNSS, 2023.

b) The Courts can take the assistance of persons associated with District Legal Services Authority/Tamil Nadu State Legal Service Authority wherever it is necessary to facilitate the process of Mutually Satisfactory Disposition (MSD).



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c) The Courts shall take note of the clarification given in this order regarding period of sentence which can be imposed in case of plea bargaining and decide accordingly.

d) The Courts below shall take note that the disposal of the cases under plea bargain is considered for fixation of units while deciding their performance.

e) Whenever the Courts undertake the process of Mutually Satisfactory Disposition (MSD), it is its duty to ensure that the accused has come forward to apply voluntarily and it is his informed choice of plea bargaining.

f) The Courts shall also take note that the offences which are excluded shall not be disposed under this chapter. The notification of the Ministry of Home Affairs in No:1042 (E) dated 11th July 2006 to be referred to decide whether the offence is a socio-economic offence affecting the country.



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35. In so far this petition is concern, the memorandum of the petitioner sent after passing the order on 21/06/2024, express apprehension of bias and allegation against some of the Court staff. To dispel this apprehension, this Court transfer C.C.No.189/2024 on the file of District Munsif cum Judicial Magistrate, Kilvalur, Nagapattinam District to the file of Judicial Magistrate-I, Mayiladuthurai.

36. Before the Learned Judicial Magistrate-I, Mayiladuthurai, if the petitioner opt for plea bargain, his application to be taken on file and disposed as per the procedure laid in Chapter XXI-A of the Cr.P.C. The Court if desire and require, can get the assistance of the District Legal Services Authority, recording his reason.

37. With these directions, the *Criminal Original Petition is disposed of*. This order shall be in continuation of the earlier order passed by this Court on 21/06/2024.



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38. The service of Amicus, Mr.John Sathyan, Learned Senior Counsel and Mr.C.K.Chandrasekhar, Learned Counsel is appreciated for their assistance which showcased their skill of precision and concern for dispensation of fair justice.

39. Registry shall place this Judgment before the Hon'ble Acting Chief Justice, for circulation among the Judges of the Courts below as guidance for fruitful and effective implementation of the provisions regarding 'Plea Bargaining'.

07.08.2024

Index :Yes.
Internet :Yes.
Speaking Order/Non-Speaking Order.
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To:-

1. The Munsif cum Judicial Magistrate, Kilvelur, Nagapattinam District.
2. The Learned Judicial Magistrate-I, Mayiladuthurai
3. The Inspector of Police, Keevalur Police Station, Nagapattinam.
4. The Public Prosecutor, High Court, Madras.



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Pre-delivery order made in
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