



Crl.R.C.(MD)No.957 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.10.2024

Pronounced on : 04.12.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.957 of 2024
and
CrI.M.P.(MD)No.10544 of 2024

1.Ramesh Raja

2.Mahizhammal

... Petitioners

Vs.

The Inspector of Police,
AWPS Town Police Station,
Tirunelveli City.
(Crime No.06 of 2022)

... Respondent

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to call for the records pertaining to the impugned order in Cr.M.P.No.17086 of 2023 in S.C.No.876 of 2023 dated 19.09.2024 pending on the file of the learned Mahila Judge, Tirunelveli and set aside the same.

For Petitioners : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



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ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.17086 of 2023 in S.C.No.876 of 2023 dated 19.09.2024 on the file of the Mahila Court, Tirunelveli, dismissing the application filed for discharge under Section 227 of the Code of Criminal Procedure.

2. The petitioners are the accused 2 and 3 in S.C.No.876 of 2023 for the offences under Section 417 IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002.

3. The case of the prosecution is that the first accused, who is the son of the petitioners, and the defacto complainant are having relationship like that of student and teacher, that the first accused, by misusing his position, had abused the defacto complainant sexually, that the first accused had sexual intercourse with the defacto complainant several times forcibly, that the first accused had threatened the defacto complainant that he would disclose the said relationship to her husband and others and extracted jewels and money from her, that the defacto complainant, her husband and her mother, after coming to know about the incident, had



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informed of the same to the petitioners and directed them to return the jewels and money but both of them felt ignorance and refused to return the jewels and money and that therefore the defacto complainant has lodged a complaint against the accused.

4. On the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.6 of 2022 against three persons including the petitioners for the alleged offences under Sections 417, 376 and 506(1) IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002. After completing the investigation, charge sheet came to be filed before the jurisdictional Court and after committal, the case was taken on file in S.C.No.876 of 2023 and is pending on the file of the Mahila Court, Tirunelveli.

5. When the case was pending for framing of charges, the petitioners/accused 2 and 3 have filed the above application under Section 227 Cr.P.C. seeking discharge from the above case and the said application was taken on file in Crl.M.P.No.17086 of 2023.



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6. The case of the petitioners is that the petitioners are totally unaware of the affairs existed between the first accused and the defacto complainant until the husband and mother of the defacto complainant conveyed the same, that the only allegation levelled against the petitioners is that when the defacto complainant, her husband and her mother went to the house of the petitioners and asked them to reprimand the first accused and directed them to return the jewels and money taken by the first accused from the defacto complainant, the petitioners had replied that they would not return the amount, that admittedly, there are no overt acts against the petitioners so as to attract the offences under Section 417 IPC and Section 4 of TN Prohibition of Harassment of Women Act and that therefore, the petitioners were constrained to file the discharge application.

7. The respondent police has filed counter statement raising objections and further stated that after conducting proper investigation, charge sheet has been rightly laid against three accused including the petitioners, that the petitioners are giving unlawful assistance to commit the offence to the first accused, that the petitioners are necessary and



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proper parties to the present case, that the first accused has committed the offence with the help and assistance from his parents and false assurance given by them, that the above application has been filed to drag on the proceedings and that therefore, the application is liable to be dismissed.

8. The learned Sessions Judge, after enquiry, has passed the impugned order dated 19.09.2024 dismissing the discharge application. Aggrieved by the order of dismissal, the present revision came to be filed.

9. At the outset, it is pertinent to note that in the complaint lodged by the defacto complainant, it has been stated that the petitioners/parents of the first accused had abetted the first accused in committing the offence of extracting jewels and money from the defacto complainant and the relevant portion is extracted hereunder:-

□... இவ்வாறு குடும்ப பெண்களை மிரட்டி அபகரித்த பணம் நகைகளை வைத்து அவனது குடும்பத்தினருக்கும் அவர்கள் சொகுசான வாழ்க்கை நடத்துவதற்கும் பயன்படுத்தி வருகின்றான். என்னிடம் இருந்து அபகரித்து பணம் நகைகளை வைத்து அவன் சொந்தமாக கார் வாங்கியுள்ளான். மேற்படி லெஸ்லி திவாகரின் பணம் பறிக்கும் குற்ற செயல்களுக்கு அவனது தந்தை ரமேஷ்



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ராஜா தாயார் மகிழ்மலர் உடந்தையாக செயல்பட்டு வருகிறார்கள். அவர்களது குடும்பத்தினரே இது போன்ற குற்ற செயல்களை தொடர்ந்து செய்து வருகின்றனர்.... என்னை எனது விருப்பத்திற்கு மாறாக வலுக்கட்டாயமாக மிரட்டி கற்பழித்ததற்கும் மேலும் என்னை மிரட்டி என் வீட்டில் இருந்த பணம் தங்க நகைகளை அபகரித்து கொண்டதற்கும் அதற்கு உடந்தையாக இருந்த அவனது பெற்றோர்கள் மீதும் சட்டப்படி நடவடிக்கை எடுத்து என் நகைகளையும் பணத்தையும் மீட்டு தரும்படியும்.....□

10. As rightly contended by the learned counsel appearing for the petitioners, the defacto complainant in her first statement given under Section 161(3) Cr.P.C. has stated that when her husband and mother went to the petitioners' house and directed them to reprimand the first accused and to return the jewels and money, the petitioners had replied that they were not aware of those things and hence, they were not in a position to return the amount and the relevant portion is extracted hereunder for better appreciation;

□... என் கணவரும் என் தாயாரும் திவாகரின் தாய் தந்தையிடம் இது பற்றி சொல்லி திவாகரை கண்டித்து வைக்குமாறும் பணம் மற்றும் நகைகளை திரும்ப தருமாறும் கேட்டனர். அதற்கு திவாகரின் தாய் தந்தை இருவரும் எங்களுக்கு இது பற்றி ஒன்றும்



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தெரியாது நானும் பணம் தரமுடியாது என்று
சொல்லிவிட்டனர்....□

11. Even in the subsequent statement recorded on 13.02.2023, the defacto complainant has reiterated the very same version against the petitioners. The defacto complainant's husband Saravana Kumar and mother Vijaya in their statements recorded under Section 161(3) Cr.P.C. have reiterated the version of the defacto complainant and the relevant portion is as follows:-

Defacto complainant's husband Saravana Kumar :

□... இது பற்றி நானும் என் மனைவியும் திவாகரின் அப்பா அம்மாவிடம் சொன்ன போது அவர்கள் எங்களுக்கு இது பற்றி ஒன்றும் தெரியாது என்றும் பணம் நகையெல்லாம் தர முடியாது என்று சொல்லி விட்டார்கள்...□

Defacto complainant's mother Vijaya : □...இது பற்றி

திவாகரின் அம்மா அப்பாவிடம் கேட்ட போது அவர்கள் எங்களுக்கு எதுவும் தெரியாது என்று சொல்லி விட்டதாக என் மகளும் அவள் கணவரும் சொன்னார்கள்...□

12. Except the above statement of the defacto complainant and other witnesses, as rightly contended by the learned counsel appearing for the petitioners, there are no other materials produced by the prosecution



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against the petitioners.

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13. More importantly, the learned counsel appearing for the petitioners would rely on the statement recorded under Section 164 Cr.P.C. by the jurisdictional Magistrate from the defacto complainant. As rightly pointed out by the learned counsel appearing for the petitioners, the defacto complainant has taken a complete U-turn and made allegations against her husband. Moreover, in the said statement, she has stated that she has given her jewels and money to the said Divakar but subsequently she has received back from him and that there was no illicit relationship between her and the said Divakar and only due to the compulsion of her husband, the present complaint came to be lodged.

14. In the impugned order, the learned Sessions Judge has observed that there are materials to frame charge for the offences under Sections 417 r/w 114 IPC against the petitioners. According to the prosecution, the petitioners have abetted their son/first accused to commit the offence levelled against him.



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15. Abetment under the criminal jurisprudence would mean the act of insisting, provoking or encouraging any person to commit an offence. According to Section 107 IPC, there are three essential elements of abetment, namely, instigation, provocation and active involvement. To put it in other way, Section 107 IPC defines abetment of a thing that consists of three acts, namely, instigation, conspiracy, or intentional aid. Abetment occurs when someone willingly encourages, insists, or aids another person to commit an offence and as such, the presence of *mens rea* is a precondition. It is pertinent to note that the person abetting must have complete knowledge of the crime he/she will commit as a result of the said abetment and only after establishing the presence of both the elements, *mens rea* and whether or not the accused had the knowledge of the crime, the accused shall be charged with the offence of abetment. Chapter V (Sections 107 to 120 IPC) talks about the crime of abetment and its punishment. Section 114 IPC states that if someone is present when a crime is committed, they are considered to have committed the crime. The purpose of Section 114 IPC is to ensure that those, who help or encourage a crime, are held accountable as the law towards an abettor who is present at the scene with increased severity because their presence seen as



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encouragement or support for the crime.

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16. In the case on hand, as already pointed out, the first accused was charged with the offence of rape, cheating and criminal intimidation. It is not the specific case of the prosecution that the petitioners had abetted the first accused for commission of the above said offences. Even according to the prosecution, after the commission of the offence, when the defacto complainant, her husband and her mother had approached the petitioners and informed the offence committed by their son and directed them to return the jewels and money which came to be taken by the first accused from the defacto complainant, they had replied that they were not aware of those things and as such, they were not in a position to return the amount. As rightly contended by the learned counsel appearing for the petitioners, the prosecution has levelled allegations against the petitioners only with regard to the incident occurred subsequent to the commission of main offence. Neither the defacto complainant nor any other witnesses had stated that the petitioners had abetted the first accused in taking jewels and money from the defacto complainant or that the petitioners were present at the time of taking the jewels and money from the defacto complainant. As



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rightly contended by the learned counsel appearing for the petitioners, this Court is also at loss to understand, in the absence of any material, as to how the petitioners were implicated in the above case.

17. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 455***.

“7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v. CBI (2010) 9 SCC 368, State v. A.Arun Kumar (2015) 2 SCC 417, Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424, State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711, Niranjana Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunia (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case



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against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the mater and weigh the materials as if he was conducting a trial”

18. The learned counsel appearing for the petitioners would rely on a judgment of the Hon'ble Supreme Court in ***Vikramjit Kakati Vs. The State of Assam*** reported in ***2022 AIR SC 3597***, wherein, the Hon'ble Apex Court has referred the principles laid down by the Hon'ble Supreme Court in ***M.E.Shivalingamurthy Vs. Central Bureau of Investigation,***



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Bengaluru reported in **(2020) 2 SCC 768** and the relevant principles are extracted hereunder:-

“10....

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.”

19. It is settled law that at the stage of framing charges, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused and the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

20. It is also settled law that while considering an application seeking discharge from a case, the Court is not expected to go deep of the probative value of the material on record, but on the other hand, the Court has to form a presumptive opinion as to the existence of the factual



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ingredients constituting the offence alleged, and for that purpose, the Court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is a main trial.

21. It is pertinent to note that the Courts are duty bound to determine if there are sufficient grounds to proceed against the accused and if there are not sufficient grounds, then the Courts must discharge the accused. The purpose of Section 227 Cr.P.C. is to ensure that the Court is satisfied that the accusations made against the accused are not frivolous. In the case on hand, as already pointed out, there are absolutely no material sufficient enough to frame charges and proceed against the petitioners but the learned Sessions Judge, without considering the above aspects in proper perspective, by simply observing that there are materials to proceed against the petitioners, dismissed the application.

22. Considering the above, this Court has no hesitation in holding that the impugned is unsustainable and therefore is liable to be set aside. Hence, proceeding further against the petitioners would be an abuse of process of law.



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23. In the result, this Criminal Revision Petition stands allowed and the impugned order dated 19.09.2024 passed in Crl.M.P.No.17086 of 2023 in S.C.No.876 of 2023 is set aside and the discharge application in Crl.M.P.No.17086 of 2023 stands allowed. Consequently, connected Miscellaneous Petition is closed.

04.12.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Mahila Judge,
Tirunelveli.
2. The Inspector of Police,
AWPS Town Police Station,
Tirunelveli City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.957 of 2024
and
Crl.M.P.(MD)No.10544 of 2024

Dated : 04.12.2024