

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Petition No.131 of 2015
M.P.No.1 of 2015

P.Jayaraj

.. Petitioner

Vs.

The Inspector of Police,
All Women Police Station,
Gandhipuram Central,
Coimbatore City.

.. Respondent

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order dated 06.01.2015, made in C.M.P.No.512 of 2014 in S.C.No.53 of 2013, on the file of the Mahila Court, Coimbatore.

For Petitioners : Mr.C.Deivasigamani
For Respondent : Mr.P.Govindarajan,
Addl. Public Prosecutor

O R D E R

Being aggrieved by the order made in C.M.P.No.512 of 2014 in S.C.No.53 of 2013, dated 06.01.2015, on the file of the Mahila Court, Coimbatore, the present revision petition is filed.

2. It is the case of the petitioner that as per the Charge Sheet, an offence, under Section 376 IPC., is not made out. If the offence under Section 376 IPC., is deleted, then the Mahila Court, Coimbatore, has no jurisdiction. Therefore, he has prayed for alteration of the charge. Objection has been raised by the prosecution, on the ground that when an attempt was made to quash the charge, for the same relief, this Court, by order, dated 30.07.2014, in Crl.O.P.No.18200 of 2013, dismissed the petition, by observing that there are sufficient allegations in the charge sheet to make out a prima facie case, for the offence of rape. Therefore, it was submitted that the Mahila Court has got jurisdiction to try the offence and there is no need to alter the charge.

3. Before the Mahila Court, Coimbatore, learned counsel for the petitioner has contended that when the offence, under Section 376

IPC., is said to have taken place in May, 2008 and thereafter, there was a further allegation of committing rape for 4 to 5 times, no complaint was given for four years. He further submitted that there was no medical evidence to connect the accused to the charge, under Section 376 IPC.

4. For considering the above said averments, for alteration of charge, the Mahila Court, has considered the operative portion of the charge, which states that by threatening termination of the employment, against her will and compulsion, the accused raped her in a Tank room of the marriage hall in May, 2008. Thereafter, till 05.03.2012, under the same threat, he had raped the victim on 4 to 5 occasions. On 05.03.2012, at 16.30 Hours, when he attempted to rape the victim, in the Kitchen, attached to the Marriage Hall, a complaint was lodged and on investigation, a final report, dated 20.06.2012, was filed by the All Women Police Station, Gandhipuram Central, Coimbatore, against the petitioner/accused, for the offence, under Section 376 IPC., r/w. Section 4 of the Women Harassment Act.

5. Case of the prosecution is that the victim was under continuous threat by the accused of terminating her from employment and thus, she had not preferred any complaint. As regards medical evidence, the Court below has observed that it is a settled principle of law that no medical evidence is necessary to constitute the offence, under Section 376 IPC., if the evidence of the prosecutrix inspires confidence in the mind of the Court. The Court below has also observed that absence of semen on the clothes seized, cannot be ground to negative the case of the prosecution, at the threshold of the case and truth could be revealed during trial. For the abovesaid reasons, the Court below has dismissed the petition, under Section 216 Cr.P.C., for alteration of charge, observing that it is too early to say that the prosecution case is lacking evidence.

6. Assailing the correctness of the order, rejecting the prayer, made in C.M.P.No.512 of 2014 in S.C.No.53 of 2013, dated 06.01.2015, on the file of the Mahila Court, Coimbatore, Mr.C.Deivasigamani, learned counsel for the petitioner has reiterated the very same submissions made before the lower Court. Inviting the attention of this Court to Section 375, which defines, "rape", he submitted that in the absence of any medical evidence and considering the fact that there was no complaint of any alleged rape, said to have taken place in May, 2008, the Court below ought to have allowed the prayer sought for. He also submitted that the learned Judicial Magistrate, has not followed the procedure, contemplated under Section 207 Cr.P.C. For the abovesaid reasons, he prayed to set aside the impugned order.

7. Opposing the said prayer and referring to Section 90 of the Indian Penal Code, which deals with consent known to be given under fear or misconception and to the charge that under the threat of termination of employment, Mr.P.Govindarajan, learned Additional Public Prosecutor, submitted that the petitioner had committed an offence of rape, against the will of the prosecutrix and there is a prima facie material for an offence, under Section 376 IPC. He further submitted that when there is sufficient material, to prove that the prosecutrix was a victim, of an offence, punishable under Section 376 IPC., the Court below has to consider the evidence adduced and arrive at a conclusion, at the time of trial.

8. Learned Additional Public Prosecutor further submitted that even assuming that there is no medical evidence, if the statement of prosecutrix, duly corroborated, it is sufficient to arrive at a conclusion, after the trial and it is too early to arrive at a conclusion that no case has been made, for the offence, under Section 376 Cr.P.C. He also invited the attention of this Court to the orders made in CrI.O.P.No.18200 of 2013, dated 30.07.2014 and further submitted that when the very same argument was made, for quashing the proceedings, this Court has rejected the same and on the contrary, this Court has held that there are sufficient materials. For the reasons, stated supra, he prayed for dismissal of the criminal revision case.

Heard the learned counsel for the parties and perused the materials available on record.

9. Before adverting to the case on hand, this Court deems it fit to have a cursory look at certain provisions of the Indian Penal Code. Section 90 deals with consent known to be given under fear or misconception and the said Section reads as follows:

"Consent known to be given under fear or misconception:-

A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person- if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child- unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

10. Section 375 of the Indian Penal Code, defines "rape", which is as follows:

"A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First - Against her will.

Secondly- Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly- With or without her consent, when she is sixteen years of age."

11. Prosecution case is that the alleged victim, along with her husband and two children, are resident of Rathinagiri, Coimbatore. She was working as Sweeper in a Marriage Hall, attached to Fathima Church, Dr.Radhakrishnan Street, Coimbatore. The petitioner-accused was the Manager of the said Hall. As the victim's husband was not suitably employed and in order to maintain her two daughters, she was constrained to work and earn, in the marriage hall, as sweeper. Taking advantage of the family situation and plight of the prosecutrix, and by threatening termination of employment, the petitioner-accused committed rape in May' 2008 in the Tank room of the Marriage Hall. Exerting threat, he raped her, for 4 to 5 occasions. On 05.03.2012, around 05.30 P.M., when he made an attempt in the Kitchen of the Marriage Hall, situated below the Church, a complaint was lodged.

12. Material on record discloses that the prosecution has examined witnesses and submitted their final report on 20.06.2012. Prosecution has proposed to examine 20 witnesses, including the Inspector of Police, All Women Police Station, Coimbatore (Central), Investigation Officer and mark as many as nine documents. At this juncture, the petitioner has filed CrI.O.P.No.18200 of 2013, to quash the charge sheet in S.C.No.53 of 2013, on the file of the Mahila Court, Coimbatore.

13. From the reading of the order made in CrI.O.P.No.18200 of 2013, dated 30.07.2014, it could be deduced that one of the contentions raised by the petitioner to quash the charge sheet was that the allegations do not prima facie make out offence punishable under Section 376 IPC and there are no medical evidence to prove the act of rape, on the prosecutrix. Perusal of the said order also shows that the petitioner has raised a ground that there was no presence of semen on the clothes seized and therefore, there was no supportive medical evidence, to proceed against the petitioner, under Section 376 IPC. While declining to accept the abovesaid submissions, for quashing the charge sheet, this Court, at Paragraphs 5 and 6, ordered as follows:

"5.However, this Court is of the view that there are enough allegations in the charge sheet and the same are sufficient enough to prima facie make out the offence against the petitioner. Insofar as the medical evidence is concerned, the Doctor who examined the second respondent, has not definitely stated that there was no act of rape committed on the second respondent. The report of the Doctor is only to the effect that the second respondent being married women the doctor was unable to give any opinion in this regard.

6.As rightly argued by the learned Additional Public Prosecutor, the occurrence allegedly happened during May 2008 and on 05.03.2012 at 12.00pm, whereas the complaint was given on the very next day i.e., on 06.03.2012, but the second respondent was subjected to medical examination only on 08.03.2012. The second respondent being a married women, there is no presence of semen on the clothes seized and the same cannot be a sole ground to negative the prosecution theory at threshold, the entire case is based on sufficient allegations and there are statement of the witnesses, the truth of the same remains to be proved during trial. It is too early stage to say that the prosecution case is lacking in evidence against the petitioner herein, as such, this Court finds no ground much less valid ground to quash the proceedings against the petitioner at this stage."

14. As per Section 375 I.P.C., a man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances, falling under, any of the six following descriptions, viz., (i) Against her will, (ii) Without her consent, (iii) With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt, (iv) With her consent, when the man knows that he is not her husband, and that her consent is given because she

believes that he is another man to whom she is or believes herself to be lawfully married, (v) With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent, and (vi) With or without her consent, when she is sixteen years of age.

15. After examining the witnesses, the prosecution has filed a final report, stating that taking advantage of the family situation and the plight of the prosecutrix and under threat of termination of employment, the petitioner has committed an offence, under Section 376 IPC., r/w. Section 4 of the Women Harassment Act. When the petition to quash the charge, by raising the above contentions, has been dismissed by this Court in Crl.O.P.No.18200 of 2013, dated 30.07.2014, for the reasons, stated supra, consequently, the prayer for alteration of charge made in C.M.P.No.512 of 2014 in S.C.No.53 of 2013, has been rightly negatived by the lower Court.

16. Evidence of the prosecution is yet to commence. Even on the earlier occasion, this Court in Crl.O.P.No.18200 of 2013, dated 30.07.2014, has observed that absence of presence of semen on the clothes seized, would not be the sole ground to negative the case of the prosecution. This Court has also observed that there are sufficient allegations in the statement of the witnesses and truth of the same, would be proved only during trial.

17. All the grounds raised by the petitioner, have already been considered by this Court, while declining to quash the charge. By filing the present petition to alter the charge, the petitioner has only attempted to achieve, what he has failed to achieve in the quash petition. Merely because, the Code of Criminal Procedure, provides for alteration of a charge, it does not mean that the petitioner can file petitions, one after another, on the same cause of action, with the sole objective of getting himself relieved of the offence, for which, he is charged. सत्यमेव जयते

18. Power exercised by the High Court, under Section 482 of the Code, is extraordinary. On the facts of this case, when exercising the said powers, this Court had already rejected the case of the petitioner, for the reasons extracted, taking advantage of Section 216 Cr.P.C., alteration has been sought for and that the order, rejecting the same, is impugned in the revisional jurisdiction. Course adopted by the petitioner cannot be countenanced.

19. When this Court exercising the powers, under Section 482 of the Code, has rejected the case of the petitioner, by observing that there is sufficient evidence to proceed against him, under Section 376 I.P.C., on the same set of facts, the revisional Court,

exercising powers, under Sections 397 and 401 Cr.P.C., cannot hold otherwise. In the given case, if that is done, it would be nothing but a review of an earlier order, passed under Section 482 Cr.P.C.

20. The present Criminal Revision Case is a second round of litigation on the same set of facts. The only additional oral submission is that the procedure under Section 209 has not been followed. There is no plea in C.M.P.No.512 of 2014 in S.C.No.53 of 2013, nor any ground is raised in the memorandum of grounds of revision. However, perusal of the materials on record, it is evident that while filing a final report, the Inspector of Police, All Women Police Station, has proposed to examine 20 witnesses and mark 10 documents, including the copy of the charge sheet. As rightly observed by the Court below, there is no case for alteration of charge.

21. In the result, the Criminal Revision Case is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judge, Mahila Court,
Coimbatore.

2. The Inspector of Police,
All Women Police Station,
Gandhipuram Central,
Coimbatore City.

3. The Public Prosecutor,
High Court, Madras.

1 cc to Mr. C.Deivasigamani, Advocate, SR.No.10877

Criminal Revision Case No.131 of 2015

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