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Crl.O.P.No.21456 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.21456 of 2016 and
Crl.MP.No.11082 of 2019

1.Hariharan
2.Sumathi
3.V.Nagarajan

... Petitioners/A1 to 3

Vs.

1.State rep. By the Inspector of Police,
All Women Police Station,
Triplicane,
Chennai District
crime No.2 of 2019
2.Revathi

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the crime No.2 of 2019 pending on the file of the All Women Police Station, Triplicane, Chennai and to quash the same by allowing this criminal original petition.

For Petitioners : Mr.M.Guruprasad

For Respondents
For R1 : Mr.A.Gopinath,
Government Advocate(Crl.side)

ORDER



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This criminal original petition has been filed to quash the FIR registered in crime No.2 of 2019 on the file of the first respondent registered for the offences under Sections 417, 376 and 506(i) of IPC.

2. The second respondent/victim lodged complaint alleging that she used to visit her grand mother's house. The first petitioner stayed at Murugappa Street and used to follow her and continuously expressed his love affair towards the victim. Though initially the victim refused his offer, thereafter, she accepted his love and he promised to marry her. On the pretext of marriage on 14.02.2019, he had physical relationship with the second respondent, that too on compulsion. In the meanwhile, the parents of the victim lodged complaint for girl missing. Once again, the victim lodged another complaint dated 17.02.2019 before the W2 All Women Police Station, Anna Salai. While conducting enquiry, the petitioners demanded huge dowry from the victim for the marriage. When it was refused by the victim and her family members, the petitioners threatened her with dire consequences and they also abused her with caste name. Hence, the first respondent registered the FIR for the offence under Sections 417, 376 and 506(i) of IPC.



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3. The learned counsel for the petitioners would submit that there were two earlier complaints before the FIR. The victim is aged about more than 20 years and she knows the consequences of physical relationship. Therefore, she voluntarily consented for physical relationship with the first petitioner and no offence is made out under Section 417 of IPC. He further submitted that as far as the second and third petitioners are concerned, they are parents of the first accused and they are nothing to do with the offences under Sections 417 or 376 of IPC. That apart, the offence under Section 417 is not at all made out since in order to attract the said offence, whoever, by deceiving any person, fraudulently or dishonestly induced the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'. Therefore, no ingredients are satisfied with the allegations in the FIR. That apart, the victim girl consented for physical relationship and as such offence under Section 376 also is not made out.

4. Heard, the learned counsel appearing on either side.



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5. On perusal of records, revealed that there are three accused in which the petitioners are arrayed as A1 to A3. The first accused fell in love with the victim and in the pretext of marriage, on compulsion, he had physical relationship with the victim. Immediately, the parents of the victim lodged complaint. However, no FIR was registered. Therefore, the victim was constrained to file another complaint before the first respondent and the same has been registered in crime No.2 of 2019 for the offence under Sections 417, 376 and 506(i) of IPC. On reading of FIR, there are specific allegations as against the petitioners to attract the offences under Sections 417, 376, 506(i) of IPC. Though no offence is made out as against the second and third petitioners under Sections 417 and 376 of IPC, the other offence under Section 506(i) of IPC is clearly made out. That apart, FIR is not an encyclopedia and it has to be investigated in depth to unearth the truth. Therefore, FIR cannot be quashed on its threshold.

6. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.,*** as follows:-



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"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.



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9. *Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."*

7. The above judgment is squarely applicable to the case on hand. Therefore, this Court cannot conduct a mini trial to go into all the charges levelled against the petitioners. At the stage of FIR, while exercising the powers under Section 482 Cr.P.C., this Court is not required to conduct investigation or trial. This is not the stage where the prosecution / investigation agency is/are required to prove the charges. The allegations are required to be investigated



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during the investigation and on the basis of the evidence, the investigation agency could file charge sheet. Therefore, this Court has got very limited jurisdiction and is required to consider whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not. Further, whether FIR is malicious or not is not required to be considered at this stage.

8. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, considering the crime is of the year 2019, the first respondent is directed to complete the investigation in Crime No.2 of 2019 and file final report within a period of twelve weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Inspector of Police,
All Women Police Station,
Triplicane, Chennai
2.The Public Prosecutor,
High Court of Madras

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