

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM

THE HONOURABLE MS.JUSTICE R. MALA

CRL.O.P.No.4187 of 2016

and

CrI.M.P.No.2163 of 2016

K.C.Anuranjith .. Petitioner/Accused
.. Vs ..

1. State of Tamil Nadu,
Represented by,
The Inspector of Police,
All Women Police Station (East),
Coimbatore. ... Respondent/Complainant

2. G.V.Shubhasakthi ... Respondent/De facto complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records and quash the charge sheet pending committal in P.R.C.No.9 of 2015 on the file of the learned Judicial Magistrate, Additional Mahila Court, Coimbatore, so as to secure the ends of justice.

For Petitioner : Mr.C.V.Kumar
For R-1 : Mr.C.Emalias
Additional Public Prosecutor

ORDER

The petitioner has come forward with this petition seeking to quash the proceedings in P.R.C.No.9 of 2015 pending on the file of the learned Judicial Magistrate, Additional Mahila Court, Coimbatore, for the offences punishable under Sections 376, 417 and 493 IPC.

2. Learned counsel for the petitioner submitted that the de facto complainant is a post graduate student and she had love affair with the petitioner. On 04.10.2013 at 12.30 p.m., in the absence of the parents of the de facto complainant, the petitioner/accused was having sexual intercourse with her. Further, the learned counsel for the petitioner has drawn the attention of this Court through the statement of the de facto complainant/victim girl recorded under Section 161 of Cr.P.C. and submitted that the de facto complainant, in her statement, had admitted that she had love affair with the petitioner and

therefore, ingredients of offences neither under Section 376 of IPC nor under Sections 417 and 493 of IPC are not made out.

3. Learned counsel for the petitioner relied upon the decisions of the Hon'ble Apex Court reported in [i] 2003 (4) SCC page 46 (Uday Vs. State of Karnataka); [ii] 2005 (1) SCC page 88 (Deelip Singh Alias Dilip Kumar Vs. State of Bihar); [iii] 2007 (7) SCC page 413 (Pradeep Kumar @ Pradeep Kumar Verma Vs. State of Bihar and another); [iv] 2011 (4) Scale page 224 (K.P.Thimmappa Gowda Vs. State of Karnataka); [v] 2013 (7) SCC page 675 (Deepak Gulati Vs. State of Haryana) and [vi] 2013 (9) SCC page 113 (Kaini Rajan Vs. State of Kerala) and submitted that the de facto complainant is aged 27 years old and she had lover affair with the petitioner and the ingredients of the offence under Section 376 of IPC are not made out. So, the ratio laid down by the Hon'ble Apex Court in the above decisions is clearly applicable to the facts of the present case and therefore, the learned counsel prayed to quash the proceedings by applying the same ratio. The learned counsel for the petitioner has also relied upon the decision of the Gujarath High Court in Criminal Misc. Application (For Quashing & Set Aside FIR/Order) No.15688 of 2014.

4. At the time of admission, without issuing notice to the respondents, the arguments of the petitioner were heard.

5. On a perusal of the records, it is seen that the petitioner is from Kerala and he was working as Armed Reserved police. The de facto complainant is M.Sc. IT student. Both the petitioner and the de facto complainant were fell in love. The petitioner has given promise to the de facto complainant to marry her and had sexual intercourse with her but subsequently, the petitioner has refused to marry her. Hence, complaint has been given by the de facto complainant. Based on the complaint given by the de facto complainant, a case has been registered by the Palakkad Town Police in Crime No.5 of 2014 for an offence under Section 376 IPC and subsequently, the said case was transferred to the first respondent herein viz., All Women Police Station (East), Coimbatore, and the first respondent police has registered a case on 05.02.2015 in Crime No.16 of 2014. During the investigation, the first respondent police altered the provision and filed the final report for the offences punishable under Sections 376, 417 and 493 of IPC and which was taken on file by the learned Judicial Magistrate, Additional Mahila Court, Coimbatore, in P.R.C.No.9 of 2015. Now, this Court has to consider whether it is a fit case for quashing the criminal proceedings. Even though the petitioner had given promise to the de facto complainant to marry her and on the basis of the said promise, the petitioner was having physical relationship with the de facto complainant, subsequently, the petitioner has refused to marry her and hence, the complaint has been given. Further, in the statement recorded under Section 161 of Cr.P.C., the de facto

complainant had stated that the petitioner demanded money and 200 sovereigns of jewels for marrying her.

6. The case of the petitioner is that based on the consent given by the de facto complainant only, the petitioner and the de facto complainant had physical relationship. As per Section 91 of IPC, the question as to whether the consent has been given under fear or misconception has to be decided only at the time of trial. The decisions relied upon by the learned counsel for the petitioner have to be relied only in appeal stage, after letting oral and documentary evidence. So, I am of the view that it is premature to quash the proceedings under Section 376 of IPC without letting oral and documentary evidence. For the offences under Sections 417 and 493 of IPC are concerned, the petitioner has given a false promise to marry the de facto complainant but subsequently, he refused to marry the de facto complainant. So, from the statement of the de facto complainant recorded under Section 161 of Cr.P.C. itself, prima facie the ingredients of the offences under Sections 417 and 493 of IPC are made out. But in the quash petition, it is not the duty of the Court to consider whether it is a fit case for conviction instead of whether any prima facie case has been made out for framing of charges alone can be considered. The statement of the de facto complainant recorded under Section 161 of Cr.P.C. itself is sufficient to frame charges against the petitioner. Further, in the decisions relied upon by the learned counsel for the petitioner, it was stated that Section 376 of IPC is not made out, since the victim girls are major and they consented for sexual intercourse. Furthermore, in all the cases, during trial, the accused were convicted and in the Apex Court, they were acquitted stating that the victim girls in all the cases are major and they consented for sexual intercourse on accepting the promise made by the accused. Hence, I am of the view that the above citations relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case.

7. In the decision of the Gujarat High Court relied upon by the learned counsel for the petitioner, FIR has been filed only for the offence punishable under Section 376 IPC. But in the present case, even though the case has been registered for the offence under Section 376 of IPC, after investigation, charge sheet has been filed not only for the offence under Section 376 IPC but also for the offences under Sections 417 and 493 of IPC. In such circumstances, I am of the view that the decision of Gujarat High Court is also not applicable to the facts of the present case, since on a perusal of 161 statement of the de facto complainant, prima facie, the ingredients of the offences under Sections 376, 417 and 493 of IPC are made out. Hence, I am of the view that it is not a fit case for quashing the criminal proceedings pending against the petitioner and therefore, this Criminal Original Petition is dismissed as devoid of merits. The learned Judicial

Magistrate, Additional Mahila Court, Coimbatore, is directed to commit the case within a period of one month from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The Judicial Magistrate,
Additional Mahila Court,
Coimbatore.
 2. The Inspector of Police,
All Women Police Station (East),
Coimbatore.
 3. The Public Prosecutor,
High Court, Madras.
- + 1 cc to MR.C.V. Kumar, Advocate Sr.15865

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SR(CO)
EU 29.03.16

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