



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P.(MD) No.12705 of 2016

WEB COPY

Moorthi

... Petitioner/Sole Accused

-vs-

1. State represented by
The Inspector of Police,
All Women Police Station,
Kamuthi, Ramanathapuram District.
(Crime No.9/2016)

... 1st Respondent/Complainant

2. Kanagavalli

... 2nd Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the entire records relating to the FIR in Crime No.9 of 2016 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.M.S.Jeyakarthik

For R1 : Mr.A.P.Balasubramani
Govt. Advocate (Crl.Side)

For R2 : Mr.A.Karthik

ORDER

Alleging that, case registered against the petitioner is out of baseless apprehension that the petitioner would fly to Singapore without marrying the victim girl, and that the case is totally false and therefore, the case registered against the petitioner is liable to be quashed, this petition has been filed.

2. It is seen that a case in Crime No.9 of 2016 for the alleged offences under Sections 417 and 376 IPC on the file of the 1st respondent police, has been registered against the petitioner/accused.

Gist of the complaint:

3. In the complaint, it is alleged that the petitioner and the victim girl had been in love with each other for five years, that the petitioner had been working in Singapore for sometime, that on the promise of marriage, he had sexual intercourse with the victim and the last intercourse was on 26.06.2016, that the unattended phone call gave a signal to the 2nd respondent that the petition may cheat her and that on 28.06.2016, the petitioner openly told her that he would not marry her.

3.1. Based on this complaint, the case in Crime No.9 of 2016 came to be registered.

4. When the matter is taken up for hearing, the petitioner/Accused and the second respondent, appeared in person and their identifications were confirmed by this Court, in addition to the confirmation of the identity of the parties by the learned Government Advocate (Crl.Side) through the respondent police.



5. Learned counsel appearing for the parties filed a joint memo of compromise dated 18.07.2016, duly stating that since the parties have arrived at an amicable settlement by marrying each other, the second respondent wanted to to withdraw the case in Crime No.9 of 2016 pending on the file of the first respondent and therefore, the case must be quashed.

6. Perusal of the FIR would go to show the petitioner herein had sexual relationship with the defacto complainant, without her consent and knowledge and on the false promise of marrying her.

6.1. On enquiry with the defacto complainant, she has stated that her date of birth is 15.04.1994 (as per 10th mark sheet) and the date of birth of her husband is 05.03.1994 (as per Voter's ID); that unfortunately she was compelled by her parents and circumstances to prefer a false complaint, which again was triggered by some apprehension entertained by her parents that the petitioner is not likely to marry her; that both the petitioner and the defacto complainant loved each other and continue to love each other, which fructified in their marriage on 25.03.2016 and the same has also been registered with the Sub Registrar, Paramakudi in Sl.No.156 of 2016 dated 14.07.2016 and therefore, she wants the case against her husband to be quashed.

7. Forcible sexual intercourse under the circumstances stated under Section 375 IPC is considered, not only a crime against the person of a woman, but it is considered as a crime against the entire society and therefore, normally, those offences are not permitted to be compounded. But here is the case where no offence of forcible sexual intercourse under the stated circumstances under Section 375 IPC has been made out. The alleged sexual intercourse had taken place neither against her will nor without her consent nor when she was below the statutory age prescribed under Section 375 IPC. The circumstances under which this incident is said to have taken place do not show that her consent has been obtained by putting her in fear of death or hurt, or her consent could have been obtained under any invalidating circumstances.

8. From the totality of the circumstances that is,

- a) the duration of the relationship between the petitioner and the 2nd respondent;
 - b) the financial status of families of both sides;
 - c) the physical health condition of the petitioner's father;
 - d) the petitioner having been travelling between Indian and Singapore in connection with his employment;
 - e) the non disclosure of the relationship between the 2nd respondent and the petitioner by the 2nd respondent to her parents,
- all cumulatively put together have led the parties to this situation.

9. The petitioner's father is a paralytic patient. The 2nd respondent's parents earn their livelihood only by their coolie work. By borrowing money for exorbitant interest, the petitioner had gone to Singapore, in order to earn money to give treatment to his father. Under the stated circumstances, it is alleged that neither they were able to marry nor they were able to wait. Forced by the circumstances, the 2nd respondent is stated to have preferred this complaint. The circumstances



did not indicate any guilty intention on the part of the petitioner to cheat the 2nd respondent. The circumstances under which the sexual intercourse had taken place did not make it an offence under Section 375 IPC. Under such circumstances, continuance of proceedings would amount to judicial separation of married couple. Thus, the plea of the petitioner/accused that he is not guilty of the offence is found to be true. Continuance of proceedings would not be in the ends of justice and thus, it is ordered to be quashed.

10. In the result, this Criminal Original Petition is allowed and the entire proceedings in Crime No.9 of 2016 dated 28.06.2016 on the file of the 1st respondent police in respect of the petitioner/accused are hereby quashed.

Sd/
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To:

1. The Inspector of Police,
All Women Police Station,
Kamuthi, Ramanathapuram District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.M.S.Jeyakarthik, Advocate in SR.No.39214
+2ccs to M/S.M.S.Jeyakarthik, Advocate in SR.No.39376

Cr1.O.P. (MD) No.12705 of 2016
25.07.2016

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