

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Cr1.R.C.No.1359 of 2015

1. Azhagappan
 2. Namachivayam
 3. Govindammal
- ... Petitioners/2 to 4 Accused

Vs

1. State Rep. By
Inspector of Police,
A.W.P.S.Ulundurpet
Crime No.20/2014

2. Iyyanar
- ... Respondents

Prayer:- This Criminal revision petition is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order dated 01.10.2015 passed in Cr.M.P.No.124 of 2015 in Spl.S.C.No.18/2014 on the file of learned Sessions Judge, Fast Track Mahila Court, Villupuram.

For Petitioners : Mrs.S.R.Sumathy
For Respondents : Mr.R.Ravichandran
Govt. Advocate (Cr1 side) for

R1

O R D E R

Challenging the order dated 01.10.2015 passed by the learned Sessions Judge, Fast Track Mahila Court, Villupuram in Cr.M.P.No.124 of 2015 in Spl.S.C.No.18/2014 this revision has been filed.

2. Petitioners are A2 to A4 in Spl.S.C.No.18/2014 on the file of the learned Sessions Judge, Mahalir Neethi Mandram, (Fast Track Mahila Court), Villupuram. There are totally four accused. A1 stood charged for offences under Section 448, 506 (i) IPC r/w Section 4 of Protection of Children from Sexual Offences Act 2012 and A2 & A4 were charged for offences under Section 294(b), 354, 511, 506(ii) IPC & 4 of WH Act 1998 and A3 charged for offences under Section 294(b), 506(ii) IPC. The petitioner filed a petition to discharge them and the trial Court dismissed the same. Challenging the order the present revision is filed.

3. The case of the prosecution is as follows:-

The de-facto complainant is a victim girl in this case. Both the defacto complainant and A1 are residing at Mannarkudi Nagar, Ulundurpet taluk and they loved each other. On 23.03.2014 at about 9:00 p.m when the de-facto complainant was alone at her home, A1 trespassed into the house of the de-facto complainant and forcibly had sexual intercourse with her under the pretext that he would marry her. Thereafter, when the de-facto complainant was on her way to her agricultural field, A1 followed her and dragged her in to a sugar cane field, again forcibly raped her and the de-facto complainant became pregnant. When the de-facto informed the same to A1 he assured that he would marry her after getting the consent of his parents. However, A1 forced the de-facto complainant to terminate the pregnancy and also threatened her with dire consequence if the de-facto complainant does not do so. The doctor who examined the de-facto complainant refused to terminate the pregnancy. On 22.09.2014, the de-facto complainant along with her relatives went to the house of the accused and asked A1 to marry her but A2, A3 and A4 abused her. Hence the de-facto complainant laid a complaint before the respondent police and after investigation, final report has been filed by the respondent police for the above said offences against A1 to A4. Thereafter the Court below framed charges and to discharge them the petitioner filed the petition, Court below dismissed the same. Challenging the order of the trial Court, the present revision has been filed.

4. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal Side) appearing for first respondent.

5. It is worthwhile to notice a decision of the Supreme Court in the case of Sheoraj Singh Ahlawat and another Vs State of Uttar Pradesh and another reported in 2013 (II) Supreme Court Cases 476 held as follows:-

" While framing charges, Court is required to evaluate materials and documents on record to decide whether facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the Court is not required to go deep into the probative value of materials on record. It needs to evaluate whether there is a ground for presuming that accused had committed offence. But it should not evaluate sufficiency of evidence to convict accused. Even if there is a grave suspicion against the accused and it is not properly explained or court feels that accused might have committed offence, then framing of charges against the accused is justified. It is only for conviction of accused that materials must indicate that

accused had committed offence but for framing of charges if materials indicate that accused might have committed offence, then framing of charge is proper. Materials brought on by prosecution must be believed to be true and their probative value cannot be decided at this stage. The accused entitled to urge his contentions only on materials submitted by prosecution. He is not entitled to produce any material at this stage and the court is not required to consider any such material, if submitted. Whether the prima facie case made out depends upon facts and circumstances of each case. If two views are possible and materials indicate mere suspicion, not being grave suspicion, against accused then he may be discharged. The Court has to consider broad probabilities of case, total effect of evidence and documents produced before it. The court should not act as mouthpiece of prosecution and it is impermissible to have roving enquiry at the stage of framing of charge".

6. Keeping the above principle in mind let us consider the instant case. It is the specific case of the de-facto complainant that A1 promised to marry her and under that pretext he had sexual intercourse and she became pregnant, but later A1 refused to marry her and forced her to terminate the pregnancy. Then the de-facto complainant and her family members approached the brother and parents of A1 to get her married to A1. They not only refused but also abused them. A2, A3 & A4 outraged her modesty. Hence the de-facto complainant gave a complaint to the respondent/police.

7. The learned counsel for the petitioner submitted that the de-facto complainant, neither in the complaint, nor in the statement given before the Judicial Magistrate under Section 164 Cr.P.C, implicated A2 to A4 and only during the investigation, she had given a statement under Section 161 Cr.P.C, wherein she has implicated A2 to A4. Apart from that, there are material contradictions in the said statement given by the witnesses under Section 161 Cr.P.C. Hence, it is clearly indicated that A2 to A4 have been falsely implicated in this case. It is settled law that the FIR is not the substantive piece of evidence and it can be used only to contradict the version of the author under Section 145 of the Indian Evidence Act. Likewise, the statement given under Section 164 Cr.P.C. also is not a substantive piece of evidence and it can be used to corroborate or contradict the statement of the witnesses. Apart from that, the de-facto complainant has also given reasons in her statement under Section 161 Cr.P.C. for not implicating A2 to A4 while giving the complaint.

8. In the above circumstances, when the materials are available, if at all any contradiction in the statement given by the witnesses, it cannot be a ground for discharge and even

if there is any contradiction in the statement given by the witness is no ground to discharge the accused. As it is settled law that at the time of framing charge, the Court cannot go deep into the probative value of the materials available on record and the Court has to see that whether there are any materials available on record to constitute a prima-facie case against the accused.

9. Considering all the above materials, the Court below dismissed the application filed by the petitioner and I find no illegality or irregularity in the order passed by the Court below. I find no merits in this revision. Accordingly this Criminal Revision Petition is dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Session Judge, Fast Track Mahila Court, Villupuram.

2. The Inspector of Police,
A.W.P.S.Ulundurpet.

+1 cc to Mrs.S.Sumathy,advocate,sr.22391.

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krd 3/5

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