

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.27830 of 2011

1.C.Vasanthkumar
2.R.Chithambaram

... Petitioners

vs.

1. Deputy Superintendent of Police,
Velur Sub Division,
Namakkal District.
(Crime No.344 of 2011)

2. M.Maheshwari

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in S.C.No.93 of 2011, on the file of Principal District and Sessions Judge, Namakkal and quash the same.

For Petitioners : Mr.R.Gandhi, Senior counsel
for Mr.R.G.Narendhiran and P.Kannankumar

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)

No Appearance (for R2)

ORDER

This Criminal Original Petition is filed by the petitioners herein, to call for the records in S.C.No.93 of 2011, on the file of Principal District and Sessions Judge, Namakkal and quash the same.

2. I heard Mr.R.Gandhi, learned senior counsel appearing for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent.

3. The learned senior counsel appearing for the petitioners has advanced the arguments as follows:-

(i) The second respondent herein has lodged a complaint with the first respondent alleging that first petitioner herein, while he was studying B.E. In P.G.P. College, Namakkal, stayed

in a rented house nearby her school. At that time, the first petitioner enticed her and posturing that he would marry her, by taking this as an advantage, the first petitioner exploited her sexually.

(ii) The second respondent further alleged that on 06.03.2011 at about 11.30 a.m. the first petitioner took the second respondent with him to a park situated in the check dam at Jederpalayam and exploited her sexually. Further the second respondent alleged that the first petitioner had threatened the second respondent and also evaded the marriage.

(iii) Based on the second respondent complaint, the first respondent registered an F.I.R. on 08.07.2011 in Crime No.344 of 2011 for the offence took place on 06.03.2011 under Sections 366, 376(1), 417, 294(b) I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 1998 read with Section 3 (2)(v) and 3(1)(x) of the Scheduled Caste and Scheduled Tribe Act 1989.

4. The first respondent conducted investigation and filed charge sheet before the District Munsif-cum-Judicial Magistrate, Paramathi, Namakkal District and the same was taken on file and numbered as P.R.C.No.19 of 2011. Thereafter, the same was committed to the Principal District and Sessions Judge, Namakkal and numbered as S.C.No.93 of 2011 and the same is pending. Challenging the said charge sheet, the present Criminal Original Petition has been filed for quash the charge sheet in S.C.No.93 of 2011, on the file of the Principal District and Sessions Judge, Namakkal.

5. It is the case of the petitioner is that as per the F.I.R. the incident took place on 06.03.2011 at about 11.30 a.m., but F.I.R. registered only on 08.07.2011, the delay of more than four months not properly explained. The second respondent admitted in the F.I.R., that the incident took place four months prior to the registration of F.I.R., this would vitiate the entire proceedings based on the F.I.R. The delay of more than four months not properly explained by the second respondent.

6. The second respondent admitted that the incident took place on 06.03.2011 at about 11.30 a.m. and the first petitioner took her to a park situated inside the check dam in a motor cycle and obtained two entry tickets for both and one separate entry ticket for two wheeler. The numbers are 36210, 36211 and 36212. The Public Information Officer, Public Works Department, Namakkal, under the Right to Information Act, replied that the entry ticket numbers 36210, 36211 and 36212 are sold on 05.03.2011, but the defacto complainant with ulterior motive had

given false complaints against the petitioners. Further, the Public Information Officer admitted that on 06.03.2011 there was no sale of Two Wheeler entry tickets. This would destroy the prosecution theory, that the first petitioner took the complainant in a motor cycle to the park situated in the check dam.

7. The second respondent/defacto complainant alleged that the first petitioner sexually exploited her under a tree which is less than fifty feet away from main park and closer to children's play area. On 06.03.2011 as per the Public Information Officer's reply 456 persons have visited the park and all the staff members were also present. The alleged incident took place at about 11.30 a.m. in day time, it is unbelievable that in a public park in the presence of visitors / general public / staffs, the alleged offence took place. The complainant can very well cry for help and the general public would have noticed the same and rescued the second respondent.

8. The second petitioner is no way connected to the alleged incident; he was added as an accused, since he is the father of the first petitioner and the second petitioner is an agriculturist and residing fifty kilo meters away from the scene of occurrence. Further, in any angle, he has not involved in this case and there is no material produced by the prosecution connecting the second petitioner with the crime.

9. The reply received from the Public Information Officer dated 17.09.2011, will falsify the prosecution case, since the date of occurrence not tally with the F.I.R. version and also with the entry ticket dates. The case has been lodged by the second respondent to harass the petitioners and to get an undue advantage. The Right to Information Act reply would damage the prosecution version that the first petitioner took the complaint in a motorcycle and committed the rape, inside the public park.

10. The petitioners further submitted that the action of the 2nd respondent would be abuse of process of Court and allowing the same to continue, would result in injustice and prayed to quash the S.C.No.93 of 2011 on the file of the Principal District and Sessions Judge, Namakkal.

11. The learned Government Advocate vehemently contended that the case can be tried by the trial Court and the above discrepancies will not damage the prosecution theory. Further, argued that the case has to be tried only by the trial Court, after evidence and exhibits were marked, the trial Court can reach a conclusion. The petition filed under Section 482 of Cr.P.C. Is not maintainable and the evidence before the trial Court will alone be proved the offence alleged to committed by

the petitioners / accused. Therefore, the learned Government Advocate prayed to dismiss the above quash petition.

12. There was no representation for the 2nd respondent, but her name is printed in the cause list.

13. I heard Mr.R.Gandhi, learned senior counsel for Mr.R.G.Narendhiran appearing for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Crl.side), appearing for the 1st respondent and perused all the relevant records.

14. The learned senior counsel placed reliance on the following decisions:-

1. State of Haryana and others v. Bhajanlal and others reported in AIR 1992 Supreme Court 604 (1).
2. Inder Mohan Goswani and another v. State of Uttaranchal and others reported in AIR 2008 SC 251.
3. Uma Shankar Gopalika v. State of Bihar and another reported in 2005 (10) SCC 336.
4. Kishan Singh (Dead) through L.R.s v. Guralpal Singh and others reported in AIR 2010 SC 3624.
5. Rajiv Thapar and others v. Madan Lal Kapoor reported in 2013 (3) SCC 330.

15. The issue involved / point for determination is, whether this Court has to exercise, the inherent powers conferred under Section 482 of Code of Criminal Procedure and whether, the above facts and circumstances of the case, warrants interference by this Court, in a matter pending with the criminal trial Court.

16. The original records were produced and on perusal of the same reveals, that as per the prosecution version, the offence happened on 06.03.2011 at about 11.30 a.m., in the public park, situated in the Jedarpalayam dam. But, the First Information Report was registered on 08.07.2011. The delay of four months and two days has not been properly explained by the second respondent/defacto complainant in the First Information Report and also in the 161 statement given under Criminal Procedure Code, recorded by the Investigation Officer. Further, the tickets issued for entry into park contains the numbers 36210, 36211 and 36212, but the Public Information Officer, Public Works Department, Namakkal, in his letter No.106 of 2011, has admitted that all the entry tickets were sold on 05.03.2011 only. There is no sale of two wheeler entry tickets on the alleged offence date i.e. on 06.03.2011. This would reveal that on the particular date, the second respondent has not gone over there in a two wheeler with the first petitioner as per the prosecution version.

17. This Court also noticed the fact that the second petitioner, is no way involved in this case and only because, he is father of the first petitioner, he was added as an accused in this case. The date of occurrence is contradictory in nature and the petitioners have proved that the offence was not took place as per the second respondent F.I.R. version.

18. The Hon'ble Supreme Court of India in AIR 2010 SC 3624 Kishan Singh (Dead) through L.R.s v. Gurpal Singh and others has held that "in cases where there is delay in lodging an F.I.R., the Court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal" to the prosecution case.

19. The Hon'ble Supreme Court of India also held in the case of Rajiv Thapar and others v. Madan Lal Kapoor reported in 2013 (3) SCC 330 has held that

"the High Court can quash the Criminal Proceedings pending before the trial Court, when the High Court satisfies, that

(a) the material produced or relied on by the accused leads to conclusion that their defence, is based on sound, reasonable, and indubitable facts;

(b) rules out and displaces, assertions contained in charges levelled against the accused without necessity of recording any evidence;

(c) should not have been refuted, or alternatively, cannot be justifiably refuted, being of sterling and impeccable quality i.e. a reason man should be persuaded to dismiss and condemn actual basis of accusations as false;

(d) whether proceeding with the trial would result in an abuse of process of the Court and would not serve the ends of justice."

20. The Hon'ble Supreme Court of India, in the decisions of Inder Mohan Goswani and another v. State of Uttaranchal and others reported in AIR 2008 SC 251 and the judgment reported in AIR 1992 Supreme Court 604 (1), (State of Haryana and others v. Bhajanlal and others) and also the judgment reported in 2005 (10) SCC 336 (Uma Shankar Gopalika v. State of Bihar and another), wherein, it has held that "the High Courts can exercise, the inherent powers under Section 482 Cr.P.C., when the High Court, comes to the irrevocable conclusion that to prevent abuse of process of Court and to do real and substantial justice, the inherent powers to be exercised sparingly, carefully and with great caution". On the appreciation of the above facts and circumstances of the case and also the material available, this Court, comes to the conclusion, that the inherent powers has to be exercised in this case. Otherwise,

the petitioners would be harassed further. There is no evidence available in this case, to proceed further against the petitioners. Further, the impugned complaint is brimming with improbabilities and devised with an ulterior intention to thwart the petitioners and there is no ground to proceed the criminal proceedings further.

21. From the available materials, it is made clear that the prosecution case is absolutely baseless. In this case, in the year 2011, the criminal proceedings against the petitioners were already stayed by this Court and absolutely there is no material available on the record for allowing the prosecution to go further. The offence set out against the petitioners in the charge sheet are not made out. Thus, in my considered opinion and also as per the law laid down by the Hon'ble Supreme Court stated above, the present case is liable to be quashed.

22. In the result, the Criminal Original Petition is allowed and the case in S.C.No.93 of 2011, on the file of the Principal District and Sessions Judge, Namakkal is quashed.

23. Accordingly, this Criminal Original Petition is allowed. There is no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The Principal District and Sessions Judge,
Namakkal.

2. The Deputy Superintendent of Police,
Velur Sub Division,
Namakkal District.

+1cc to Mr.R.G.Narendhiran, Advocate, S.R.No.20271

+1cc to Mr.P.Kannankumar, Advocate, S.R.No.20426

Cr1.O.P No.27830 of 2011

CS/07/07/17