

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.17992 of 2010
and
M.P.Nos.1 and 2 of 2010**

P.Murugappan

... Petitioner

vs.

1.State rep. by
Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District.

2.K.Thillai Nayaki

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and to quash the final report filed in C.C.No.118 of 2010 (pending trial) before the learned Judicial Magistrate-II, Ulundurpet.

For Petitioner : Mr.R.C.Paul Kanagaraj

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

No Appearance (for R2)

JUDGMENT

The petitioner has filed this Criminal Original Petition praying to quash the charge sheet filed in C.C.No.118 of 2010 before the learned Judicial Magistrate II, Ulundurpet for an offence under Sections 417 and 493 of IPC.

2.The case of the prosecution is that one Thiallainayaki, D/o.Kannan of Iruvelpatty Colony was fallen in love with the petitioner herein who was working in abroad and used to come to the village once in 6 months. At that time the above said Thiallainayaki, the defacto complainant was studying B.A., 1st year at Govt. Arts College, Villupuram. During their meeting, the petitioner had sexual intercourse with the 2nd respondent herein by promising to marry her after her studies were over. Thereafter, the petitioner herein by throwing his promise on air, arranged for marriage with some other lady and the same was arranged by the parents of the petitioner herein.

3.On coming to know about the marriage arrangement of the petitioner, the 2nd respondent lodged a complaint before the 1st respondent police. Originally the said complaint was registered for the

offence under Sections 417 and 376 of IPC and after investigation, the offences were altered and final report was filed for the offences under Sections 417 and 376 of IPC challenging the same, the petitioner is before this Court by way of this quash petition.

4.I heard Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent and entire material records are perused. There is no representation for the 2nd respondent.

5.The learned counsel for the petitioner advanced his arguments that except the defacto complainant no other witnesses supported the case of the prosecution which itself would falsify the case of the 2nd respondent herein. The learned counsel further submitted that a reading of Section 161 (3) Cr.P.C. statement of the defacto complainant does not disclose the offence under Section 493 of IPC. The allegation made by the defacto complainant to attract the offence under Section 417 is very vague.

6.Whereas the learned Government Advocate (Criminal Side) would contend that all the statements of the witnesses recorded under Section

161 (3) of Cr.P.C. would clearly attract the commission of offence by the petitioner herein for an offence punishable under Sections 417 and 493 of IPC. From the statements recorded under Section 161 (3) of Cr.P.C. this Court could see that the accused promised the de-facto complainant to marry her and in the plea she had consented for sexual intercourse on many times with the accused. But he failed to keep up the promise and his parents arranged for marriage with some other girl. All the statements of the witnesses have corroborated each other with regard to the above said facts. Therefore there is no ground to quash the charge sheet laid against the petitioner herein by the 1st respondent police. The commission of offence by the petitioner herein would come into the light only after the completion of the trial. Hence there is no scope for quashment of the above proceedings and the same is liable to be dismissed.

7.I have carefully gone through the entire charge sheet including the statements of the witnesses recorded under Section 161 (3) Cr.P.C. From a close reading of the statements recorded by the prosecutrix, it is easily discernible that only with her consent every sexual intercourse has been done.

8.The only point urged on the side of the prosecution is that since

<http://www.judis.nic.in> the petitioner herein/accused has given promise of marrying the 2nd

respondent herein had sexual intercourse, due to misconception, the 2nd respondent herein has given her consent for having sexual intercourse.

9.As per the dictum of the Hon'ble Supreme Court, there must be consistent evidence for the purpose of showing that from very inception, the petitioner herein has never really intended to marry the 2nd respondent herein. In the instant case, such aspect is totally absent. The specific evidence of the prosecutrix is that during the visit of the petitioner herein to his village from foreign country on several occasions, both of them have had sexual intercourse. Since on the side of the prosecution absolutely there is no evidence for the purpose of showing that from inception of episode, the petitioner/accused has never intended to marry the 2nd respondent, this Court cannot come to a conclusion that only under misconception, the 2nd respondent herein has given her consent for having sexual intercourse with the first accused. Since the decisions referred to supra are identical to the facts of the present case, this Court cannot take a different view. Under the said circumstances, the argument advanced by the learned counsel for the petitioner/ accused is having merit.

10.Now let me take to the judgment relied on by the petitioner

reported in **2014 Cri.L.J 1437** of this Court, wherein this Court in paragraphs 8 and 9 held as follows:

“8. It is the argument of the learned counsel for the petitioner that since the consent was obtained by false representations and later he refused, the 1st accused is liable to be punished under sections 417, I P C. The learned counsel for the respondent would rely upon the oral testimony of P.W.1. The cross examination would show that P.W.1 has got knowledge about the consequence of earlier intercourse before marriage. Her cross examination goes thus:

(Vernacular matter omitted Ed.)

9. The above said part of evidence would indicate that she is well aware of the consequences which would arise if sexual intercourse takes place before marriage. Learned counsel for the respondent taking advantage of this part of evidence cited a decision of Honourable Supreme Court reported in (2003) 4 SCC 46: (AIR 2003 SC 1639) (Uday v. State of Karnataka) wherein Their Lordships have observed as follows:-

“The consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to

sexual intercourse with a person with whom she is deeply in love on promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the code, in the instant case; the prosecutrix was grown-up girl studying in a collage. She was deeply love with the appellant, she was, however, aware of the facts that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequence of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of cast considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not

consequence of any misconception of fact”

11. Apart from that the learned counsel for the petitioner relied on a judgment of the Hon'ble Supreme Court reported in **2003 (4) SCC 46** wherein it is held as follows “The prosecutrix and the appellant were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 O'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what way, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but she also desired it.

circumstances of the present case on hand, this Court is of the view that none of the witnesses examined by the prosecution have spoken that by making false promise the petitioner had sexual intercourse with the de-facto complainant. Further as rightly held in the above said judgments the defacto complainant is well aware of the consequences which would arise if sexual intercourse takes place before marriage. At the time of the commission of offence the de-facto complainant was aged about 18 or 19 years old as she was studying 1st year B.A., and therefore she know very well about the consequence of sexual intercourse before her marriage. Further, admittedly the de-facto complainant was deeply in love with the petitioner herein and the sexual intercourse also with the consent of the 2nd respondent herein. All these circumstances lead me to the conclusion that she freely, voluntarily and consciously consented to have sexual intercourse with the petitioner, and her consent was not in consequence of any misconception of fact.

13. In view of the foregoing discussion, this would be a fit case for exercise of powers under Section 482 Cr.P.C. In the considered opinion of this Court, the prosecution has not made out a case against the petitioner herein to attract the offence under Sections 417 and 493 of IPC. Therefore the ordeal of trial by the lower Court is vexatious one and waste of judicial time and the same cannot be allowed to stand. Hence this Court finds that

it is a fit case to quash the charge sheet filed against the petitioner herein.

14.In fine, the Criminal Original Petition is allowed and the proceeding in C.C.No.118 of 2010 before the learned Judicial Magistrate No.II, Ulundurpet, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

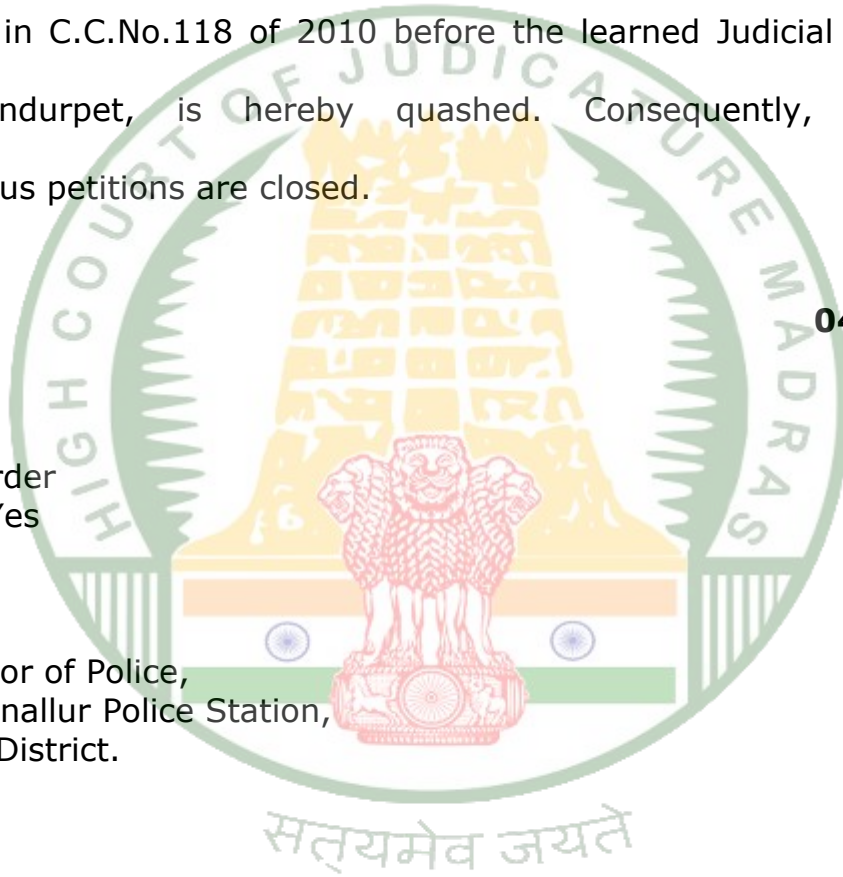
04.10.2017

vs

Speaking order
Index : Yes

To

The Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District.



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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.17992 of 2010
and
M.P.Nos.1 and 2 of 2010**

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