



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.07.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C (MD) .No.868 of 2011

and

M.P (MD) No.1 of 2011

WEB COPY

Seenivasan

... Petitioner/Accused
-Vs-

1.The State, through
The Inspector of Police,
AWPS, Ambasamudram,
Tirunelveli District.
(In Crime No.10 of 2007)

....Respondent/Complainant

2.Pushpalatha

....2nd Respondents

(R2 impleaded as per order passed by this Court in
M.P(MD)No.2 of 2011 in CRL.R.C (MD)No.868/2011,
dated 20.12.2011)

Prayer : Criminal Revision Case filed under Section 397 r/w 401 and 482 of the Code of Criminal Procedure, praying this Court to call for the records from the Judicial Magistrate, Ambasamudram, Tirunelveli District and to set aside the order passed in Cr.M.P.No.4066 of 2011 in C.C.No.8 of 2008, dated 09.09.2011 whereby the learned Judicial Magistrate, Ambasamudram has allowed the Petition filed by the respondent under Section 323 of Cr.P.C. To commit the case to the file of Sessions Judge, Tirunelveli.

For Petitioner : M/s.AR.Jeyarhuthran

For Respondent-1 : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

O R D E R

Challenging the order of committal to Sessions Court on the application filed by the prosecution under Section 323 of Cr.P.C., the present revision has been filed.

2.The brief facts leading to the file of the revision is as follows:

<https://hcservices.ecourts.gov.in/hcservices/> Based on a complaint given by P.W.1/second respondent, a case has been registered against the Petitioner herein for the



offence under Sections 376, 417 and 420 IPC and after investigation, charge-sheet has been filed against the Petitioner for the offence under Sections 417 and 420 of IPC before the learned Judicial Magistrate, Ambasamudram, Tirunelveli District. The learned Judicial Magistrate taken cognizance of the offence and had taken it on file in C.C.No.117 of 2009. After commencement of trial and on examination of P.W.1/victim, as an offence under Section 376 Cr.P.C is also made out, the prosecution has failed an application under Section 323 of Cr.P.C to commit the case to Sessions Court, as the offence under Section 376 is triable only by a Sessions Court. The court below after considering the same, allowed the application and committed the case to the Sessions Court at Tirunelveli. Now challenging the same, the present revision is filed.

3.I have heard the submissions made by Mr.AR.Jeyarhuthran, learned counsel for the Petitioner and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor, appearing for the first respondent/State and considered the materials available on record.

4.The learned counsel for the Petitioner submitted that even from the evidence of P.W.1, it is seen that only with the consent of P.W.1, the occurrence has taken place and it cannot be considered as a rape and hence the offence under Section 376 I.P.C does not attract, and hence the court below has wrongly committed the case to Sessions Judge, Tirunelveli as from the evidence available, no offence is made out to attract the offence under Section 376 of I.P.C.

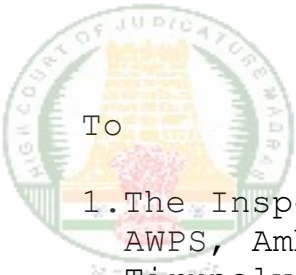
5.Per contra, the learned Additional Public Prosecutor appearing for the first respondent would submit that from the evidence of P.W.1, it is clear that the petitioner only on a false promise and not with the consent of P.W.1 committed rape and at any rate, this issue has to be decided only during trial whether the consent of P.W.1 is a valid consent or not.

6. I have considered the rival submissions, from the materials available before this Court and considering the evidence of P.W.1/victim, it could be seen that a prima facie case is made out to attract the offence under Section 376 IPC, which is triable by a Sessions Court. Hence in the above circumstances, the Court below has committed the case to Sessions Court invoking the power under Section 323 of Cr.P.C., and I find no illegality or irregularity in the order of the Court below warranting interference by this Court and thus the revision fails.

6.Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is dismissed.

Sd /-

ASSISTANT REGISTRAR(CS-II)



To

1.The Inspector of Police,
AWPS, Ambasamudram,
Tirunelveli District.

2.The Judicial Magistrate,
Ambasamudram,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC TO MR.A.R.JEYA RHUTHRAN, ADVOCATE, SR NO.64644

vsn

MAS/MR-KKR/SAR3:18.07.2017:3P-5C

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and
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