

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.920 of 2013 and
M.P.No.1 of 2013

Shankar

...Petitioner/Accused

Vs.

1. Selvi ...1st Respondent/Defacto Complainant

2. The Inspector of Police
K6, T.P. Chattiram Police Station,
Chennai. ...2nd Respondent/Complainant

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order dated 19.04.2013 made in C.C. No.9288 of 1999 by the learned V Metropolitan Magistrate, Chennai, altering the charge from Sections 417 and 420 of Indian Penal Code to Section 376 of Indian Penal Code.

For Petitioners :Mr.John Satyan for
Mr.Durai Kannan
For Respondent -1:Mr.C.H.Vinobha Gandhi
For Respondent -2:Mr.R.Ravichandran
Govt. Advocate (Crl. Side)

ORDER

This Criminal Revision has been filed by the petitioner against the order dated 19.04.2013 passed by the learned V Metropolitan Magistrate, Chennai in C.C. No.9288 of 1999 altering the charge from Sections 417 and 420 of Indian Penal Code to Section 376 of Indian Penal Code.

2 The first respondent is a victim women. Her father had filed a complaint before the respondent Police making allegations against the petitioner that the petitioner/accused had promised to marry his daughter and had sexual intercourse with her, but subsequently failed to keep up his promise. The Inspector of Police, after investigation filed a charge sheet before the learned V Metropolitan Magistrate, Chennai, for the

offences punishable under Sections 417 and 420 IPC, which was taken on file in C.C. No.9288 of 1999.

3 Before the trial Court, in order to prove case of prosecution, nine witnesses have been examined. At that time, the prosecutrix/victim women filed a miscellaneous petition before the Magistrate, seeking to alter the charges from Section 417 and 420 IPC to Section 376 IPC. The learned Magistrate, after giving due opportunity to both the parties, came to the conclusion that it is the fit case to alter the charge and hence allowed the application filed by 1st respondent/victim women, by an order dated 19.04.2013.

4 Aggrieved against the order dated 19.04.2013, the accused has preferred the present criminal revision before this Court.

5 The learned Counsel appearing for the petitioner submitted that there is no ingredient for the commission of alleged offence under Section 376 and the prosecution also, after investigation framed charges under Sections 417 and 420 IPC only. Further he submitted that the first respondent has no locus standi to prefer the petition for alteration of charge, when the State/2nd respondent herein was prosecuting the case. The first respondent/victim women, in chief examination, had clearly stated that the petitioner/accused had promised to marry her and after obtaining consent of the first respondent only the accused had sexual intercourse with her and she further stated that the petitioner/accused is a good person and their parents only misguided him, which clearly shows that the petitioner/accused had no intention to cheat her. The first respondent, being an adult, had given consent for sexual intercourse with the petitioner/accused and hence at any point of time, Section 376 will not attract. Furthermore, FIR is of the year 1999 and evidence commenced in the year 2002 itself and after the lapse of more than a decade, the first respondent had filed a petition, seeking to alter the charges, which itself cannot be entertained. The learned Magistrate failed to consider the above facts and erroneously allowed the petition and altered the charges, which warrants interference.

6 The learned Government Advocate (Crl.Side) appearing for the respondent Police submitted that the petitioner/accused had promised to marry the first respondent and had sexual intercourse with her and later, he did not keep up his promise. The first respondent/victim women, believing the words of the petitioner/accused and after obtaining promise from him to marry her, had given consent for sexual intercourse. Hence prima facie case has been made out to alter the charge under Section 376 of IPC and therefore the learned Magistrate had rightly

altered the charge under Section 376 IPC by invoking Section 216 of Cr.P.C., which does not warrants any interference of this Court.

7 Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

8 In this case, the first respondent/victim women had given evidence that the petitioner/accused had promised to marry her and therefore she had given consent for sexual intercourse, later he failed to keep up the promise and hence the learned Magistrate altered the charges under Section 376 of IPC. On reading of Section 216 of Cr.P.C, it is very celar that the court can alter the charge at any stage, if the court finds there is prima facie allegations to alter the charge. Admittedly, the present case is at the stage of examination of prosecution side witnesses. The learned Magistrate found that there is material available to alter the charge under Section 376 of IPC and hence allowed the petition, seeking alteration of charge. Mere altering the charge will certainly not cause any serious prejudice to the petitioner/accused and whatever the defence available to him can be established before the Court of Sessions. There is no perversity in the order passed by the learned Magistrate and there is no merit in the revision petition.

9 In the result, the criminal revision is dismissed. Consequently, connected miscellaneous petition is closed. The learned Magistrate is directed to commit the case to the Court of Sessions concerned and the Sessions Court is directed to take up the case on file and proceed the matter in accordance with law.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The V Metropolitan Magistrate, Egmore, Chennai.
2. The Public Prosecutor, High Court of Madras.

3. The Inspector of Police
K6, T.P. Chattiram Police Station, Chennai.

+1 CC to Mr. Durai Kannan, Advocate sr 70014.

+1 CC to M/s. C.H. Vinobha Gandhi, Advocate sr 69541.

Crl.R.C.920 of 2013
and
M.P.No.1 of 2013

VSNII (CO)
SP(24/07/2019)



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