

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.06.2018

PRONOUNCED ON: 14.06.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.14976 of 2018 & Crl.M.P. Nos.7554 and 7555 of 2018

Selvi ... Petitioner

vs.

1 State by
the Inspector of Police
All Women Police Station
Chidambaram
(Cr. No.1048 of 2013)

2 R. Neela ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records related to the case in S.C. No.21 of 2015 on the file of the Mahila Court, Cuddalore and quash the same as against the petitioner/accused no.2.

For petitioner Mr. A. Navaneethakrishnan
Sr. Counsel
for Mr. O.R. Mahesvaren

For R1 Mr. C. Raghavan
Govt. Advocate - Crl Side

ORDER

This Criminal Original Petition has been preferred seeking to call for the records related to the case in S.C. No.21 of 2015 on the file of the Mahila Court, Cuddalore and quash the same as against the petitioner/accused no.2.

2 For the sake of convenience, the parties, viz., (i) Neela, the second respondent, (ii) Selvi, the petitioner herein and (iii) Balaji, the first accused are referred to as the de facto complainant, A.2 and A.1 respectively.

3.1 On the complaint lodged by the de facto complainant, the first respondent police registered a case in Cr. No.1048 of 2013 on 06.12.2013 under Sections 354-A, 354-B and 354-C, 376 IPC and Sections 67 and 67-A of the Information Technology Act against A.1 and A.2.

3.2 During the course of investigation, the first respondent police filed an alteration report altering the penal sections to Sections 354-A, 354-B, 354-C and 376 IPC. After completing the investigation, the first respondent police filed charge sheet in P.R.C. No.17 of 2014 before the Judicial Magistrate No.II, Chidambaram against A.1 and A.2 for offences under Sections 354-A, 354-B, 354-C and 376 IPC.

3.3 On the final report in P.R.C. No.17 of 2014, the Judicial Magistrate No.II, Chidambaram took cognizance for the offences under Sections 354-A, 354-B, 354-C and 376 read with Section 34 IPC and issued process to the accused. The accused appeared before the Judicial Magistrate No.II, Chidambaram and were furnished with the copies of the final report and relied upon documents under Section 207 Cr.P.C.

3.4 Since the case was triable by the Court of Session, the Judicial Magistrate No.II, Chidambaram committed the case to the Court of Session. The Court of Session took the case on file in S.C. No.21 of 2015 and on the appearance of the accused, charges were framed on 17.03.2015. When questioned, both the accused pleaded "not guilty" of the charges. While so, A.2 has filed the present application under Section 482 Cr.P.C. for quashing the prosecution against her in S.C. No.21 of 2015.

4 Mr. A. Navaneethakrishnan, Senior Counsel for the accused made the following submissions:

i A.2 being a lady, cannot be charged for the offence of rape by A.1.

ii In the complaint given by the de facto complainant, she had stated that A.1 had taken nude photographs of her in his mobile phone and had posted the same in the social media, whereas, the police have recorded a further statement of the de facto complainant, wherein, she has stated that the nude pictures were not hosted in the social media and that she had exaggerated the incident.

iii The Committal Magistrate did not apply his mind while taking cognizance of the offences inasmuch as he has blindly taken cognizance of the offences mentioned in the final report and therefore, the entire prosecution stands vitiated.

iv The Court of Session, while framing charges, has included Section 109 IPC, for which, cognizance was not taken by the Committal Magistrate.

v The Sessions Court cannot take cognizance for the second time as per the judgment of the Supreme Court in Dharam Pal & Others vs. State of Haryana and another [(2004) 13 SCC 9].

vi There are no materials to show that A.2 had abetted the offence within the meaning of Section 107 IPC.

vii There was no eye witness to the incident.

5 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by Mr. A. Navaneethakrishnan.

6 This Court gave its anxious consideration to the rival submissions.

7 To appreciate Mr. Navaneethakrishnan's arguments, it may be necessary to state in detail, the allegations against the accused in the F.I.R. and charge sheet.

8.1 The de facto complainant who was aged about 43 years at the time of the incident was separated from her husband and was living with her two children in Mannargudi. She went to Chidambaram to admit her daughter in an Engineering College and there, she got acquainted with A.1. She wanted to relocate her residence from Mannargudi to Chidambaram, perhaps, to be proximate to the college where her daughter was studying. She was on the look out for a house for rent in Chidambaram and identified a house belonging to one Selvam. A.1 was running a photocopying shop in Chidambaram and A.2 was an employee under A.1 in the said shop. Since the de facto complainant did not know anyone in Chidambaram, she approached A.1 for help.

8.2 On 03.12.2012, around 11.15 a.m., the de facto complainant and Selvam, the house owner, met in A.1's photocopying shop and the de facto complainant handed over the advance amount to Selvam, after which, Selvam left. Thereafter, A.1 and A.2 closed the shop and stuffed a handkerchief into the mouth of the de facto complainant and undressed her. Thereafter, A.1 took nude photographs of the de facto complainant in his mobile phone and both A.1 and A.2 started threatening the de facto complainant that they would post the nude photographs in the internet. The threat continued to such an extent that A.1 started to sexually abuse the de facto complainant for over a period of time by brandishing the nude

photographs. Ultimately, a stage came when A.1 started eyeing the de facto complainant's daughter for satiating his carnal pleasure and at that juncture, the de facto complainant decided to break the silence and spill the beans to the police.

8.3 As stated above, on the complaint lodged by the de facto complainant, the police registered a case in Cr. No.1048 of 2013 on 06.02.2013 against A.1 and A.2. Of course, in the complaint, the de facto complainant has stated that A.1 had uploaded some of the nude photographs of her in the internet; however, there is a further statement of the de facto complainant in the case records to the effect that A.1 had not uploaded the nude photographs of the de facto complainant in the internet. It is worth mentioning at this juncture that the further statement of the de facto complainant does not say that no photographs were taken by A.1. It only states that nude photographs were not uploaded in the internet.

9 Coming to the first contention of Mr. A. Navaneethakrishnan that A.2 being a lady, cannot be charged for the offence of rape by A.1, the same requires to be stated only to be rejected, because, this argument is simply opposed to common sense and law. A woman can abet the commission of rape of another woman by a man. In this case, it is the specific allegation of the de facto complainant that A.1 and A.2 stuffed a handkerchief into her mouth and forcibly undressed her and took photographs and thereafter, using the nude photographs, A.1 forced himself on the de facto complainant. Thus, the overt act of A.2 will clearly fall within the meaning of clause (iii) of Section 107 IPC.

10 As regards the second contention relating to not posting the nude photographs in the internet, the same can be viewed in the following two ways.

i The police themselves could have written the further statement under Section 161(3) Cr.P.C. in order to cover up their failure to seize the mobile phone of A.1 or wade through the internet to download the photographs even before their removal by the accused.or

ii The de facto complainant would have believed honestly that A.1 had posted the nude photographs in the internet at the time of lodging the complaint and later, she would have given the further statement after ascertaining that the photographs were not posted in the internet. This, by itself, cannot lead to the conclusion that the entire case has been foisted on the accused. This would, in fact, show that the police have conducted a fair and unbiased investigation.

11 As regards the third ground, it is true that the Committal Magistrate had taken cognizance for the offences under Sections 354-A, 354-B, 354-C and 376 IPC read with Section 34 IPC. However, the case has been committed to the Court of Session and the Court of Session has framed the following charges against the accused.

Charge 1	Under Section 354-B against A.1 for forcibly removing the dress of the de facto complainant
Charge 2	Under Section 354-B and Section 109 IPC against A.2 for assisting A.1 in undressing the de facto complainant
Charge 3	Under Section 376(1) IPC against A.1
Charge 4	Under Section 376 read with Section 109 IPC against A.2

12 Both the accused were questioned about the charges in Tamil and they pleaded "not guilty" of the offences charged against them and therefore, it is too late in the day for the accused to complain that the Committal Magistrate had failed to take cognizance of some of the offences. The law does not require the Court of Session to frame charges only on the offences for which cognizance has been taken by the Committal Magistrate. In this case, the Sessions Judge has thoroughly read the final report and the Section 161 Cr.P.C. statements and has framed the charges correctly against A.1 and A.2 under Section 228 Cr.P.C.

13 Coming to the fourth ground, this Court is of the view that the Sessions Court was perfectly justified in charging A.2 for abetment of the offence by A.1 and this answers grounds (iv) and (v) urged by Mr.Navaneethakrishnan. To reiterate, the Court of Session has not taken second cognizance, but has framed appropriate charges under Section 228 Cr.P.C.

14 As regards the sixth ground, the complaint and the statement given by the de facto complainant clearly disclose the overt acts attributable to A.2, inasmuch as, A.2 was in the photocopying shop and had actively assisted A.1 in stuffing the handkerchief into the de facto complainant's mouth, undressing her and taking photographs of her.

15 Coming to the last ground urged by Mr.Navaneethakrishnan, had there been an eye witness to the

incident, this Court is sure that the incident itself would not have occurred because, unlike the Kauravas in the Mahabharata, seldom would anybody undress a lady and take photographs in public in the gaze of witnesses.

In the result, this Criminal Original Petition, which is devoid of any merit, stands dismissed. The Trial Court is directed to complete the trial within six months from the date of receipt of a copy of this order. The accused shall cross-examine the witnesses on the day they are examined in chief, as directed by the Supreme Court in Vinod Kumar vs. State of Punjab [(2015) 3 SCC 220]. If the accused adopt any dilatory tactics, they shall be remanded to custody in the light of the law laid down by the Supreme Court in State of Uttar Pradesh v. Shambunath Singh [JT 2001 (4) SC 319]. If the accused abscond, a fresh FIR can be registered against them under Section 229-A IPC.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad
To

- 1 The Inspector of Police
All Women Police Station
Chidambaram.
- 2 The Mahila Judge
Cuddalore.
- 3 The Public Prosecutor
High Court of Madras.
- 4 The Judicial Magistrate No.II,
Chidambaram.
- 5 The Chief Judicial Magistrate,
Cuddalore.

+1cc to Mr.A.Navaneethakrishnan, Advocate Sr.37421

CrI.O.P. No.14976 of 2018

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