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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2018

CORAM:
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
Crl.R.C.[MD] No.543 of 2018
and
Crl.M.P.(MD) No.7581 of 2018

Ashokumar : Appellant/Petitioner/Accused

vs.

The Inspector of Police,
All Women Police Station,
Manapparai,
Trichy District.
Crime No.13 of 2015 : Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned II Additional District Judge / Mahila Judge, Trichy in Crl.M.P.No.74 of 2018 in S.C.No.175 of 2017 dated 23.07.2018.

For Petitioner : Mr.N.Kamesh
For Respondent : Mr.A.Robinson
Government Advocate (Crl.Side)

ORDER

This criminal original petition has been filed aggrieved by the dismissal of the discharge petition filed by the petitioner in Crl.M.P.No.74 of 2018.

2.It is seen from records that the victim girl had given a complaint on 04.11.2015 to the respondent police to the effect that the petitioner expressed his willingness to marry the victim and after making such promise against her wishes, the petitioner had sexual intercourse with the victim on 28.09.2015. Thereafter, the victim along with her family members went and approached the petitioner asking him to marry the victim, but the petitioner refused to marry the victim girl. Therefore, the compliant was given on 04.11.2015 by the victim girl and based on the same, the respondent police have registered an FIR in Crime No.13 of 2015 against the petitioner for the offence under Sections 417, 376 and 294 (b) IPC.

3.After investigation, the respondent police have filed a final report against the petitioner for the offence under Sections 417, 376 and 294(b) IPC. Thereafter, the petitioner had filed a petition seeking for discharge on the ground that the allegation made in the

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final report and the statement given by the witnesses do not constitute the offence under Section 376 IPC. The Court below has dismissed the discharge petition filed by the petitioner by order dated 23.07.2018.

4.The learned counsel for the petitioner brought to the notice of this Court that the age of the victim was 27 years at the time of incident and the petitioner was 21 years. Therefore, the learned counsel would submit that there was a relationship between the parties, which had ended with a sexual intercourse between the petitioner and the victim girl.

5.The learned counsel for the petitioner also brought to the notice of this Court, the statement given by the victim girl to the police, wherein, the victim girl has categorically stated that the petitioner was present on the particular day with the victim girl till 04.00 p.m., in the evening and both of them came out of the house and they were also seen by one Krishnamoorthy, who is the cousin brother of the victim and when he questioned the victim girl, she herself has told him that she is having a love and affection with the petitioner. The learned counsel would therefore submit that there was a relationship between the petitioner and the victim girl and therefore it can never attract the provision of Section 376 IPC.

6.Per contra, the learned Government Advocate (Crl.Side) for the respondent would submit that on a prima facie reading of the final report and also the statement given by the witnesses before police, the offence under Section 417, 376 and 294 (b) IPC has been made out. Therefore, the Court below has rightly dismissed the discharge petition filed by the petitioner.

7.This Court has carefully considered the rival submission made on either side and also the material placed on record.

8.It is seen from records that the victim girl was aged about 27 years and the petitioner was 21 years when the alleged incident said to have been taken place. The incident is said to have been taken place on 28.09.2015. However, the complaint was lodged only on 04.11.2015 after efforts made to get the victim girl to marry the petitioner failed. The case is now at the stage of framing charges. Section 228 Cr.P.C., gives an exclusive power to the Sessions Court to frame charges based on the final report and also the materials placed by the prosecution along with the final report.

9.The argument of the learned counsel that no case has been made out under Section 376 IPC based on the materials placed by the prosecution, shall also be considered by the Court below at the time of framing the charges. The Court below has to independently apply its mind on the materials placed before it at the time of framing of charges. The framing of charge is a judicial act, where the Court

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is supposed to apply its mind on the materials placed on record. Therefore, this Court does not want to exercise its revisional jurisdiction at this stage since the Court below is given ample powers to consider all the materials while framing the charges under Section 228 Cr.P.C.,

10.In view of the facts and circumstances of the case, the Court below is directed to complete the entire proceedings within a period of six months from the date of receipt of a copy of this order and report compliance before this Court after completion of the proceedings.

11.This criminal revision case is disposed of with the above direction. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(ADI)

/True Copy/

Sub Assistant Registrar(CS-II)

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To

1.The II Additional District Judge
/ Mahila Judge,
Trichy.

2.The Inspector of Police,
All Women Police Station,
Manapparai,
Trichy District.

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

+1cc to Mr.N.Kamesh, Advocate in SR No.87266

Crl.R.C.[MD] No.543 of 2018

NM/SKN/SAR II/17.10.18/3P/5C

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