



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

CRL.O.P.[MD]No.4623 of 2019
and Crl.M.P. (MD)No.2832 of 2019

Rev.Fr.Joe Xavier @ Joseph Xavier : Petitioner/3rd Accused
Vs.

- 1.The State of Tamil Nadu,
Rep. By its Inspector of Police,
All Women Police Station,
4th Circle, Fort Police Station,
Trichirappalli. ..1st Respondent/Complainant
- 2.Florence Mary .. 2nd Respondent/Defacto
Complainant

PRAYER : This Petition has been filed under Section 482 Cr.P.C to call for the records in S.C No.101 of 2011 on the file of the Sessions Judge (Magila Court), Trichirappalli as against this petitioner and quash the same.

For Petitioner : Mr.Isaac Mohanlal, Senior Counsel
for M/s Isaac Chambers

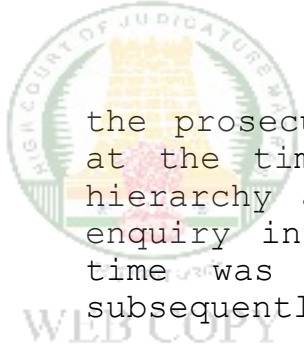
For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side)

For R2 : Mr.John Vincent

ORDER

The petitioner herein is arrayed as A3 in S.C.No.101 of 2011. The said case arises out of a complaint preferred by the second respondent, who at the relevant point in 2006 was a nun and she has alleged in her complaint that she was repeatedly raped by certain Father Rajarathinam arrayed as A1 in this case. The case has been charge sheeted, committed to sessions and the charges have been framed and now pending trial before the Mahila Court, Trichy. At this stage, the petitioner herein has come forward with the present petition for quashing the charges.

2. Mr.Isacc Mohanlal, learned senior counsel appearing for the petitioner argued that the only allegation against the petitioner is that after the repeated acts of alleged rape by the first accused,



the prosecutrix / second respondent approached the petitioner, who at the time was functioning as Advisor Provincial in the church hierarchy and he is said to have been present in the preliminary enquiry into the allegation made against A1, who at the relevant time was a Principal in a college run by the Jesuits and subsequently held out threat to the petitioner.

3. Before the Sessions Court, the petitioner faces trial for the charges under Sections 201 and 506(i) IPC r/w Section 34 IPC.

4. On reading the entire final report, which necessarily includes the statements of witnesses, including that of the prosecutrix, it is clear that the allegation of rape was directed only against the first accused and that itself has spread over a period of time.

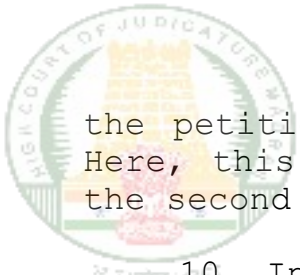
5. Even according to the statement of the second respondent, she was once conceived in one of those repeated acts of force-sex and the same was aborted, and the only allegation, where she brings in the present petitioner is that on 29.09.2010, she made a complaint to the petitioner in his capacity as Advisor Provincial, and further makes a statement that the Provincial on enquiry disclosed that the first accused had denied the allegations made against him. The threat part of the second respondent's allegation is said to have been taken place subsequent to this enquiry.

6. Heard the learned Government Advocate (Crl.side) appearing for the first respondent and the learned counsel for the second respondent.

7. The second respondent has also filed what is styled as a counter affidavit. On a reading of the same, it gives the wholesome concession to all the accused, including the first accused, who she had earlier alleged as having raped her, or supported the acts of rape, as the case may be.

8. A reading of the entire statement of the witnesses including that of the prosecutrix, one fact that stands out is that nowhere there is an allegation that the petitioner had either harboured any criminal, or had participated in any of the acts constituting rape at any point of time, nor had he suppressed any information deliberately to the Investigating Agency. Possibly if the Investigating Agency has treated him as a witness he might have parted with any information. But, when the Investigating Agency has treated him as an accused, necessarily the petitioner is Constitutionally protected not to make any self incriminating statement to the Investigating Agency. Therefore, this Court considers no offence under Section 201 IPC has made out.

9. Turning to the second part, namely, offence under Section 506(i) IPC, while it may appear artificial in the context of the case, yet inasmuch as charges are framed, in normal circumstances,



the petitioner will be required to undergo trial for the offence. Here, this Court chooses to rely on the counter affidavit filed by the second respondent.

10. In this affidavit, the second respondent makes a statement that her complaint itself is false, and was wrongly made, and that she would be withdrawing the complaint. Where the offence of which the first accused is accused of, is not only a cognizable offence, but also a crime of heinous variety, it would not be appropriate to accept the statement of the prosecutrix entirely. Suffice to say for the present, if only it were a false case, the prosecutrix is only making mockery of the legal process and judicial system of the country.

11. Legal system of the country is not a play thing for her to settle the personal score if only the Court were pressed her present statement made in her counter affidavit.

12. Having stated thus, so far as the charge under Section 506 (i) IPC against the petitioner is concerned, the Court chooses to rely on the affidavit of the second respondent for the limited purpose of treating the said offence merely in nature of private offence. Therefore, when the prosecutrix makes statement that she does not want to proceed with the case, it is only considered for the limited purpose that she is not going to proceed with the case for the offence under Section 506(i) IPC. (As indicated earlier, this Court does not want to stretch it for the offence of 376, for which the first accused now faces trial.) Necessarily, charges for offence under Section 506(i) IPC framed against the petitioner should also now go.

13. In conclusion, this Court holds that the charges framed against the present petitioner for the offences under Section 201 and 506(i) IPC r/w 34 IPC is quashed and this criminal original petition is allowed. Bail condition imposed on the petitioner by order passed in Cr1.O.P(MD)No.12125 of 2010 stand cancelled and passport be returned to the petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Sessions Judge, Mahila Court,
Trichy.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Inspector of Police,
All Women Police Station,
4th Circle, Fort Police Station,
Trichirappalli.

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

+1 CC to M/s.A.JOHN VINCENT, Advocate (SR-59399[F] dated 05/04/2019

+3 CC to M/s.ISAAC CHAMBERS, Advocate (SR-59485[F] dated 08/04/2019

CRL.O.P.[MD]No.4623 of 2019
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05.04.2019

CM

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