



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL. R.C.[MD]No. 249 of 2014

WEB COPY

Rajangam

:Petitioner

Vs.

1. The State Rep by

The Deputy Superintendent of Police,
Samayanallur Sub-Division,
Madurai

2. Meenakshi

:Respondents

(2nd respondent is impleaded as per the order of this Court dated 17.12.2014 and made in M.P.(MD) No. 2 of 2014 in CRL. R.C. (MD) No.249 of 2014).

PRAYER: Criminal Revision Case is filed under Section 397 & 401 (1) of the Criminal Procedure Code, to call for the records and set aside the order dated 11.03.2014 in Special Sessions Case No.52 of 2008, on the file of the III Additional District Sessions Court (PCR), Madurai, made in invoking 357(A)(3) of Cr.P.C., to pay a sum of Rs.1,00,000/-within 3 months, as compensation to the child Rithika, without prejudice to her civil right to proceed against the accused.

For Appellant : Mr.N. Anandakumar

For Respondents : Mr.Shanmuga Raja Sethupathi
For Mr.A.Rahul

ORDER

This Criminal Revision Case has been filed, to call for the records and set aside the order, dated 11.03.2014 in Special Sessions Case No.52 of 2008, on the file of the III Additional District Sessions Court (PCR), Madurai, made in invoking 357(A)(3) of Cr.P.C., to pay a sum of Rs.1,00,000/-within 3-months, as compensation to the child Rithika, without prejudice to her civil right to proceed against the accused.

2. The case of the prosecution is that the revision petitioner/accused maintained a close affinity with the victim/P.W1/defacto complainant for more than six years under false promise to marry her. In view of the said false promise, the victim/p.w.1 had closely moved with the accused as a lover. Whileso



about two years back prior to 12.11.2006, the revision petitioner/accused clandestinely married with another woman without the knowledge of the victim/P.W.1. When the victim/P.W.1 latter came to know and questioned the same, the revision petitioner/accused replied to the victim that he could not marry her, since she belongs to Pallar community. Even then the revision petitioner promised to maintain the victim. In the course of their association, under false promise to marry her, he had carnal copulation with the victim/P.W.1 and due to which the victim conceived. Thereafter, on the request of the revision petitioner/accused she aborted foetus. Subsequent to that in view of the continuance of relationship, again victim/P.W.1 conceived, but, again the revision petitioner pressurized the victim denied the same on the health ground. Whiles, on 12.11.2006, at about 10.00 p.m., the revision petitioner/accused compelled the victim/P.W.1 to have sexual relationship. Thereafter, again the revision petitioner/accused repeated the request with the victim/P.W.1 to abort foetus and the same ended in wordy quarrel.

3. Based on a complaint given by the victim/P.W.1, the Deputy Superintendent of Police, Samayanallur Sub-Division had laid final report against the revision petitioner/accused in Crime No.162 of 2006 of Palamedu Police Station, for the offences punishable under Sections 417, 376, 323 and 506(i) of the I.P.C., and Section 3(1) (xii) of SC/ST (PA) Act, 1989 and the same has been taken on file in P.R.C. No.30 of 2007. Since the offences are exclusively triable by the Court of Sessions and hence, the case in P.R.C. No.30 of 2007 was committed before the learned III Additional District Judge (PCR), Madurai and the same has been taken on file as Special Sessions Case No.52 of 2008.

4. After full-fledged trial, the learned III Additional District Judge (PCR), Madurai has acquitted the revision petitioner/accused under Section 235(1) Cr.P.C. and further by invoking Section 357(A)(3) Cr.P.C., the revision petitioner/accused was ordered to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) within three (3) months, as compensation to the child Rithika, with out prejudice to her civil right to proceed against the revision petitioner/accused, in default to pay the above said compensation amount, within the above period, the revision petitioner/accused was directed to undergo three (3) months simple imprisonment. Aggrieved over the same, the revision petitioner/accused has filed the present Criminal Revision Case.

5. Heard the learned counsel appearing for the revision petitioner and learned counsel appearing for the respondents and perused the materials available on record.

6. The learned counsel for the petitioner submitted that the order of the learned III Additional District Sessions Judge (PCR), Madurai is contrary to the proposition of law, weight of evidence and probabilities of the case. He further submitted that though the paternity of the child is not proved by the prosecution through



scientific evidence and relied the birth certificate of the child Rithika.

7. It is an admitted fact that the revision petitioner herein not challenged the paternity of the child, but, challenged the compensation amount only.

8. The specific contention of the P.W.1 is that only due to the physical relationship with P.W.1 she begotten a child by name Rithika as proved under Ex.P.16 Birth certificate. The revision petitioner admitted the birth of Rithika, but denied the paternity. But, the evidence given by the investigating officer P.W.18, proved that the revision petitioner and the victim were lived like husband and wife for the past seven (7) years and his evidence indirectly project the relationship between the revision petitioner and victim.

9. As per Section 114(1) Evidence Act Illustration (e) the Ex.P.16 attached with the presumption that the Government and official functions are being regularly performed. In this case, it has been proved from the evidence of P.W.1 that the revision petitioner is the father of the child "RITHIKA" and this was also corroborated from the documentary evidence namely, the birth certificate of the child Ex.P.16. Therefore, prosecution has proved that the revision petitioner is the father of the child 'RITHIKA'.

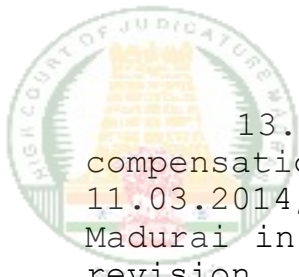
10. Though the P.W.1 says that she is a victim, really speaking by the act and conduct of the revision petitioner and the victim, the child 'RITHIKA' is the real victim. Therefore, the child has every right to proceed against the revision petitioner under Civil law. For the no wrong on the part of the child, she is now in the earth with social stigma. When the child grow she would develop some sort of frustration and that she has to carry such ordeal for all her remaining life due to the unmindful conduct of the P.W.1 and the revision petitioner.

11. The word 'victim' defined in Sec 2 (wa) of Cr.P.C. is, as follows:-

" Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir".

Here the act of the revision petitioner, child 'RITHIKA' suffered loss and injury as discussed above. Therefore, this Court is very confident that the child 'RITHIKA' is the victim, under the definition of Section 2 (WA) Cr.P.C.

12. In view of the above, the revision petitioner is liable to pay compensation to the victim as determined infra to the child. Under these circumstances, there is no merit and also no reason to interfere that the compensation order passed by the Trial Court under Section 357(A) (3) of the Cr.P.C.



13. Hence, in the interest of justice, the order of compensation under Section 357(A)(3) of the Cr.P.C., dated 11.03.2014, passed by the III Additional District Judge (PCR), Madurai in Special Sessions Case No.52 of 2008 is confirmed and the revision petitioner/accused is directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) as compensation to the child 'RITHIKA', without prejudice to her civil right to proceed against the revision petitioner/accused, within a period of One (1) month from the date of receipt of copy of this order, in default to pay the above compensation amount within the said period, the revision petitioner/accused has to undergo three (3) months simple imprisonment.

14. In view of the above discussion, the Criminal Revision Case is disposed of.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The III Additional District Judge (PCR),
Madurai.
2. The Deputy Superintendent of Police,
Samayanallur Sub-Division,
Madurai
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to Mr.A.RAHUL, Advocate SR-43319.
+1 CC to Mr.N.ANANDA KUMAR, Advocate SR-43333.

Cr1.R.C. [MD] No.249 of 2014
28.01.2019

CS: (19/06/2019) 4P 8C