



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.6070 of 2019

and

Crl.M.P. (MD)Nos.3927 & 3928 of 2018

M.Muthukumar ... Petitioner/Sole Accused
Vs

1. The Inspector of Police,
All Women Police Station,
Sivagangai.
(Crime No.4 of 2017) ... Respondent/Complainant

2.Devi ... Respondent/Defacto Complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the charge sheet for offences under Sections 417, 376 (I), and 506 (I) of the Indian Penal Code in S.C.No.33/2019 on the file of the learned Fast Track Mahila Court (District and Sessions Court), Sivagangai and quash the charge sheet and consequential all further proceedings.

For Petitioner : Mr.A.Ramesh Senior Counsel for
D.Shanmugaraja Sethupathi
For R-1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)
For R-2 : Mr.R.Karunanithi

ORDER

This petition has been filed to quash the proceedings in S.C.No.33/2019 on the file of the learned Fast Track Mahila Court (District and Sessions Court), Sivagangai, for the offence under Sections 417, 376 and 506 (ii) IPC.

2. The learned Senior Counsel appearing for the petitioner submits that the petitioner is a sole accused. The case of the prosecution is that the second respondent is known to the petitioner through her father. Her father is running a petty shop, which was rented out by the petitioner to her father. On 22.09.2015, the petitioner called the second respondent over phone and instructed to come to his house. At the request of the petitioner, the second respondent entered into the house of the petitioner and immediately, he tied Thali to her. Thereafter, on 23.09.2015, she was asked to come to his house to remove the Thali. When she went to his house, the petitioner had a sexual intercourse with her forcibly by making her to believe as if the petitioner is her husband. Thereafter, the



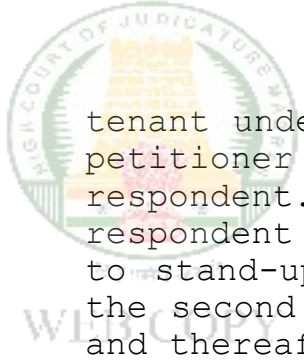
petitioner arranged rental house for her and she was living in that separate house. On 24.06.2016, she also delivered a female child. Subsequently, she was subjected to criminal intimidation by the petitioner and others.

3. The learned Senior Counsel further submitted that no offences are made out as against the petitioner even as per the prosecution. In the absence of any material to attract any of the offence, the entire proceedings are liable to be quashed. Insofar as the offence under Section 417 of IPC is concerned, there must be fraudulently and dishonestly inducing a person by deceiving him to deliver any property. The essential ingredients required for attracting the penal provision are 'deception' and 'dishonest intention', that too, right from the inception. Except mention of this offence in the charge sheet, there is no averment about the deceit, cheating or fraudulent intention of the petitioner constituting the offence. He further submitted that the defacto complainant fully aware that the petitioner is a married man and had children. Thereafter, she also lived with the petitioner. There is no question of inducing or making false representation to do any act which would harm the defacto complainant.

4. He further submitted that insofar as the offence under Section 376 of IPC is concerned, the petitioner tied Thali on 22.09.2015 and had physical relationship with her on the pretext of wedded husband. Thereafter, the petitioner had taken a house for rental and lived together as a husband and wife and also they had physical relationship on many occasions. The defacto complainant also gave a female child on 24.06.2016. Thereafter, they lived with a child. After two years from the date of alleged occurrence i.e., 23.09.2015, the defacto complainant lodged a complaint as against the petitioner on 08.03.2017, alleging that she was threatened by some unknown persons at the instance of the petitioner. In fact, at the time of lodging the complaint, she was pregnant. Thereafter, she also delivered a second child through the petitioner on 17.10.2017. It shows that the *mala fied* intention of the defacto complainant only to threaten the petitioner and to accede her terms.

5. He further submitted that insofar as the other offence under Section 506 (i) IPC is concerned, the petitioner alleged to have threatened her. Mere threatening is not sufficient, without having threatened to do any act which he is not legally bound to do, for attracting the offence. In the case on hand, absolutely, there is no allegations to show that the defacto complainant was threatened by the petitioner to omit to do any act. Therefore, the entire charges are vitiated and it is liable to be quashed. He also relied upon the judgment in the case of **Pramod Suryabhan Pawar Vs. The State of Maharashtra & another** passed in **Crl.A.No.1165/2019 @ SLP (crl) 2712 of of 2019**.

6. Per contra, the learned counsel appearing for the second respondent would submit that the father of the petitioner was a



tenant under the petitioner. When he was not there in the shop, the petitioner used to come to his shop and acquaintance with the second respondent. While doing so, on 22.09.2015, he phoned to the second respondent and told that he fell down in the bathroom and not able to stand-up. Therefore, he requested to take the shop's key. When the second respondent went to his house, immediately, he tied Thali and thereafter, he threatened her with dire consequence. Thereafter, on next day, he compelled her to have physical relationship and raped her. Due to the rape committed by the petitioner, she delivered a female child. Thereafter, he threatened the second respondent with dire consequence by engaging some hooligans.

7. He further submitted that there are incriminating materials to attract the offence under Sections 417, 378 and 506 (ii) IPC as against the petitioner and as such, the entire proceedings cannot be quashed at this stage. The points raised by the petitioner have to be considered only during the trial before the Trial Court. Therefore, he prayed for dismissal of the quash petition.

8. The learned Government Advocate (Crl.Side) appearing for the first respondent would submit that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.04 of 2017 for the offence under Sections 417, 378 and 506 (ii) IPC. After completion of the investigation, the respondent police filed a final report before the learned Judicial Magistrate, No.I, Sivagangai and the same was subsequently committed to the learned Fast Track Mahila Court (District and Sessions Court), Sivagangai, and taken cognizance in S.T.C.No.33 of 2019. The petitioner is a sole accused and the charges are that on 22.09.2015, he called the defacto complainant through phone with a false intention. When the defacto complainant went to the house of the petitioner, he tied Thali to her and threatened her to have sexual intercourse on compulsion. He committed rape on 23.09.2015 and as such, she also got pregnant and she delivered a girl baby and she was threatened by the petitioner and some others with dire consequence. Therefore, he sought for dismissal of the quash petition.

9. Heard the learned Senior Counsel appearing for the petitioner, the learned Government Advocate (Crl.Side) appearing for the first respondent and the learned counsel appearing for the second respondent.

10. The petitioner is a sole accused. He has been charged for the offence under Sections 417, 376 and 506 (ii) IPC and the same has been taken cognizance in S.T.C.No.33/2019 and it is pending for trial. The case of the prosecution is that on 22.09.2015, when the defacto complainant was called by the petitioner, she went to the house of the petitioner. Immediately, he tied Thali and told her to come on next day to remove the Thali. Believing his words uttered by the petitioner, again the second respondent went to his house and on that day, she was raped by the petitioner. Thereafter, she delivered a female baby in the year 2017. She was threatened by the



petitioner with dire consequence. Therefore, she lodged a complaint on 23.02.2017.

11. The petitioner is the owner of the building in which, one shop was rented out to the father of the second respondent. Therefore, the second respondent was well acquaintance with the petitioner. She also knew about the family of the petitioner that he is a married man and he is the father of two children. Knowing these facts fully, the second respondent went to the house of the petitioner, where the petitioner tied Thali (Mangalyasuthra). On next day, 23.09.2015, again she was called by the petitioner to remove the Thali. Believing his words, again the second respondent went to his house and the petitioner committed rapped on her. No prudent woman would go again to the house of the accused, when he tied Thali against her Will and compulsion to remove the same. It is also seen that on 22.09.2015 or 23.09.2015, no complaint was lodged by the second respondent. After the alleged occurrence, the petitioner and the second respondent lived together in a rental house. Thereafter, they had physical relationship and the second respondent has also delivered a female baby on 24.11.2016. It is seen from the statements recorded from the second respondent under Section 161 of Cr.P.C., that she got pregnant and as such, on the advice of her relatives, she lived with the petitioner, though he is a married man. It is further stated that they lived together in a separate house. Some days before the complaint, she was threatened by two persons as per the direction of the petitioner. As such, to take appropriate action as against the petitioner, she lodged a complaint. In her statement, she further stated that only based on the fear, the petitioner abandoned her. Therefore, she foisted a false case as against the petitioner.

12. The alleged occurrence took place on 22.09.2015 and the complaint lodged on 23.03.2017. After the period of two years from the date of occurrence, the complaint was lodged by the second respondent and there was no explanation for the delay in lodging the complaint. In fact, after the alleged occurrence they lived together in a rented separate house and she also delivered a female baby. Again she got pregnant and while she was pregnant, the complaint was lodged on 23.02.2017. Thereafter, she delivered a second child on 17.10.2017. It proves that the second respondent and the petitioner continuously lived together. Admittedly, the second respondent is a well grown intellectual lady and she is not an ill-literate. Even after the complaint, she had continuous co-habitation with the petitioner on her consent and delivered the another child. At this juncture, the charge under rape cannot be sustained as against the petitioner. In this regard, the learned Senior Counsel relied upon the judgment in the case of **Uday Vs. Karnataka** reported in (2003) 4 SCC 46, which held as follows:-

"23. Keeping in view the approach that the Court must adopt in such case, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix



was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact."

13. The Hon'ble Supreme Court held that the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the accused. She also aware of the consequence of physical relationship. Further, she freely, voluntarily and consciously consented to have sexual intercourse with the accused and as such her consent was not in consequence of any misconception of fact.

14. In the case on hand, there was no complaint, on the date of occurrence, when, the petitioner tied Thali to the defacto complainant. Thereafter, they lived together in a rented separate house and continuously had sexual relationship. She also delivered a female child. While, she got second pregnancy, she lodged a complaint. Therefore, it is not amount to rape. The learned Senior Counsel relied upon the judgment in the case of **Prashant Bharti Vs. State (NCT of Delhi)** reported in **(2013) 9 Supreme Court Cases 293**, which held as follows:-

" 22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "CrPC") has been dealt with by this Court in *Rajiv Thapar V. Madan Lal Kapoor* wherein this Court inter alia held as under: (SCC pp.347-49, paras 29-30)

" 29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the process, or at the stage of committal, or even at the stage of framing of charge. These are all stages before



the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to herein above, would have far-reaching consequences, inasmuch as it would negate the prosecution's-complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It is should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should no have been refuted, or alternatively, cannot be justifiable refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."

15. The learned Senior Counsel relied upon another judgment in the case of **Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra & others** in **CrI.A.No.1143/2018 @ SLP (CrI) No.6532/2018**, which held as follows:-

"In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that the is a widow. IT was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that " as I was also a widow and I was also in need of a companion, I agreed to his



proposal and since then we were having love affair and accordingly, we started residing together. We used to reside sometimes at my home whereas some time at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the fact of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376 (2) (b) cannot be sustained."

16. He also further relied upon the judgment in the case of **Parkash Chand Vs. State of Kimachal Pradesh** reported in (2019) 5 Supreme Court Cases 628, which held as follows:-

" 23.If we do not place confidence in the deposition of P.W.4 and P.W.5 then the case would depend upon the credibility of P.W.2, the prosecutrix. The incident is alleged to have taken place near a path which has been admitted by the prosecutrix and her aunt P.W.3 as common path. If indeed the prosecutrix has raised hue and cry as in **Kaini Rajan Vs.State of Kerala**, it is very unlikely that the labourers who are supposed to haunt the common path could not hear it. There is a case of the appellant that the evidence would make out a case of consensual sex. It is true that in the High Court, it is recorded that there is o case of consensual sexual intercourse as shch argued but we have to decide the case on the basis of evidence.

24.We would think in the circumstances of this case that the appellant cannot be convicted for the offence under Section 376. It would indeed be unsafe to convict him based on the testimony of the prosecutrix. He would certainly be entitled to the benefit of doubt which is created by the very circumstances which we have referred.



25.As far as the charge against the appellant under Section 376 IPC is concerned, it reads as follows:

" That in the month of December 1999 at about 5/6 p.m at Village Bhoga, you committed rape upon Kumari ... at a place one kilometre away from Dugli towards Bhoga and thereby committed an offence punishable under Section 376 IPC and within my cognizance,"

And I hereby direct you accused be tried on the said charge by this Court."

26.As far as the charge under Section 506 read with Section 34 IPC is concerned, it reads as follows:

" That on 10.07.2000 at Village Bhoga, you along with your co-accused in furtherance of common intention, criminally intimidated Kumari ... to do away with her life and thereby committed an offence punishable under Section 506 IPC read with Section 34 IPC and within my cognizance;

And I hereby direct you accused be tried on the said charge by this Court."

27.The trial Court, in fact, has proceeded to rely upon the testimony of the prosecutrix about the appellant threatening her that in case she disclosed the incident to anyone she will be killed by the accused. This apparently is related to the incident in December 1999. In fact, the appellant was specifically charged with criminal intimidation allegedly done on 10.07.2000. The appellant was so charged in alleged furtherance of common intention along with the co-accused. The trial Court has also proceeded to convict the co-accused relying on the evidence of the prosecutrix. The High Court has acquitted the co-accused of the charge of criminal intimidation. We have noted that there is no specific charge even framed against the appellant under Section 506 in regard to the alleged incident which took place in December 1999 and the charge in fact relates only to the acts alleged to have been committed on 10.07.2000. Apart from the fact that there is no specific charge against the appellant in regard to what happened in December 1999, we are inclined to think that the appellant could not be convicted under Section 506 having regard to the circumstances which we have already discussed herein before."

17. He also relied upon the judgment in the case of **Pramod Suryabhan Pawar Vs. The State of Maharashtra & another** passed in **Crl.A.No.1165/2019 @ SLP (crl) 2712 of of 2019**, which held as follows:-

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

" 19.The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage



in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:-

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(i) The complainant and the appellant knew each other since 1998 and were intimate since 2004:

(ii) The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant; and

(iii) The appellant expressed his reservations about marrying the complainant on 31 January 2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.

20. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 of the IPC has occurred.



18. All the above cases referred by the learned Senior Counsel appeared on behalf of the petitioner held that there were relationship with each other for quite some time and enjoyed each other's company. They had been living as such for quite some time together and thereafter, she lodged a complaint with a allegation that the accused forcibly raped her. The victim had taken a conscious decision after actively applying the mind to the things what happened. It is the case of passive submission in the face of psychological pressure exerted and there was a tacit consent given by her was not the result of a misconception created in her mind.

19. In the case on hand, from the year 2015 onwards, the petitioner and the second respondent lived together in a separate house. Due to their relationship, she also delivered two children. While, she was pregnant on second time, the alleged complaint was lodged after the period of two years. When she shared her bed with the petitioner continuously and also delivered two children it would not amount to rape.

20. It is also seen that the second respondent filed a maintenance case in M.C.No.18/2019 as against the petitioner and it is pending for trial. Thereafter, she also filed a complaint in D.V.O.P.No.05/2019 and it is also pending for trial.

21. It clearly shows that the second respondent fully aware that the petitioner is a married man and he is the father of two children. Thereafter, she consented to live with the petitioner and had physical relationship. Therefore, no offence is made out as against the petitioner to prosecute him. The entire proceedings are vitiated and it is nothing but clear an abuse of process of law. Accordingly, the proceedings in S.C.No.33/2019 on the file of the learned Fast Track Mahila Court (District and Sessions Court), Sivagangai, is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

22. However, considering the facts that the second respondent is now deserted by the petitioner and as such, the second respondent was constrained to file a maintenance case and also a Domestic Violence complaint. She is now living with two children without any source of income. There is no dispute that the children born to the second respondent only through the petitioner. Therefore, the petitioner is liable to maintain the second respondent as well as his own children born through the second respondent herein.

23. It is seen from the records, the petitioner is running so many businesses and he owned several immovable properties. Therefore, in the interest of justice, and considering the above facts and circumstances of the case, the petitioner is directed to pay a sum of Rs.20,000/- to the second respondent and a sum of Rs.10,000/- to each child till the disposal of the maintenance case



in M.C.No.18/2019 on the file of the learned Judicial Magistrate, Family Court, Sivagangai and till the disposal of the complaint in D.V.O.P.No.5/2019 on the file of the learned Judicial Magistrate, No.I, Sivagangai, as interim maintenance.

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Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

- 1.The Fast Track Mahila Court
(District and Sessions Court),
Sivagangai.
- 2.The Inspector of Police,
All Women Police Station,
Sivagangai.
3. The Judicial Magistrate,
Family Court, Sivagangai.
4. The Judicial Magistrate No.I,
Sivagangai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.D.SHANMUGARAJA, Advocate Sr. No. 91239

**Crl.O.P. (MD)No.6070 of 2019
and
Crl.M.P. (MD)Nos.3927 & 3928 of 2018
03.10.2019**

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