



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE N. SESHASAYEE

CRL.O.P. [MD] No.21512 of 2018

and

Crl.M.P. (MD) No.9959 of 2018

Rev. Fr.Devadass

: Petitioner/2nd Accused

Vs.

WEB COPY

1.The State of Tamil Nadu,
Rep. By its Inspector of Police,
All Women Police Station,
4th Circle, Fort Police Station,
Trichirappalli. : 1st Respondents/Complainant

2.Florence Mary : 2nd Respondent/Defacto Complainant

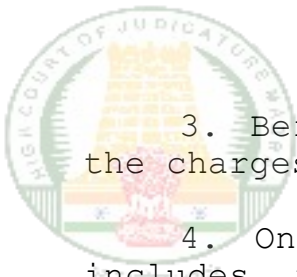
PRAYER : This Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in SC No.101 of 2011 on the file of the Sessions Judge (Magila Court), Trichirappalli as against this petitioner and quash the same.

For Petitioner : Mr.Isacc Mohanlal(Sr.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 A2 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 Provincial in the church hierarchy and he is said to have hold preliminary enquiry into the allegation made against A1, who at the relevant time was a Principal in a college run by the Jenit's 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.

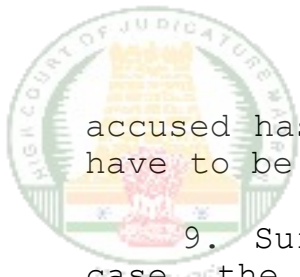
4. On a reading the entire final report, which necessarily includes the statements of witnesses, including that of the prosecutrix, it is clear that the allegation of rape was directed only against the first accused and that itself has spread over a period of time.

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 Provincial and further makes a statement that the Provincial on enquiry discloses that the first accused had denied the allegations made against him. The threat part of the second respondent is said to have been taken place subsequent to this enquiry.

6. Heard the learned counsel for the petitioner and the learned Government Advocate and the learned counsel for the second respondent.

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

8. A reading of the entire statement of the witnesses including the prosecutrix, one fact that stands out is that nowhere there is an allegation that the petitioner had either harboured criminal or participated in any of the acts constituting rape at any point of time nor he suppressed any information deliberately to the Investigating Agency. Possibly if the Investigating Agency has treated him as a witness he might have been parted with any information. But 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, preliminarily this Court considers no offence under Section 201 IPC has made out. Turning to the second part, namely, offence under Section 506(i) IPC, while it may appear artifice in the context of the State of the case yet inasmuch as charges are framed, it may not be stated in normal circumstances, the petitioner may have to trial for the offence. Herein the Court now wants to rely on the counter affidavit filed by the second respondent. In this affidavit, the second respondent makes a statement that her complaint itself a false complaint and she says that she is going to withdraw the complaint, wherein the offence is not only a cognizable offence to consider as a heinous crime, the prosecutrix may not compound the offence, which her counter affidavit may go to indicate. This Court therefore does not want to act on her statement that her allegation of rape against the first



accused has never taken place. This aspect of the case necessarily have to be contested during trial.

9. 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.

10. 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.

11. Having stated thus, so far as the allegation may survive for consideration is only under Section 506(i) IPC, the Court still wants to rely on the affidavit of the second respondent for the limited purpose of treating the said offence mere 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. This Court does not want to stretch it for the offence of 376, for which the first accused now faces trial. Necessarily, charges for this offence should also now go.

12. 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. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

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

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

+1cc to Mr.M/s Isaac Chambers, Advocate, SR.No.46233

+1cc to Mr.A.John Vincent, Advocate, SR.No.56160

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SP/05.04.2019/ 3P/5C