



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.04.2019

Pronounced on : 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P. (MD)No.4275 of 2017

and

Crl.M.P. (MD)Nos.3075 of 2017 & 2172 of 2019

WEB COPY

1.Kinathadiyan
2.Karuppannan
3.Chinnammal
4.Rajasekaran
5.Ranjani
6.Krishnan
7.Chellammal
8.Masanam

... Petitioners
Accused 1 to 8

Vs.

1.State rep. by
The Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.
Crime No.1 of 2017

...Respondent/Complainant

2.Prameshwari ... 2nd Respondent/De-facto Complainant

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in Crime No.1 of 2017 on the file of the first respondent and quash the same.

For Petitioners : Mr.G.Karuppasamy Pandian
For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor
for R.1
No representation for R.2

ORDER

This Criminal Original Petition has been filed by the petitioners to quash the proceedings pending against them in Crime No.1 of 2017 on the file of the first respondent police, which was registered at the instance of the second respondent, on 05.01.2017, for the offence punishable under Sections 417, 376 & 506(i) IPC.

2. The case of the prosecution is that the first petitioner, under the guise of marriage, had sexual intercourse with the defacto



complainant for more than twenty times and when the complainant and her family members insisted the first petitioner to marry her, the petitioners herein refused and criminally intimidated them. Hence, the present complaint came to be lodged.

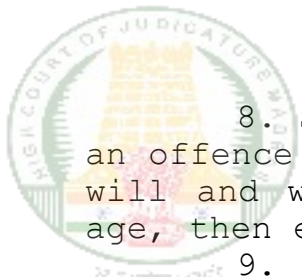
3. The learned Counsel for the petitioners would submit that the averments made in the complaint does not attract the offence punishable under Sections 417, 376 IPC, much less than the offence under Section 506(i) IPC. The second respondent / defacto complainant is a divorcee, aged about 21 years. She, knowing fully the consequences, had moved closely with the first petitioner and even according to her, they had sexual intercourse for more than twenty times, which would show that she had sexual affair with the first petitioner with full and free consent. Therefore, this will not come under the misconception of fact as enshrined under Section 90 IPC.

4. The learned Counsel for the petitioners has also relied upon the decision of the Hon'ble Apex Court reported in **2003 SCC Crl. 775 [Uday v. State of Karnataka]**, wherein, the Hon'ble Apex Court has held that if a matured and grown up lady indulges in sexual intercourse with whom she is deeply in love on a promise that he would marry her on a later date, it cannot be said to be given under the misconception of fact.

5. Per contra, the learned Additional Public Prosecutor would submit that the second respondent is a divorcee and taking advantage of her position, the first petitioner moved with her, gave a cell phone bearing number 96511-93006 and was in constant touch with the second respondent from his cell phone bearing numbers 91598-27264 and 97904-82602, made her to believe that he would marry her and with that promise, he had sexual intercourse with the second respondent / defacto complainant. He would further submit that several witnesses have been examined and their statements have also been recorded under Section 161(3) Cr.P.C. The investigation is at the crucial stage and since the petitioners have obtained an order of interim stay, they have not proceed further. Therefore, he prays for dismissal.

6. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record. There is no representation for the second respondent.

7. The allegation levelled against the petitioners is that the first petitioner, on a false promise of marriage, had sexual intercourse with the second respondent and when the second respondent and her family members insisted upon the first petitioner for marriage, the petitioners herein refused and criminally intimidated them. But, according to the petitioners, the second respondent, with full and free consent, has indulged in the alleged act, as such, the offence will not be attracted.



8. Section 375 IPC defines the offence of rape and to attract an offence of rape, the incident should have taken place against her will and without her consent. If the victim is under 16 years of age, then even when there is a consent, it is an offence.

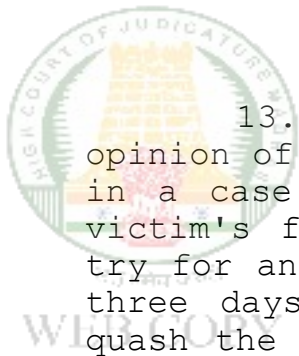
9. Section 90 of the Indian Penal Code defines 'consent' known to be given under fear or misconception:

"Section 90: Consent known to be given under fear or misconception - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception."

10. If the consent is given by a person under fear of injury, or misconception of facts, it cannot be termed as a true consent. If a fully grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity, it is an act on her part also and not an act induced by misconception of fact. But, the Hon'ble Supreme Court, in its latest decision in **Criminal Appeal No.629 of 2019, dated 09.04.2019 [Anurag Soni v. State of Chhattisgarh]**, has held that if the prosecution proves that from the very beginning, the accused never intended to marry the prosecutrix and gave false promise to marry her and on such false promise, had physical relationship with the prosecutrix, then her consent can be said to be a consent on misconception of facts as per Section 90 IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 IPC.

11. The petitioners have approached this Court at the threshold, ie., at the stage of FIR. At this stage, this Court could not come to a safe conclusion, as to whether the first petitioner has made a false promise or the consent is a valid one. It is for the investigation agency to investigate into the matter and file a report and therefore, this Court is not inclined to interfere insofar as Section 376 IPC is concerned.

12. As regards Section 417 IPC - punishment for cheating, it is the contention of the prosecution that on a false promise of marriage, the first petitioner committed the offence, therefore, Section 417 IPC will lie. Insofar as Section 506(i) IPC is concerned, their case is that when the defacto complainant and her family members insisted the first petitioner for marriage on 02.01.2017, the petitioners herein refused and intimidated them. However, the petitioners refuted both the charges and prayed innocence. They have also taken a ground that though the alleged intimidation took place on 02.01.2017, the complaint was lodged only on 05.01.2017, with a delay of three days.



13. This delay of three days in lodging the complaint, in the opinion of this Court, will not have much weight. The reason is that in a case of sexual intercourse on the pretext of marriage, the victim's family, keeping in mind their family status, would first try for an amicable solution by way of marriage and therefore, this three days delay in lodging the complaint cannot be a ground to quash the complaint in *toto*. The investigation is at the threshold and at this point of time, the petitioners have approached this Court. It is for the investigation agency to investigate and collect materials in order to substantiate their case with regard to the offence under Sections 417 & 506(i) IPC.

14. In view of the foregoing discussions, this Court is not inclined to entertain this Criminal Original Petition and the same is accordingly, dismissed. The first respondent police is directed to conduct a fair investigation, uninfluenced by any of the findings rendered by this Court, taking into account the grounds raised by the petitioners herein and complete the same, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.

+1 CC to Mr.G.KARUPPASAMY PANDIAN, Advocate SR-74614.

Order made in
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and
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CS(20.09.2019) 4P 3C