

Bail Slip

The Revision Petitioner, namely R.Kannan (Accused in C.C.No. 2200 of 2010 on the file of Judicial Magistrate, Sirkazhi) of was released on bail vide order of this court, dated 03.06.2014 and made in Crl.M.P.No.1 of 2014 in Crl.Rc.508 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.11.2020

Pronounced on : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.508 of 2014

R.Kannan ...Revision Petitioner/Appellant
Accused

VS.

State Rep. by its
The Inspector of Police,
All Women Police Station,
Sirkali Taluk,
Sirkali, Nagapattinam District. ...Respondent/Respondent/
Defacto Complainant

Criminal Revision Case filed under Section 397 r/w 401 of of the Code of Criminal Procedure, against the judgment dated 16.04.2014 in C.A.No.50 of 2012 on the file of the Fast Track Mahila Court, Nagapattinam, partly confirming the judgment dated 31.08.2012 in C.C.No.2200 of 2010 on the file of the Judicial Magistrate, Sirkali.

For Revision Petitioner : Mr.Adinarayana Rao

For Respondent : Mr.S.Karthikeyan

Additional Public Prosecutor

O R D E R

The Revision Petitioner is the accused in C.C No.2200 of 2010 on the file of the learned Judicial Magistrate, Sirkali. He has faced the trial for the offence punishable under Section 417 of IPC. By judgment dated 31.08.2012, the learned Judicial Magistrate, Sirkali, convicted the petitioner under Section 417 of IPC and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six months. Challenging the same, the petitioner filed an appeal in C.A.No.50 of 2012, before the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam.

2. By judgment dated 16.04.2020, the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, confirmed the findings arrived at by the trial Court and dismissed the appeal.

However, the sentence awarded to the petitioner for the offence under Section 417 of IPC, was reduced from simple imprisonment of one year to that of simple imprisonment for six months. Aggrieved over the same, the revision petitioner is before this Court with the present Criminal Revision Case.

3. The case of the prosecution, in brief, is as follows:

(i) PW1-Roopu Devi is the victim in this occurrence. PW2-Mr.Anbumani and PW3-Mrs.Lakshmi, are the parents of PW1. The parents of the victim and the revision petitioner are the adjacent land owners and since the lands belongs to the victim and the accused/revision petitioner, are adjacent one, they had the opportunity to meet regularly. They regularly met and developed a cordial relationship. Resultantly, after developing the intimacy, the revision petitioner made promise to the PW1 for marrying her. Due to the said promise, PW1 consented for the physical relationship and the same was continued nearly for four years, till the filing of the complaint. In the meantime, on 08.05.2010, the revision petitioner in Anjenayar Koil at Vaitheeswaran Koil, tied a thali to the PW1. Subsequent to that he refused to take her to his home. Thereby, PW1 lodged the complaint before the All Women Police Station, Sirkali.

(ii) On receipt of the complaint given by PW1, PW9-Mrs.Kamatchi, the then Inspector of Police, All Women Police Station, Sirkali, registered a case against the petitioner in Cr.No.5 of 2010, under Sections 417 and 420 of IPC. Complaint given by the PW1 and the FIR prepared by PW8 are marked before the trial Court as Exs.P1 and P3, respectively.

(iii) After the registration of the case, PW9-Mrs.Kamatchi, took up the same for investigation and in the scene of occurrence, she prepared the Observation Mahazar under Ex.P4 and further she had drawn the rough sketch under Ex.P5. She examined the witnesses and recorded their statements. She made arrangements to produce the victim girl before the Doctor for medical examination. Accordingly, PW7-Dr.Banumathi, medically examined PW1 and found that she was not a virgin. In this regard, she issued a certificate under Ex.P2. After receiving the same, PW9, concluded the investigation and filed a final report against the revision petitioner before the Judicial Magistrate, Sirkali, alleging that the petitioner committed an offence under Section 417 and 420 of IPC.

4. Based on the above materials, the learned Judicial Magistrate, Sirkali, questioned the accused that the revision petitioner committed the offence under Section 417 Cr.P.C. The same was denied by the petitioner. In order to prove the case of the prosecution, 9 witnesses have been examined on the side of the prosecution as PW1 to PW9 and five documents were marked as Exs.P1 to P5.

(i) Out of the said witnesses, PW1-Roopu Devi, is the victim girl and deposed about the promise made by the revision petitioner and about the tying of thali and also about the breach of promise committed by the revision petitioner. PW2-Mr.Anbumani and PW3-Mrs.Lakshmi, are the parents of PW1. They have given evidence that their daughter narrated the incidence and thereafter, when at the time the revision petitioner was requested to join with PW1, he refused to join with PW1. Though, PW4 to PW6 are cited as occurrence witnesses, they have not supported the case of the prosecution. PW7-Dr.Banumathi, attached with Government Hospital, Sirkali has stated about the medical examination conducted on the PW1 and about the report given on that aspect. PW8-Mrs.Mahalaksmi, Head Constable, has spoken about the production of victim girl before the Doctor. PW9-Mr.Kamatchi, the then Inspector of Police, All Women Police Station, Seerkali, has spoken about the registration of the case, details of investigation and about the filing of the final report against the revision petitioner.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, none has been examined on his side, for proving his defence.

6. Having considered all the above materials, the trial Court found him guilty under Section 417 of IPC and the lower Appellate Court confirmed the same. That is how, the accused is before this Court with this revision.

7. I have heard the learned counsel for the revision petitioner and the learned Additional Public Prosecutor appearing for the respondent State.

8. The learned counsel appearing for the revision petitioner would submit that in order to prove the case of the prosecution, except the evidence given by PW1, no other evidences are available on record. Further, the evidence given by PW1 is very clear that the petitioner is not having any dishonest intention to cheat the PW1. Only due to the rivalry tactics taken by the parents of the PW1 and the victim, he is not in a position to join with the PW1. The Courts below without considering the same, convicted the accused, which is nothing but perverse.

9. Per contra, the learned Additional Public Prosecutor appearing for the respondent police would contend, that the evidence given by the PW1 was supported by the evidence of PW7-Dr.Banumathi and therefore, only by considering the same, the Courts below came to the correct conclusion that the petitioner, with a dishonest intention cheated PW1 and therefore, it cannot

be said the judgments rendered by the Courts below is perverse one.

10. I have considered the rival submissions of the learned counsel on either side and also perused the records carefully.

11. The evidence given by the Doctor, who examined PW1, is very clear that PW1 is not a virgin. In otherwise, the said evidence has been proved through the evidence of PW1. PW1 herself admitted that after developing the intimacy particularly after getting assurance of marriage from the petitioner, he made physical contact with her. Further, the evidence given by PW1 is very clear that during the interregnum period, PW1 got conceived and the same was aborted. Moreover, before the registration of the case, the revision petitioner tied a thali to the PW1. In this connection, this Court is of the opinion that if the petitioner is not having any intention to marry the victim girl, there is no necessity for him to tie a thali, after some time from the date of which, they started having physical contact.

12. Only in the circumstances, the prosecution established that the petitioner made promise to marry the victim and it is clear that such promise was made by the petitioner only to obtain the consent of the victim to undergo intercourse with her. Here it is a case if such promise was made by the accused without any intention to cheat the victim, as already observed, there is no necessity for the petitioner to marry the victim girl in the temple. After tying the thali, it cannot be said the petitioner is having an intention to deceive the PW1. Further, there was a submission from either side that now both the petitioner and the victim have got married with different persons and are living with their children. Though the said reason is not sufficient to allow the criminal revision case, as it was already observed, the dishonest intention of the petitioner has not been proved by the prosecution through the evidence of PW1.

13. Accordingly, this Court is of the opinion that the offence under Section 417 of IPC has not been proved. But the Courts below without seeing the said aspect perspectively came to the conclusion that the petitioner committed the offence under Section 417 of IPC. Therefore, the findings arrived at by the trial Court is perverse one and is also manifestly error. Hence, in the light of the above discussion, the Criminal Revision Case is allowed and the conviction and sentence imposed on the revision petitioner by the Courts below is set aside and revision petitioner is acquitted of all charges. Fine amount,

if any, paid by him, shall be refunded to him. Bail bond if any shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Fast Track Mahila Court,
Nagapattinam.

2. The Judicial Magistrate,
Sirkali.

3. The Chief Judicial Magistrate,
Nagapattinam.

4. The District Collector,
Nagapattinam.

5. The Inspector of Police,
All Women Police Station,
Sirkali Taluk,
Sirkali, Nagapattinam District.

6. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer, Criminal Section,
High Court, Madras-104.

+1cc to Mr.Adhinarayana Rao, Advocate, S.R.No.38176

WEB COPY

Pre-delivery Order in
Cr1.R.C.No.508 of 2014

GJ(CO)
RV(18/12/2020)