

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	09.11.2020
PRONOUNCED ON	02.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.O.P.NO.15862 OF 2019

AND

CRL.M.P.NO.7915 OF 2019

1.S.Chandrasekar
2.M.R.Sekar
3.Subbulakshmi

...Petitioners

Vs

1.State represented by
The Inspector of Police,
All Women Police Station,
Chengalpattu,
Kanchipuram.
(Crime No.1 of 2019 dated 16.02.2019)

2.Vanmathi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to call for the records and quash the proceedings as against the petitioners in Crime No.1 of 2019, pending on the file of the 1st respondent.

For Petitioners : Mr.I.Abrar Md.Abdullah for
Mr.V.Janarthanan.

For Respondents : Mr.S.Karthikeyan,
Additional Public Prosecutor for R1.
Mr.R.Balaguruswamy for R2.

O R D E R
(through Video Conference)

This Criminal Original Petition has been filed seeking the relief to call for the records and quash the proceedings as against the petitioners in Crime No.1 of 2019, pending on the file of the 1st respondent.

2.Heard Mr.I.Abrar Md. Abdullah, learned Counsel appearing for the Petitioners, Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing on behalf of the first respondent and Mr.R.Balaguruswamy, learned Counsel appearing for the second respondent.

3.The petitioners herein are arrayed as accused 1 to 3 in the above First Information Report registered at the instance of the defacto-complainant / R2. At the relevant point of time, the first petitioner herein who was working in the company viz.,M/s.Solvedge Technology Services, Pallavaram, Thuraipakkam, met the second respondent regularly who was also working with the first petitioner in the said private firm and proposed his love affair, for which the second respondent herein replied that she is a widow and she is elder than the first petitioner. Even after knowing the same, by mentioning the names of Tendulkar and Abishek Bachan, the first petitioner pressurized the second respondent and resultantly, the second respondent for agreed the love proposal given by the first petitioner.

4.Further, in the absence of anybody, in the Marudheeshwarar Temple situated at Tiruvanmiyur, the first petitioner tied mangal sutra to the second respondent and thereafter, he took the second respondent to various places, wherein physically contacted with her. More than that, upon the request made by the petitioners herein, the second respondent spent huge money from her salary to the family of the petitioners. Further, in respect to the announcement of marriage, the first petitioner told to the second respondent that after the completion of his elder brother's marriage, he is ready to perform his marriage with the second respondent and ready to announce the same to the public.

5.In respect of the same, the second respondent along with her parents met the second and third petitioners in Thiruvannamalai and at that time, when the parents of the second respondent asked about the marriage of the first petitioner with the second respondent, the second and third petitioners replied that a good news will arrive shortly. Thereafter, without any information, the first petitioner relieved from the company and joined in a new company viz., Cognizant Technology Solutions. After knowing the same, when at the time the second respondent contacted the first petitioner, he has stated that only for his physical urge, he contacted with the second respondent and now his parents are arranging the marriage for him.

6.After hearing the same, the second respondent had given the present complaint against the petitioners and thereafter, the present case has been registered against the petitioners.

In respect to the averments which was found in the First Information Report, the learned Counsel appearing for the petitioners submitted that the alleged complaint has been given by the second respondent after four years from the date of occurrence. Further, when at the time of having physical contact with the second respondent, the first petitioner is not having any intention to cheat the second respondent and therefore, the averments found in the First Information Report did not disclose the offence under Section 376 of Indian Penal Code. Further, he relied upon the Judgment of the Hon'ble Apex Court in the case of "Dr.Dhruvaram Murlidhar Sonar -vs- The State of Maharashtra & Ors." reported in Crl.A.No.1443 of 2018, wherein it has been held as follows:

"(1) Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in?

(2) Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her?

In this case, the girl lodged a complaint with the police stating that she and the accused were neighbours and they fell in love with each other. One day in February, 1988, the accused forcibly raped her and later consoled her by saying that he would marry her. She succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her, and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter, the intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl, but the accused avoided marrying her and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed. Therefore, she was constrained to file the complaint after waiting for some time. With this factual back-ground, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law."

7.He would further submit that it cannot be said that the alleged offence has been committed by the first petitioner as against the will of the second respondent. Only after getting consent from the second respondent, the first petitioner cohabited with the second respondent. More than that, money which is said to have been bought by the second and third petitioners from the second respondent is not an offence, since the said money has been given by the second respondent voluntarily without any request from 2nd and 3rd petitioners.

8.Further, the learned Counsel appearing for the petitioners would further rely upon the Judgment of the Hon'ble Apex Court in the case of "Pramod Suryabhan Pawar -vs- The State of Maharashtra & Anr." in Crl.A.1165 of 2019 and submitted that the allegations found in the First Information Report do not disclose the offence under Section 376 of Indian Penal Code. He submitted that in the said Judgment it has been held that the appellant's failure in 2016 to fulfill his promise made in 2008 cannot be construed to mean the promise itself was false. Hence, he submitted that the first petitioner and second respondent continued to engage in sexual relationship nearly for a period of four years in an undisputed manner. Therefore, the said circumstances reveals the fact that everything had happened only after getting consent from the second respondent. In support of his contention, he referred to paragraph no.20 of the above cited judgment which is usefully extracted as follows:

"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 fulfill 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."

From the above submissions, the learned Counsel appearing for the petitioners submitted that the First Information Report registered against the petitioners is liable to be quashed and prayed to allow this petition.

9. In respect to the said submissions, the learned Additional Public Prosecutor appearing for the first respondent police would submit that in the course of occurrence, the first petitioner had not only made promise to the second respondent but also made promise to the parents of the second respondent also. If really the first petitioner's intention is not to cheat the second respondent, it is not necessary for him to tie mangal sutra in Marudheeshwarar Temple in the absence of anybody including the parents of the first petitioner in a secret manner. The said act committed by the first petitioner reveals the fact that he is having intention to cheat the second respondent. Further, the second and third petitioners herein also, after knowing the same, breached the promise made by them and made arrangements for the first petitioner's second marriage.

10. Now on considering the rival submissions put forth by either side and on perusing the averments found in the First Information Report, as already observed, if the consent given by the second respondent is free consent, there is no necessity for the second respondent to tie mangal sutra from the first petitioner. Further, in the same transaction, the petitioners herein had received a portion of salary amount from the second respondent. At this juncture, it is relevant to see the Judgment of the Hon'ble Apex Court in Crl.A.No.255 of 2019 in the case of "Sau. Kamal Shivaji Pokarnekhar -vs- The State of Maharashtra & Ors." wherein it has been held as follows:

"9....A perusal of the complaint discloses that prima facie, offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

11. Further, in the case relied on by the learned Counsel appearing for the petitioners, the prosecution completed the investigation and filed final report against the accused and our Hon'ble Apex Court, only after perusing the entire materials

which have been submitted by the prosecution, came to the said conclusion that the First Information Report which has been registered for the said occurrence, has to be quashed. But here in this case, the investigation is at threshold stage. In the said circumstances, now the only requirements before this Court which has to be decided is that, whether the averments found in the First Information Report discloses the prima facie case for the offence under Section 376 of I.P.C. or not.

12. At this juncture, it is necessary to see the Judgment of Hon'ble Apex Court reported in "2008 2 SCC Cr1 430" in the case of "Central Bureau of Investigation -vs- K.M. Sharan", wherein our Hon'ble Apex Court has held as follows:

"31. At this stage, the High Court in its jurisdiction under Section 482 Cr.P.C. was not called upon to embark upon the inquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the Court concerned after the entire material is produced before it on a thorough investigation and evidence is led."

Applying the ratio laid down by the Hon'ble Apex Court in the above referred Judgment, it is made clear that Section 482 of Criminal Procedure Code cannot be invoked in all the cases. A detailed analysis is necessary before going to the quashment of the First Information Report.

13. Further in the Judgment reported in "(2015) 3 SCC (Cr1) 132" in the case of "Manik Taneja and another -vs- State of Karnataka and another", our Hon'ble Apex Court has held as follows:

"When a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made, prima facie, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction are bleak, and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage."

14. Therefore, applying the ratio laid down by our Hon'ble Apex Court in the case on hands, it is clear that if averments found in the First Information Report discloses the prima facie case, the said First Information Report cannot be quashed ordinarily without seeing the special circumstances. In this case also, the averments found in the First Information Report is very clear that prima facie, the accused has committed the offence under Section 376 of Indian Penal Code.

15. Further, in respect to the delay stated by the petitioner, the materials placed before this Court discloses the fact that the second respondent lodged complaint only after knowing the fact that the second and third petitioners made arrangements for the marriage of the first petitioner with another girl. More than that, the All Women Police Station, Tiruvannamalai is not having any territorial jurisdiction to entertain the complaint given by the second respondent. Therefore, after registration of the First Information Report, they transferred the same to the police station which is having jurisdiction and subsequently, upon receipt of the same, transferred First Information Report has been registered by the first respondent police. Therefore, in the said circumstances, delay has been occurred only due to the administration functions having by the police officers.

16. More over, if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 of the IPC and can be convicted for the offence under Section 376 of the IPC.

17. Therefore, I am of the considered opinion that allegation stated against the petitioners has to be elaborately investigated and only thereafter, the Investigation Officer can come to a conclusion that consent given by the prosecutrix is a free consent or consent given under the misconception of fact.

18. Accordingly, in the light of the above discussions, I am of the considered opinion that it is not a fit case to quash the First Information Report. Therefore, this Criminal Original

Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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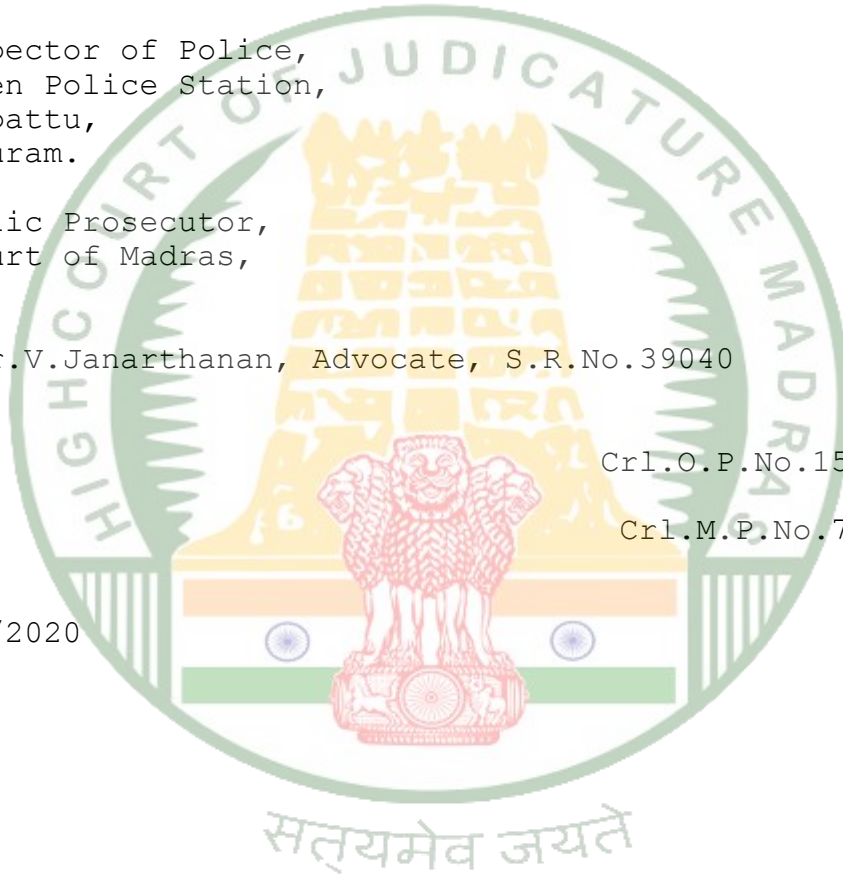
1.The Inspector of Police,
All Women Police Station,
Chengalpattu,
Kanchipuram.

2.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.V.Janarthanan, Advocate, S.R.No.39040

Crl.O.P.No.15862 of 2019
and
Crl.M.P.No.7915 of 2019

NR(CO)
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