

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.34039 of 2019

and

Crl.M.P.Nos.18802 & 18803 of 2019

1.Vijaya Lakshmi .. Petitioners

2.Vasudevean

3.Valli

4.Sakthivel

5.V.Ramachandran

6.Ashok Kumar

7.Subramani

8.Ramesh

9.Subramani

10.Sallammal

Vs

1.The State Rep. By .. Respondents

The Inspector of Police,
Kallavi Police Station,
Uthangarai Taluk, Krishnagiri District.

2.Vinu Priya

Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the proceedings in P.R.C.No.8 of 2017 on the file of Judicial Magistrate, Uthangarai, Krishnagiri District.

For Petitioners : Mr.S.Sathish Rajan

For Respondents : Mr.S.Karthikeyan (for R1)
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed praying to quash the charge sheet filed in Cr.No.181 of 2014 on the file of 1st respondent police, as illegal.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the 1st respondent Police and perused the materials available on record.

3. The petitioners are arrayed as Accused Nos.1 to 10 in Cr.No.181 of 2014, which was registered against them alleging that the petitioners have committed the offence under Section 366 of IPC. After due investigation, the 1st respondent herein, came to the positive conclusion that the petitioners have committed an offence under Sections 366-A of IPC and 9, 10 of the Prevention of Child Marriage Act, 2006 and accordingly, he filed a final report and the same was pending on the file of the learned Judicial Magistrate, Uthangarai as PRC No.8 of 2017. Now, challenging the said charge sheet, the petitioners are before this Court.

4. The learned counsel appearing for the petitioners would contend that though at the time of occurrence during 2014, the 2nd respondent / victim is a minor, immediately after attaining majority, the marriage between the 5th respondent and the victim girl was solemnized on 13.03.2019 and now they are leading a matrimonial life happily. In the said circumstances, allowing to continue the proceedings initiated in PRC No.8 of 2017, is unnecessary and also is an abuse of process of law.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent police, would submit that though the dispute having by the petitioners with the 2nd respondent have ended in a compromise, the same has to be recorded only in the manner known to law, particularly after due verification of 2nd respondent. But, here it is a case, the petitioners have filed this application to quash the charge sheet, and therefore, without filing any joint compromise by either parties, the prayer sought by the petitioners cannot be entertained.

6. Considering the rival submissions made by the learned counsel appearing on either side, it is apparent, during the time of investigation, the 1st respondent examined eight witnesses, as a eye witness to the occurrence. The statements given by the witnesses and the certificate issued by the Doctor, who examined the victim girl proves the fact that at the time of occurrence, the 2nd respondent herein, had not attained the

majority. Further, during the time of occurrence, the 2nd respondent was kidnapped by the petitioners, only for the purpose of solemnizing marriage of 2nd respondent with the 5th petitioner. Therefore, it is made clear, the statements given by the witnesses who are all examined by the 1st respondent police made out a prima facie case for the offence under Section 366 IPC and for Sections 9 and 10 of the Prevention of Child Marriage Act, 2006. Further, the truthfulness of the said statements has to be decided only in the trial Court, by examining the witnesses.

7. In the said circumstances, since the allegations are upon the factual aspects, it is necessary and useful to see the judgment of our Hon'ble Apex Court in the case of **SAU. KAMAL SHIVAJI POKARNEKAR vs. THE STATE OF MAHARASHTRA & ORS.** in **Criminal Appeal No. 255 of 2019**, wherein it was held as follows;

"5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are *Sonu Gupta v. Deepak Gupta and Ors.* 2015 (3) SCC 424. disclosed, there would be no justification for the High Court to interfere.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not."

8. Further in the case of **Central Bureau of Investigation Vs. A.Ravishankar Prasad and Others**, reported in (2009) 2 SCC (Cr1) 1063, our Hon'ble Apex Court has held as follows:

"Inherent powers of High Court under Section 482 Cr.P.C., are meant to act *ex debito justitiae* to do

real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of court. These inherent powers can be exercised in the following category of cases: (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Extraordinary power under Section 482 Cr.P.C., should be exercised sparingly and with great care and caution."

9. Therefore, applying the ratio laid down in the above referred two judgments, there is no dispute that the allegation levelled against the accused are factual in nature and the same has to be testified, only by examining the witnesses. In otherwise, the learned counsel appearing for the petitioners did not indicate any special circumstances in the investigation conducted by the respondent police, which amounts to abuse of process of law. Accordingly, this Court is of the considered opinion that the issues which have been found for settling the dispute in this case, are factual in nature and the question of quashing the final report/charge sheet, cannot be entertained, at this stage. Therefore, the Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

-Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Uthangarai,
Krishnagiri District.

2.The Inspector of Police,
Kallavi Police Station,
Uthangarai Taluk,
Krishnagiri District.

3.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.34039 of 2019
and CrI.M.P.Nos.18802 & 18803 of 2019

SSV (CO)
UMY (17.12.2020)