



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.5507 of 2016

and

Crl.M.P. (MD) Nos.3619, 3620 and 2730 of 2016

WEB COPY

Anand ... Petitioner/Sole Accused

Vs

1. State Rep by,
Inspector of Police,
All Women Police Station,
Karaikudi,
Sivagangai District.

... Respondent/Complainant

2. Rakkammal

... 2nd Respondent/ defacto
Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records in C.C.No.325 of 2015 on the file of the learned Judicial Magistrate, Karaikudi and quash the same as against the petitioners.

For Petitioner : Mr.J.Anand Kumar

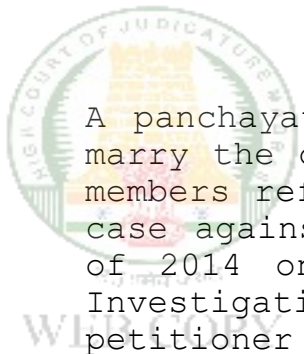
For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

ORDER

The petitioner is figuring as sole accused in C.C.No.325 of 2015 on the file of the Judicial Magistrate, Karaikudi, for the offences under Sections 417, 420, 493 and 506(i) of IPC.

2.The defacto complainant in this case is the second respondent. Even though she has been served, there is no appearance on her behalf.

3.The case of the defacto complainant is that she hails from Chinnavadakkupati and that, the petitioner herein induced her to have sexual relationship with him by promising to marry her. In fact, the defacto complainant would claim that the petitioner took her to a temple and made his believe that he had taken her as his wife. As a result of the sexual intimacy between the petitioner and the defacto complainant, the defacto complainant became pregnant. The petitioner left for overseas employment on 16.02.2014. The defaco complainant underwent a medical examination some time in March 2014. It was stated that the defacto complainant was seven months pregnant. The defacto complainant delivered a male child on 26.05.2014. The petitioner returned to India on 04.06.2014.



A panchayat was convened and the petitioner was asked to formally marry the defacto complainant. Since the petitioner and his family members refused to do so, the defacto complainant lodged a criminal case against the petitioner leading to registration of Crime No.12 of 2014 on the file of the All Women Police Station, Karakudi. Investigation was taken up and final report was laid against the petitioner on 27.07.2015 for the offences under Sections 417, 420, 493 and 506(i) of IPC. Cognizance of the offence was taken and summons were issued to the petitioner. To quash the same, this criminal original petition came to be filed.

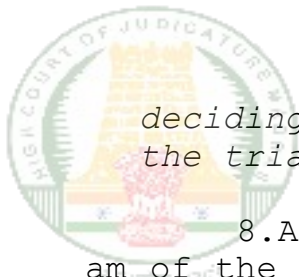
4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.side).

5.The core argument of the petitioner's counsel is that the petitioner underwent DNA test. L.W.15- Dr.Maha Lakshmi has given a report that the petitioner is not the father of the male child that was born to the second respondent herein. He drew my attention to the contents of the forensic report. He also pointed out that the forensic report was issued on 16.06.2015. The final report does not even deal with it. Of-course, Dr.Maha Lakshmi has been shown as a listed witness. The learned Magistrate taking cognizance of the offence has also not taken note of the fact that DNA report is in favour of the petitioner.

6.The petitioner's counsel would pointedly contend that the cognizance of the offence cannot be taken mechanically and that, there should be some application of mind. According to him, there is total non application of mind in the matter of taking cognizance in this case.

7.Per contra, the learned Government Advocate(crl.side) would submit that even if the DNA report is in favour of the petitioner, it is still not a ground for quashing the impugned proceedings. He submitted that the petitioner has been charged with the offence under Section 417 of IPC also and that, therefore, this Court ought not to quash the impugned proceedings. The learned Government Advocate (Crl.side) drew my attention to a very recent decision of the Hon'ble Supreme Court reported in **2019(1) MWN (Cr.) 481 (SC) (Md.Allauddin Khan Vs. State of Bihar)**. The Hon'ble Supreme Court in paragraph No.12, held as follows:-

"12.So far as the second ground is concerned, we are of the view that the High Court, while hearing the application under Section 482 of Cr.P.C., had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no prima facie case made out against Respondent No.2. In our view, this could be done only in the trial, while deciding the issue on merits or/and by the Appellate Court while



deciding the Appeal arising out of the final order passed by the trial Court but not in Section 482 of Cr.P.C. Proceedings."

8. After carefully considering the rival contentions, I am of the view that the continuation of the impugned proceedings is not warranted. The defacto complainant has come out with a very specific case. According to her, the petitioner herein had sexual intimacy with on two occasions. She would specifically take a stand that as a result, she became pregnant. Since according to the defacto complainant, the petitioner is the father of the child, he is obliged to formally marry her. When the defacto complainant has come out with a specific case and it has been established through forensic report that the petitioner is not the father of the child born to the second respondent, I fail to understand as to how the prosecution can still survive. The very foundation of the prosecution case is totally undermined by the DNA report and the forensic report dated 29.06.2015. The Deputy Director of Forensic Science, Madurai, has categorically opined that the petitioner is not the father of the male child born to the second respondent herein. It is thus obvious that the second respondent has come out with a false case against the petitioner herein. It is not a case of the second respondent that DNA report is false or that there has been some mix up in the matter of taking sample. The second respondent has not impeached the DNA report till date. I must also note that the case against the petitioner was not registered immediately. While according to the second respondent, the sexual intimacy between her and the petitioner took place in the year 2013, the case was registered after a gap of full one year. The delay in lodging a case also has to be taken note of. I am exercising my jurisdiction under Section 482 of Cr.P.C. The very object and the purpose of jurisdiction is to undo the injustice done to any party. I am satisfied that the petitioner has been falsely charged at the instance of the defacto complainant. Quashing the impugned proceedings alone would serve the ends of justice. The impugned proceedings stand quashed. The criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
All Women Police Station,
Karaikudi,
Sivagangai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Judicial Magistrate, Karaikudi.
4. +1 CC to Mr.J.ANANDKUMAR, Advocate
(SR-4634[F] dated 04/02/2020)

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and
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TP (08.05.2020) 4P 5C