

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.09.2020

PRONOUNCED ON : 20.04.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.2804 of 2015

K.Shanmugam ... Petitioner

Vs.

State by

1.State rep. by
Assistant Commissioner of Police,
Law & Order (East),
Coimbatore City,
(Crime No.16 of 2011).

2.R.Sudha Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the charge-sheet pending committal in P.R.C.No.1/2012 on the file of the learned Judicial Magistrate No.II, Coimbatore as an abuse of process of law.

For Petitioner : Mr.C.V.Kumar for Mr.A.K.Kumarasamy

For R1 : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

For R2 : Mr.A.Ashwin Kumar,
Legal Aid Counsel

ORDER

This Criminal Original Petition filed to quash the proceedings in P.R.C.No.1 of 2012 pending on the file of the Judicial Magistrate Court No.II, Coimbatore.

2.The case of the prosecution is that the 2nd respondent / defacto complainant belongs to the Scheduled Caste community and the petitioner belong to Vellalar Community. Prior to the year 2011, the 2nd respondent after completing her studies, in order

to study C.A she went to Coimbatore. At that time, the 2nd respondent and son of the petitioner were love with each other which was not known to their family members. Thereafter, the 2nd respondent was staying in YMCA Women's Hostel and working in Gangotri Textile Limited in R.S.Puram. During the year 2005, son of the petitioner to study MCA, he joined Coimbatore GRD College and stayed in separate home. During that period, the petitioner's son and the 2nd respondent had been to several places and on 14.04.2006, when the 2nd respondent come to the house of the petitioner's son, he had sexual intercourse with her, they lived as husband and wife for sometime. Thereafter, the petitioner's son got job in Chennai in Scope International Company and he went there. At that time, the petitioner's son used to visit the 2nd respondent in Coimbatore. During the year 2010, the second respondent asked the petitioner's son to speak about the marriage with his father. On 26.12.2010, the 2nd respondent and her mother met the father of the petitioner along with A1 and two of his friends, at that time, the father of the petitioner abused and scolded the 2nd respondent and her mother by uttering the caste name in public view and refused for marriage and asked 2nd respondent to marry someone. At that time, the friends of the petitioner Jabur and Durai Karthikeyan were present. On 12.02.2011, the 2nd respondent lodged a complaint to the B4 Police Station, Coimbatore and during enquiry, the petitioner's son gave undertaking to marry the 2nd respondent within three months. For one month the petitioner's son was in touch with the 2nd respondent and thereafter, made a phone call to the mother of the 2nd respondent and informed that he is not inclined to marry her daughter. Hence, the 2nd respondent lodged a complaint to the 1st respondent Police on 01.06.2011, for which, a case in Crime No.16 of 2011 was registered against the petitioner/A1 and his father/A2, for offence under Sections 417 IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and Sections 3(1)(x) and 3(i)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On completion of investigation, the 1st respondent Police has laid a charge sheet before the learned Judicial Magistrate No.II, Coimbatore and the same was taken on file as P.R.C.No.1 of 2012. Against which the present Quash Petition has been filed by the petitioner.

3.The learned counsel for the petitioner submitted that it is nowhere stated in the charge sheet coupled with the statement of LW1 and LW2 recorded under Section 161 Cr.P.C., as well as in FIR, when and which the petitioner uttered the words by abusing the caste name of the 2nd respondent in public place and it was heard or seen by any member of the public. The 2nd respondent except mentioning the presence of her mother, A1 and his friends viz., Durai Karthikeyan and Jabeer had not stated anything more, presence of other members of the public, heard the abusive

words. Even the friends of the petitioner were not examined by the 1st respondent Police during investigation. The learned counsel further submitted that the member of the public should be present at heard the write words when the offence is committed and even if the incident was not visible atleast the utterances or remarks should be audible to the member of the public to constitute an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Admittedly, in this case, the 1st respondent Police did not examine any members of the public to prove the offence against the petitioner.

4.The learned counsel for the petitioner further submitted that even assuming that the abusive words uttered by the petitioner would attract the provisions under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, in the facts and circumstances of the case, it cannot be said that they were uttered in order to intentionally insult or intimidate with an intent to humiliate a member of the caste. The petitioner has only rebuked the 2nd respondent. It is common that a father and mother, leave alone the petitioner, of every boy or girl to make such advice. It is very much expected from the parents of either sex based on prevailing social set up to warn or scold when they came to know that the marriage will not be accepted in their community at large. Therefore, the ingredients of the alleged offence under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, would not made out against the petitioner.

5.The learned counsel for the petitioner further submitted that as far as the offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act is concerned, there is no material either in the FIR or in the charge sheet coupled with the statement of LW1 and LW2 recorded under Section 161 Cr.P.C., to show that the petitioner in any manner committed or participated or abetted the harassment of the 2nd respondent. The learned counsel submitted that the alleged occurrence took place on 26.12.2010 and the complaint came to be lodged only after six months. The 2nd respondent did not assign any reason as to why she has not given complaint on the same day regarding the occurrence that for the taken place on 26.12.2010. Further, all witnesses cited in the charge sheet are interested witnesses and LW3 to LW6 are hearsay witnesses and their evidence are not admissible before the Court of law. Only in order to harass the petitioner, the 2nd respondent had given a false complaint with improvised version which is not proper. Further, there are contradictions and inconsistencies in the statement of the witnesses collected during investigation.

6.The learned counsel for the petitioner further submitted that in this case, absolutely there is no material available on record against the petitioner has committed the offence under Section 417 IPC., and the same is not made by the prosecution. Therefore, the allegations made in the FIR and in the complaint and the evidence collected by the prosecution in support of the same did not disclose the commission of any offence and make out a case against the petitioner. Hence, he prayed to quash the proceedings against the petitioner at this stage.

7.In order to substantiate his arguments, the learned counsel for the petitioner relied upon the following Judgments:-

- Pramod Suryabhan Pawar Versus The State of Maharashtra in Criminal Appeal No.1165 of 2019.
- State of Haryana and Ors., Versus Bhajan Lal and Ors.
- State Versus Lal Singh in Crl.M.C.No.357 of 2011.
- Viswanadhula Chittibabu Versus State of Andhra Pradesh.
- Elangovan Versus State Rep. By the Inspector of Police, Meensurity Police Station, Perambalur District in Crl.A.No.689 of 2005.
- Anil Kumar Pandey Versus Daulat Prasad.
- Sarita Shyam Dake Versus Sr.Police Inspector M.R.A., Police Station & Another in W.P.No.1746 of 2004.
- Jasrath Singh and Anr., Versus State of Madhya.

8.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the 2nd respondent / defacto complainant belongs to the Scheduled Caste community and the petitioner belongs to Vellalar Community. The 2nd respondent and the petitioner were love with each other which was not known both the family members. During the year 2005, the petitioner's son to study MCA, he joined Coimbatore GRD College and stayed in separate home. During that period, the petitioner's son and the 2nd respondent had visited several places together. On 14.04.2006, when the 2nd respondent went to the house of the petitioner's son, he had sexual intercourse with her. They lived as husband and wife for sometime. During the year 2010, the petitioner's son asked the 2nd respondent to speak about the marriage with his father. On 26.12.2010, the 2nd respondent and her mother met the petitioner, at that time, the petitioner scolded the 2nd respondent and her mother by uttering the caste name in public view and refused for marriage and asked 2nd respondent to marry someone. At that time, the friends of the petitioner Jabar and Durai karthikeyan were present. On 12.02.2011, the 2nd respondent lodged a complaint to the B4 Police Station, Coimbatore and during enquiry, the petitioner's son gave undertaking to marry the 2nd respondent within three months and thereafter, he made a phone call to the mother of the

2nd respondent and informed that he is not inclined to marry her daughter. Hence, the 2nd respondent lodged a complaint to the 1st respondent Police on 01.06.2011, for which, a case in Crime No.16 of 2011 was registered against the petitioner at his son as A1, for offence under Sections 417 IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and Sections 3(1)(x) and 3(i)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. During investigation 24 witnesses were examined and statements recorded, cited as LW1 to LW24 and 9 documents as annexed LD1 to LD9. On completion of investigation, the 1st respondent Police filed a charge sheet before the learned Judicial Magistrate No.II, Coimbatore and the same was taken on file as P.R.C.No.1 of 2012.

9.The learned Additional Public Prosecutor further submitted that after filing of the charge sheet before the learned Judicial Magistrate No.II, Coimbatore, the petitioner immediately approached this Court, filed the above quash petition and therefore, the case is under the initial stage and not yet committed to the Court of Sessions. Further, the points raised by the petitioner are factual in nature to be decided only during the trial and not in the above petition. Hence, he prayed for dismissal of the above petition with appropriate direction for committal proceedings and completion of trial.

10.When the respondent Police approached the 2nd respondent, she informed and gave letter stating that due to her mother impending health condition and the circumstances prevailing, she is unable to engage a counsel to argue the matter, but she is very certain that she wants to prosecute against the petitioner. Hence, this Court, by order, dated 10.09.2020, appointed Mr.A.Ashwin Kumar as Legal Aid Counsel for the 2nd respondent and he also served with the copy of the petition and also the typed set of papers.

11.The learned counsel for the 2nd respondent submitted that the petitioner, by making a false promise that he would marry the 2nd respondent, committed sexual intercourse with her. Mere delay in lodging the complaint, cannot be a ground for quashing the proceedings. The delay in lodging the complaint can occur due to various reasons in this case. In order to substantiate the same and the fond hope the marriage between the second respondent will be performed by the petitioner's son. The learned counsel for the 2nd respondent relied upon the Judgment of the Hon'ble Supreme Court in the case of "Deepak Versus State of Haryana reported in 2015 (4) SCC 762." The learned counsel further submitted the petitioner intentionally insulted, intimidated with clear intent abused the second respondent calling her caste name in the public place within the public view. The 2nd respondent has stated in the complaint that she

and her mother went to a Bakery near the Meenakshi Amman Temple to decide about the marriage between the petitioner and the 2nd respondent. At that time, the petitioner and uttered the petitioner's words in order to intentionally insult, intimidate with an intent to humiliate the 2nd respondent and her mother by calling their caste in the public place within the public view. Therefore, the offence under Section 3(i)(x) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act is made out against the petitioner. To substantiate the same, a Judgment of the Hon'ble Supreme Court in the case of "Swaran Singh and others Versus State reported in 2008 (8) SCC 835." has been referred to by the learned counsel for the 2nd respondent.

12.The learned counsel for the 2nd respondent further submitted the contradictions and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the trial Court during trial. That stage is yet to come in this case. In order to substantiate the same, the learned counsel for the 2nd respondent relied upon the Judgment of the Hon'ble Supreme Court in the case of "Mohammed Allauddin Khan Versus State of Bihar and Others reported in 2019 (6) SCC 107.".

13.Therefore, the points raised by the learned counsel for the petitioner for quashing the proceedings against the petitioner are to be decided only during the trial and this Court cannot appreciate the same in the above petition and prayed for dismissal of the same and prays for direction to complete the trial, since the occurrence had taken place in the year 2010, already 11 years were lapsed.

14.This Court heard the submissions of the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the 1st respondent Police and the Legal Aid Counsel appeared for the 2nd respondent. The petitioner's son Karthikeyan and the second respondent both educated, well qualified were aware of each other social status, they were in love with each other. The petitioner's son had promised to marry the second respondent. Believing the same, the second respondent got deceived yielded to the physical pleasure of A1, they continued their relationship for 10 years, earlier to the complaint gave assurance and undertaking to marry the second respondent, now citing the caste factor, avoiding the second respondent and refusing to marry the second respondent. The petitioner being a father of A1, ought to have conducted the marriage or at least not to have objected to the same. On the contrary abused his son, not to marry the second respondent. The caste pride seems to be predominant, further the utterance of prohibitory word in the public place, public view, the points raised are factual in nature which are to be decided during trial. From the facts of

the case, it is clear that the offences under Section 376 of IPC is made out, LW15 to LW16 confirms the same. The trial Court to consider the same while framing charges, be issued which is well with the power of the trial Court.

15. In view of the same, the above petition is dismissed and continuing the case is kept pending without trial for all these years the committal Court to commit the case forthwith at the trial Court to complete and conclude the trail within a period of four months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.II,
Coimbatore.
- 2.The Assistant Commissioner of Police,
Law & Order (East),
Coimbatore City,
- 3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.C.V.Kumar, Advocate Sr.23815

Cr1.O.P.No.2804 of 2015

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