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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
06.07.2021	09.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.32314 OF 2019

and

CRL. M.P. NOS. 17779 & 17780 of 2019

Rubhan Anthony Rathinaraj

.. Petitioner

- Vs -

1. The State, rep. By
Inspector of Police
J-5, Sastri Nagar Police Station
Besant Nagar, Chennai 600 090.

.. 1st Respondent/Complainant

2. C.Vaithyalingam

.. 2nd Respondent/Defacto Complainant

Criminal Original Petition filed u/s 482 Cr.P.C.
praying this Court to call for the records relating to PRC
No.82 of 2019 pending on the file of the IX Metropolitan
Magistrate, Saidapet and quash the same.

For Petitioner : Mr. Vikram Veerasamy

For Respondents : Mr. C.E.Pratap, GA(Crl. Side)for R-1
Mr. D.Senthilkumar for R-2

ORDER

The present petition has been filed for quashment of
PRC No.82 of 2019 pending on the file of the IX
Metropolitan Magistrate, Saidapet.

2. The above said case emanated based on the complaint
of the 2nd respondent/defacto complainant, the father of the
deceased, who was alleged to have been in love/relationship
with the petitioner for a span of over six years during
which period, it is alleged that the petitioner had
sexually exploited the deceased on the promise that he
would marry her after obtaining the consent of his parents.



However, the petitioner entered into a nuptial arrangement with another woman, which led to the deceased committing suicide by hanging after leaving a suicide note, which resulted in the filing of the complaint and subsequent registration of FIR and after investigation, the charge sheet had been laid before the committal court, which has taken cognizance of the said case and aggrieved of the same, the present petition has been filed for quashment by the petitioner.

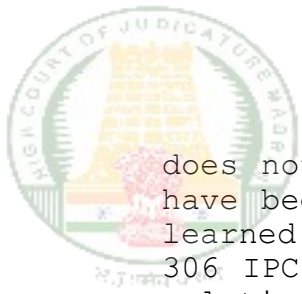
3. Mr. Vikram Veerasamy, learned counsel appearing for the petitioner submits that the relationship of the petitioner and the deceased are all matters of record and that the petitioner and the deceased were in love with each other and the petitioner had even stated to the deceased that he will marry her after obtaining consent of his parents. It is the further submission of the learned counsel that, however, fate cruelly intervened in the matter by the parents of the petitioner not yielding to the request of the petitioner to marry the deceased and had arranged his marriage with another girl.

4. It is the further submission of the learned counsel for the petitioner that the deceased was even aware of the same and that she had, through her very many written communications, accepted the fate and had resigned herself to her life and even had stated to the petitioner that she knew the mental turmoil that he would be facing in not marrying her and had even asked the petitioner not to take any extreme step, which is evidenced by the letter written by the deceased to the petitioner.

5. It is the further submission of the learned counsel for the petitioner that the sexual relationship between the petitioner and the deceased was consensual in nature and that the petitioner had never exploited the deceased and the letters of the deceased, which have been placed by the prosecution would very well reveal that such was the case and merely on a stray suicide note, said to have been written by the deceased, the petitioner has been implicated in the offence.

6. It is the further submission of the learned counsel for the petitioner that the petitioner has been charged u/s 376, 306 and 417 IPC, but the materials on record does not even prima facie establish any of the charge. It is the submission of the learned counsel for the petitioner that the sexual relationship being consensual, the charge u/s 376 IPC against the petitioner would have no legs to stand, as none of the ingredients as contemplated u/s 376 IPC are satisfied.

7. It is the further submission of the learned counsel for the petitioner that even the charge u/s 306 IPC cannot be sustained, as the said charge, relating to abetment of suicide



does not stand even on the basis of the suicide note alleged to have been written by the deceased. It is the submission of the learned counsel for the petitioner that to make out a charge u/s 306 IPC, abetment should be proved and in the present case, the relationship being consensual and the deceased having walked out of the life of the petitioner on her own volition, abetment cannot be allowed to sustain.

8. Similarly, there is no material implicating the accused with cheating the deceased, as it is even the admitted case of the respondent that there was a relationship between the petitioner and the deceased for almost six years. Merely because the relationship broke down due to the petitioner being engaged with another girl, and due to anguish the deceased had committed suicide, the same could not be brought under the ambit of cheating to implicate the petitioner u/s 417 IPC.

9. It is the further submission of the learned counsel appearing for the petitioner that barring the suicide note, there is no iota of material available on record to fasten the crime on the petitioner. Even the suicide note was presented before the respondent after a lapse of one month and the suicide note speaks about a mobile phone, which contains all the material particulars relating to the relationship between the petitioner and the deceased, which had resulted in the suicide of the deceased. However, the said mobile phone, though said to have been handed over to the police authorities by the defacto complainant, however, does not form part of the materials, which have been relied on by the respondents while filing the charge sheet.

10. It is therefore the submission of the learned counsel for the petitioner that none of the charges, alleged against the accused, are substantiated by any prima facie material, which would necessitate taking cognizance by the Court below and the court below, without proper application of mind to the materials has taken cognizance of the case, which has caused prejudice to the petitioner, in that, without any material, the petitioner is forced to go through the rigors of a trial.

11. In support of the submissions relating to the fallacy in the charge and the irrationality of the charge as to its unsustainability and the power of this Court for quashing the same, learned counsel for the petitioner placed reliance on a few dozen decisions and laid vociferous and particular emphasis on the following decisions :-

i) State of Haryana - Vs - Bhajan Lal
(1992 Supp (1) SCC 335)



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- ii) R.P. Kapur - Vs - State of Punhab (AIR 1960 SC 866)
- iii) Madan Mohan Singh - Vs - State of Gujarat (2010 (8) SCC 628)
- iv) Vedprakash Tarachand Bhaiji - Vs - State of M.P. (1995 M.P.L.J. 458)
- v) Mansur Daulat Patel & Ors. - Vs - State of Maharashtra & Ors. (2020CriLJ 2503)

12. Per contra, Mr.Pratap, learned Government Advocate (Crl. Side) appearing for the 1st respondent submitted that the law enforcing agency, after detailed investigation and recording the statements of the witnesses and collecting the relevant materials, upon proper satisfaction and only after finding the sexual relationship between the petitioner and the deceased was only on account of the petitioner inducing the deceased with the hope of marriage and, thereafter, the disinclination of the petitioner to marry the deceased after receiving sexual favours for over a period of six years, had charged the petitioner of the offences aforesaid and the act of the petitioner with regard to the sexual favours received and disinclination to marry the deceased would grossly attract Section 376 IPC and the result of his refusal to marry the deceased, had led the deceased to commit suicide, which also attracts Section 306 IPC and the whole act of the petitioner/accused aforesaid amounts to cheating the deceased, which falls u/s 417 IPC and the charges have been made out on the basis of the materials collated, which, in the prima facie opinion of the trial court, were suffice to proceed against the petitioner and, therefore, cognizance has been taken and in the above backdrop, no interference is warranted with the said cognizance taken by the trial court. It is further submission of the learned Government Advocate that all the points raised on behalf of the petitioner are points that are to be canvassed at the time of trial and cannot be adjudicated at the threshold when the petition is filed for quashment and, accordingly, prays for dismissal of the present petition.

13. Learned counsel appearing for the 2nd respondent/defacto complainant adopted the arguments placed by the learned Government Advocate and submitted that the charges against the accused are to be tested at the time of trial by adducing proper evidence and the opportunity of the respondents should not be foreclosed at the threshold.

14. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.



15. It is admitted by either side that the criminal machinery was set in motion on the basis of the suicide note alleged to have been written by the deceased and on the basis of the complaint lodged by the defacto complainant. It is also admitted by either side that there existed a relationship between the petitioner and the deceased in which sexual favours also had a major role. Even the petitioner accepts that there was physical relationship between the petitioner and the deceased, though it is the contention of the petitioner that it does not fall within the ambit of Section 376 IPC.

16. In State of Haryana - Vs - Bhajan Lal (1992 Supp (1) SCC 335), the Hon'ble Supreme Court has expounded the circumstances and the situations in which the inherent power u/s 482 should be invoked for quashment and for better appreciation, the relevant portion is extracted hereunder :-

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but



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constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. Itself."

17. In yet another case in R.P.Kapur - Vs - State of Punjab (AIR 1960 SC 866), the parameters within which the exercise of inherent powers vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 Cr.P.C.) can be invoked had been laid down in the following terms:-

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g., want of sanction;

(iii) where the allegations in the first information report or the complaint taken at



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their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

18. In Madan Mohan Singh's case (supra) the Hon'ble Supreme Court, while dealing with the suicide note has expressed that it is only the anguish that is expressed by the deceased therein who felt that his boss had wronged him and further held that they cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide and that if prosecutions are allowed to continue on such basis, it would be difficult to work with every superior officer.

19. In Vedprakash's case (supra), a learned single Judge of the Madhya Pradesh High Court has pointed out the escapist attitude of persons committing suicide that they would be able to put their alleged tormentors.

20. In Mansur Daulat Patel's case (supra), a learned single Judge of the Bombay High Court has held that the mere implication of the accused in the suicide note as the person responsible for the commission of suicide cannot be said to be an act of abetment as the insult, or abusive act will not by themselves be suffice to constitute abetment of commission of suicide unless those are reasonably capable of suggesting that the accused intended by such acts consequence of suicide.

21. From the above, it is amply evident that this Court is clothed with the requisite power to interfere with the proceeding at any stage, provided, the necessary satisfactions, as enumerated above, are fulfilled. Therefore, the test that is required to be made is whether the materials placed on record by the prosecution fulfills the test for the continuance of the case or falls short for its quashment is the sole question that requires consideration.

22. This Court is not averse to the invocation of its powers u/s 482 Cr.P.C. But the only limitation being that the tests as adumbrated by the Hon'ble Supreme Court in the aforesaid decisions should stand satisfied so as to continue the case, else, the same would deserve setting aside.

23. The whole crux of the petitioner's case lingers upon the suicide note, which according to the petitioner, is an isolated material, which points a finger at him and which alone cannot form the basis of implicating the petitioner in the



offence. Further, according to the petitioner, the said suicide note also in no way implicates him in toto, but is only the anguish of the deceased, which has led her to the extreme step of committing suicide.

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24. A typed set of documents has been filed by the petitioner in which the letters said to have been written by the deceased to the petitioner before the marriage, the letter written by the deceased to the petitioner prior to his marriage, the e-mail sent by the deceased to the petitioner and the alleged suicide note and the other letters, which have been written to the members of her family by the deceased are found annexed. It is the case of the petitioner that the vital mobile phone, in which there is recording of the deceased, had not been placed before the trial court as a document, which would have exhibited the innocence of the petitioner and the non-submission of the said mobile phone is detrimental to sustain the case of the prosecution.

25. Further, it is the argument of the petitioner that Section 376 and 306 IPC would not stand attracted as there is no abetment and rape, as codified in the said Sections, however, this Court, at this point of time is not inclined to enter into the merits of the said contention, as the intention of the petitioner vis-a-vis the suicide note has to be deliberated upon by adducing necessary oral and documentary evidence only upon which a finding can be given.

26. A perusal of the materials placed by the prosecution reveals that with regard to the mobile phone, the service provider has been shown as a witness to speak about the same. Further, it is to be pointed out that the suicide note, though said to be in isolation, however, a perusal of the materials reveal that such is not the case. There are materials in the form of statements of the family members and other witnesses, who speak about the relationship between the petitioner and the deceased and the act of the deceased in committing suicide. Further, it should not be lost sight of that the invocation of a charge u/s 376 IPC is on the basis of the sexual relationship between the petitioner and the deceased.

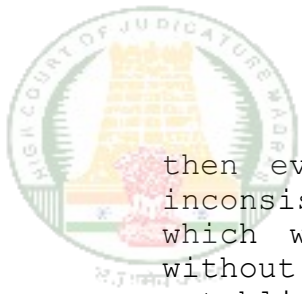
27. The whole contention of the prosecution is that the suicide note and other letters written by the deceased should not be looked at in isolation, but should be looked into in conjunction with the sexual relationship between the petitioner and the deceased and the anguish expressed by the deceased in the suicide note would very well attract the ingredients contemplated u/s 376 IPC. The contention of the prosecution outweighs the contention advanced on behalf of the petitioner with reference to the charge u/s 376 IPC. A careful perusal of



the materials as pointed out by the prosecution along with the admitted facts relating to the sexual relationship of the petitioner and the deceased, it would not be justiciable for this Court to hold that the charges u/s 376 and 306 IPC have not been made out, at the threshold for the simple reason that the suicide note, alleged to have been written by the deceased, paints a picture, otherwise than the one projected by the petitioner through certain other materials. Therefore, without proper trial, it would not be proper for this Court to quash the case at the threshold, more so when it has been admitted case of the parties that there existed a relationship, of which physical was foremost and in view of the petitioner not being able to marry the deceased, the deceased had committed suicide by hanging.

28. In Bhajan Lal's case and R.P.Kapur's case (supra), the Supreme Court has laid down the ratio that only in case where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged, then the Court, u/s 482 Cr.P.C., can invoke its inherent powers and quash the case. However, in the case on hand, the materials, more especially the suicide note as also the other letters forming part and parcel of the suicide note categorically reveal that there exists a prima facie case, which needs to be tried and without a trial, quashing the case at the threshold would be nothing but denying justice to the deceased without hearing. This Court would definitely be not a party to such an injustice. Though there are infirmities in the allegations as pointed out by the learned counsel for the petitioner, but that by itself would not suffice to strike down the case as being devoid of any material, as this Court finds that there are enough triable issues, which has to be tried and findings rendered one way or the other.

29. Though very many decisions on very many facets of law relating to the inherent jurisdiction of this Court to quash the proceedings as also the circumstances under which this Court can interfere with the proceedings have been placed before this Court and erudite arguments were put forth by the learned counsel for the petitioner to satisfy this Court for quashing the case, however, it is to be pointed out that in criminal law, the broad ratio laid down by the Court cannot form the basis for invoking the inherent jurisdiction and the ratio is only a guideline, which has to be applied to the facts of the present case to arrive at a just and reasonable decision based on the material placed before the Court. Merely because the petitioner's contention that he would succeed in the trial and in that case he would have been made to undergo the ignominy of a trial, would not be a reason to come to the aid of the petitioner by quashing the case. If such a view is to be taken,



then even in cases where there exists even a small iota of inconsistency, the Court should resort to quashing the charges, which would be nothing but giving a clean chit to a person without going through the necessary process of trial to establish his innocence and that would be nothing but a farce and a mockery of the judicial process and would be a travesty of justice to the other party, like the deceased, who cannot defend herself in the proceeding.

30. The arguable points, projected by the petitioner, are to be tested at the time of trial, as the points in favour of the prosecution would be made clearly known only at the time of trial. Without proper trial, if this Court is to decide in favour of the petitioner, it would be nothing but precluding the prosecution from establishing its case and prejudging the case, which would not be in conformity with the procedure laid down in the criminal jurisprudence. However, the discussion made above are only for the purpose of deciding the case relating to quashment of the charges and the trial court, shall decide the matter independently, without being influenced by any observation made by this Court above.

31. For the reasons aforesaid, this Court is not inclined to accede to the request of the petitioner for quashment of the case and, accordingly, this petition is dismissed. Consequently, connected stay petition is also dismissed. However, insofar as the petition to dispense with the personal appearance of the petitioner is concerned, taking into consideration the totality of the circumstances and the materials available before this Court, the appearance of the petitioner before the trial court is dispensed with except for his appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioner is necessary, the trial court, at its wisdom, shall direct his appearance on those days.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To

1. The IX Metropolitan Magistrate
Saidapet, Chennai.
2. The Public Prosecutor
High Court, Madras.
3. Inspector of Police
J-5, Sastri Nagar Police Station
Beasant Nagar, Chennai 600 090.

CRL. O.P. NO. 32314 OF 2019

CNR(CO)
RLP(04/08/2021)