



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 19.02.2021

DATE ON WHICH PRONOUNCED : 19.03.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Crl.O.P.(MD)No.10131 of 2017

and

Crl MP(MD)Nos.6912 & 6913 of 2017

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Kamarutheen ... Petitioner/Accused No.2
Vs.

1.State rep by the
Inspector of Police,
South Gate Police Station,
Madurai City.
Crime No.969 of 2012. ... 1st Respondent/Complainant

2.P.K.Nagarajan ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the charge sheet in C.C.No.272 of 2016 on the file of Judicial Magistrate Court No.IV, Madurai and quash the same as illegal in so far as the petitioner is concerned.

For Petitioner : Mr.R.Gandhi
For R1 : Mr.M.Ganesan,
Government Advocate (Crl.Side)
For R2 : No Appearance

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.272 of 2016, on the file of Judicial Magistrate Court No.IV, Madurai.

2. The case of the prosecution before the Trial Court:-

The defacto complainant, namely, Nagarajan is running Textile Show Room in South Chithirai Street, Madurai. The first accused namely, Jeyarani is the wife of the defacto complainant. She had illegal intimacy with the second accused namely, Kamarutheen, who is the petitioner herein. The third and fourth accused are the parents of the first accused, Jeyarani. The defacto complainant on seeing the illegal intimacy of the first and second accused, warned the first accused. But, she never listened. This illegal intimacy of the first and the second accused was also known to her parents namely, the third and fourth accused. They also supported the illegal intimacy of the first and second accused. So, all the accused, conspired together and instigated the first accused to steal 400 sovereigns of gold jewels, 10 kg of silver utensils and cash amount of Rs.2 lakhs. In pursuance of the conspiracy, the first accused, on 16.08.2008, from the house of the defacto



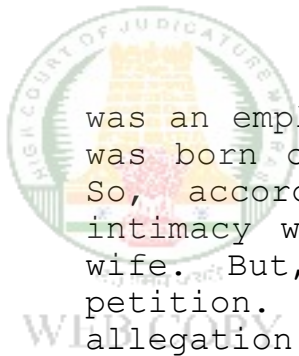
complainant. So, all the accused have committed the offence punishable under Section 120-B, 406, 420 r/w 34 IPC. After investigation, the first respondent filed a final report before the learned Judicial Magistrate Court No.IV, Madurai, and the same was taken on file in C.C.No.272 of 2016.

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3. Seeking quashment of the Charge Sheet, the second accused before the Trial Court has filed this petition, mainly, on the ground that no ingredients of the offence mentioned in the final report are attracted against this petitioner. Because of the matrimonial dispute between the defacto complainant and the first accused, this petitioner has been wrongly roped in this case. So, along with the typed set of papers, the petitioner has produced the copy of H.M.O.P.No.126 of 2009, filed by the defacto complainant before the Family Court, Madurai, against his wife namely, Jeyarani and this petitioner. S.T.C.No.1777 of 2009 was filed by the first accused against the defacto complainant before the Judicial Magistrate Court, Rajapalayam,. Perusal of these two petitions show that there is a long standing matrimonial dispute between the defacto complainant and his wife, who is the first accused in the case. H.M.O.P.No.126 of 2009 was filed by the defacto complainant on 30.03.2009, wherein, it has been stated by him that illegal intimacy existed between this petitioner and his wife and inspite of his repeated warnings, his wife namely, the first accused did not stop the relationship and on a particular day, the defacto complainant had witnessed their intimacy. So, on that ground, he has filed a petition for divorce. In para 11 of the petition it is specifically stated that only with an intention to misappropriate the jewels and cash from the defacto complainant, the wife is having illicit intimacy with this petitioner. But, he has not mentioned anything about the instigation or the conspiracy as alleged to have been occurred between this petitioner and his wife.

4. As mentioned earlier, the petition was filed on 30.03.2009. In the complaint, the alleged occurrence of theft taken place on 16.08.2008. But, the defacto complainant has not mentioned anything of such occurrence in the petition. After filing of this HMOP, the first accused appears to have initiated proceedings against the defacto complainant, under Section 12 of the Protection of Women from Domestic Violence Act, 2005, on 30.07.2009, seeking several reliefs. The result of these proceedings, is not known. Perusal of records show that the petition was filed by the other co-accused had filed a petition in Crl.OP(MD)No.7562 of 2017 to quash C.C.No.272 of 2016 and the same was dismissed as withdrawn on 20.06.2017.

5. It is the allegation of the petitioner that the defacto complainant has admitted his illegal intimacy with one Rathna, who



was an employee in shop and because of the illegal intimacy, a child was born on 25.05.2014 and the child was named as Amirthapandian. So, according to the petitioner, only because of his illegal intimacy with his employee, dispute arose between himself and his wife. But, this Court, cannot go into those aspects, in this petition. The Court has to confine only with regard to the allegation made this petition and in the First Information Report.

6. According to the petitioner, except the bald allegation of the conspiracy, no other materials were available to show that this petitioner was actively involved in cheating and criminal breach of trust. There is no allegation or material to the effect that the petitioner was entrusted with property by the defacto complainant and there is no allegation also to the effect that he dishonestly misappropriated his properties. Similarly, for attracting the offence under Section 420 IPC also, there is no allegation with regard to any deception said to have been practiced by the petitioner against the defacto complainant. As mentioned earlier, there is no material available against this petitioner for attracting the offence of conspiracy.

7. In the light of the above discussion, I am of the considered view that it is nothing, but, clear abuse of process of the Court. So, the charge sheet filed against this petitioner, is liable to be quashed and accordingly quashed.

8. In the result, this Criminal Original Petition is allowed. The Trial Court may proceed against the other accused, as per law, without being influenced by any of the observations made by this Court in this petition. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Judicial Magistrate Court No.4,
Madurai.

2.The Inspector of Police,
South Gate Police Station,
Madurai City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.(MD)No.10131 of 2017
and
Crl MP(MD)Nos.6912 & 6913 of 2017
19.3.2021

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