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Crl.R.C.No.444 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.444 of 2018

V.Rajendran

....

Petitioner

Vs

State of Tamilnadu,
represented by Inspector of Police,
W-19, All Woman's Police Station,
Adyar, Chennai

....

Respondent

Prayer: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records in C.A.No.304 of 2016 on the file of the IV Additional Sessions Judge, Chennai dated 02.03.2018 confirming the order of conviction passed by the learned IX Metropolitan Magistrate, Saidapet in C.C.No.3900 of 2013, set aside the same and set the petitioner at liberty.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER



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This Criminal Revision has been filed as against the Judgement dated 02.03.2018 passed in C.A.No. 304 of 2016 on the file of the IV Additional Sessions Judge, Chennai, thereby confirming the order dated 03.12.2016 passed in C.C.No.3900 of 2013 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai, thereby convicted the petitioner for the offence punishable under section 417 of IPC.

2. The case of the prosecution is that the defacto complainant had married one Arumugam, had lived together for 6 months, and went away stating that he had been going for work, thereafter failed to return to house. The father-in-law of the victim transferred the house in favour of the victim. In the meanwhile, the accused, who is an maternal uncle of the victim's husband, had been frequently coming to the house and by inducing her to marry him, had physical relationship with the victim. After the demise of her father in law, the accused had been living together with the victim as husband and wife. Thereafter, he went to Bangalore for his job and when she enquired about the marriage, he had intimated that he would talk to his parents and had subsequently refused to marry the victim. Hence the complaint.

3. On receipt of the said complaint, the respondent registered



an FIR in Crime No. 5 of 2012 for the offence punishable under Sections 420, 417 and 506(i) IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the Trial Court in C.C. No. 3900 of 2013.

4. In order to bring home the charges, the prosecution had examined P.Ws. 1 to 6 and marked Exs.P1 to P10. On the side of the accused, no one was examined and no document was marked.

5. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under section 417 of IPC and he was sentenced to undergo one year rigorous imprisonment with a fine of Rs.3,000/- in default, to undergo one month simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and the order of the Trial Court was confirmed.

6. The learned counsel appearing for the petitioner would submit that on perusal of the complaint itself no offence is made out as against the petitioner, that too for the offence under section 417 of IPC. It is an admitted fact that P.W.1- victim was married to one Arumugam on 27.01.2002 and he went missing on 30.10.2003. Thereafter, he was



declared as “civil death” by a Judgement dated 15.03.2011. It is alleged

that the petitioner and P.W.1 had love affair for a period of 8 years and had physical relationship. On the said basis, the petitioner had promised to marry her, thereafter he refused to marry her. The version of the prosecution itself would clearly establish that there was no element of deception or cheating, the parties have clearly understood that before 15.03.2011 they could not have married and as such, any physical relationship is based on consensual and not with the element of any deception or cheating. He further submitted that P.W.1, who had encouraged to study BBA and established the Xerox shop in her favour, after demise of her father-in-law. The petitioner used to come and stay with her, during the time they had physical relationship. It clearly shows that the victim was aware of what she is doing and under the circumstances in which she was living which would go to show that the act of physical contact was only with consent and not on any compulsion. The e-mail communications, which were marked as Ex.P5, also shows that they were intimated and it would not be sufficient to hold that the victim was deceived under the guise of promise to marry. There is no material as to when the first physical contact has taken place and the



subsequent contacts so as to attract Section 415 of IPC. There is no material to show that the accused had indulged in deceiving, fraudulently or dishonestly induced the victim and as such the order of conviction is liable to be set aside.

7. A perusal of the evidence of P.W.2 also makes it clear that the victim, being a married person, knows that her husband would not come back and as such, they waited till the decree and thereafter lodged a complaint. Therefore the promise to marry is absolutely false. Even according to the victim, they had love affair for 8 years and in the complaint lodged, there is no whisper that the petitioner had promised to marry her and by the deception had physical relationship.

8. The learned Government Advocate (Criminal Side) submitted that now the petitioner also got married and the victim also got married to some other persons respectively. In order to prove the case of the victim, the prosecution examined P.Ws.1 to 6, in which, the victim was examined as P.W.1 and her mother was examined as P.W.2. The independent witness was examined as P.W. 3, who clearly corroborated the evidence of P.Ws.1 and 2. In order to substantiate the evidence of P.Ws.1 to 3, the prosecution also marked Ex.P4-photographs and Ex.P5



the communication between the petitioner and the victim. Therefore, the Courts below rightly convicted the petitioner for the offence under Section 417 of IPC.

9. Heard, Mr.M,Devaraj, learned counsel appearing for the petitioner and Mr.A.Gopinath, Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

10. The victim was examined as P.W.1. She deposed that she married one Arumugam, however he was not found in the house from 30.10.2003. She also lodged a complaint, which was registered in Crime No. 597 of 2005 under the 'Man Missing' on the file of the Inspector of Police, J6 Police Station, Adyar, Chennai. Thereafter, the petitioner, who is the relative of the victim, was in good relationship upto the lodgement of the complaint. They had love affair and on the pretext of marriage they had physical relationship. The photographs of the petitioner and the victim was marked as Ex. P4 and e-mail communication between the petitioner and the victim were marked as Ex. P5. Both clearly shows their relationship and love affair.



11. The learned counsel for the petitioner vehemently contented that there cannot be an inducement for the victim to get married due to substance of her earlier marriage. Admittedly, her husband was found missing from 30.10.2003. In fact, she also lodged a complaint in Crime No.597 of 2005 under 'Man Missing'. Therefore, the petitioner, who is being close relative of the victim, knows the fact that her husband was missing. Further the e-mail communication is also very clear that they had very close intimacy. They had relationship for the past 8 years, i.e, they were waiting for the Court to declare her husband as civil death after completion of seven years. In fact, the victim had filed a suit in O.S.No. 13918 of 2010 for declaration declaring her husband as “civil death” which it was decreed on 15.03.2011. A copy of the decree was marked as Ex.P10. Thereafter, the victim requested the petitioner to marry her. The mother of the victim was examined as P.W.2. She deposed that the petitioner is the uncle of victim and only in the guise of marriage, they had relationship. In these type of cases the testimony of the victim alone will be sufficient as the victim only would have personal knowledge about the relationship. Therefore the contention of the learned counsel for the petitioner cannot be accepted



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and only inducement the victim inclined to have physical relationship with the petitioner. Therefore, the Courts below rightly convicted the petitioner for the offence under Section 417 of IPC and therefore nothing warrants to interference with the conviction imposed by the Courts below.

12. Accordingly, the conviction imposed by the Courts below on the petitioner is hereby confirmed. However, in so far as the sentence is concerned, it is reduced for the period already undergone by the petitioner herein on condition that the petitioner shall pay a sum of Rs.2,00,000 as compensation to the victim directly by way of Demand Draft, within a period of four weeks from the date of receipt of a copy of this order and produce the receipt before the Trial Court, failing which the sentence imposed by the Courts below shall stand restored forthwith. If the victim refuses to receive the compensation as imposed by this Court, the petitioner is directed to deposit the same to the credit of C.C. No.3900 of 2013 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

13. In the result, this Criminal Revision Case stands partly



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allowed .

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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To

1. The IV Additional Sessions Judge,
Chennai.
2. The IX Metropolitan Magistrate,
Saidapet, Chennai.
3. The Inspector of Police,
W-19, All Women Police Station,
Adyar, Chennai
4. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J.



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