



Crl. O.P. Nos.14303 and 16448 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 1/9/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. Nos.14303 and 16448 of 2022

M. Nithin	...	Petitioner in Crl.O.P.No.14303 of 2022
XXXXXX	...	Petitioner in Crl.O.P.No.16448 of 2022
Vs		

1. The Commissioner of Police
Office of the Commissioner of Police
Sozhinganallur
Chennai.
2. The Inspector of Police
Perumbakkam Police Station
Chennai.
3. The Inspector of Police
Kanathur Police Station
Kanathur
Chennai.
4. The Inspector of Police
W 35 All Women Police Station
Tambaram
Chennai.

Page No:1/18



Crl. O.P. Nos.14303 and 16448 of 2022

WEB COPY

5. XXXXX

...

Respondents
in Crl.O.P.No.14303 of 2022

a n d

1. The Commissioner of Police
Tambaram Range
Tambaram.
2. The Inspector of Police
W 35 All Women Police Station
Tambaram.

...

Respondents
in Crl.O.P.No.16448 of 2022

PRAYER in Crl.O.P.No.14303 of 2022: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records from the file of the fourth respondent in F.I.R.No.22 of 2022 and quash the same.

PRAYER in Crl.O.P.No.16448 of 2022: Criminal Original Petition filed under Section 482 of Cr.P.C. to issue a direction to the first respondent to transfer the investigation in Crime No.22 of 2022 dated 29/3/2022 pending on the file of the second respondent to CBCID, Chennai, to conduct the proper investigation in the manner known to law and file a final report within the stipulated time.



WEB COPY



Crl. O.P. Nos.14303 and 16448 of 2022

For Petitioner	...	Mr.N.L.Rajah, Senior Counsel for Mr.S.Seenuvasan (in Crl.O.P.No.14303 of 2022) Mr.S.Prem Rajkumar (in Crl.O.P.No.16448 of 2022)
For respondents	...	Mr.E.Raj Thilak Additional Public Prosecutor for Respondents 1 to 4 (in Crl.O.P.No.14303 of 2022 and for Respondents 1 and 2 (in Crl.O.P.No.16448 of 2022)
		Mr.S.Prem Rajkumar for R.5. (in Crl.O.P.No.14303 of 2022)

COMMON ORDER

Criminal Original Petition No.14303 of 2022 has been filed to quash F.I.R.No.22 of 2022 on the file of the fourth respondent.

2. Criminal Original Petition No.16448 of 2022 has been filed to direct the first respondent to transfer the investigation in Crime No.22 of 2022 dated 29/3/2022 pending on the file of the second respondent to CBCID, Chennai, to conduct the proper investigation in the manner known to law and file a final report within the stipulated time.

Page No:3/18



WEB COPY

3. The case of the prosecution in Crl.O.P.No.16448 of 2022 is that the defacto complainant XXXXX and Nithin, loved each other for more than 4 ½ years. At that time, they had physical contacts and thereafter, on 23/1/2022, he got married to one Revathy. Hence, she filed a case and the same was registered in Crime No.22 of 2022.

4. Whereas the case of Nithin/sole accused, i.e., petitioner in Crl.O.P.No.14303 of 2022 is that the said XXXXX had continuously threatened him and forced him to marry her. Hence, he filed a Police complaint in February 2022 at J 12 Kanathur Police Station. On enquiry, she accepted her mistake and gave a written assurance that she will not indulge in such activities.

5. Heard Mr.N.L.Rajah, learned Senior Counsel for the sole accused, Mr.E.Raj Thilak, learned Additional Public Prosecutor for the State and Mr.S.Prem Raj Kumar, learned counsel for the fifth respondent.



WEB COPY

6. The learned counsel appearing for the sole accused would submit that it is absolutely a false case. The accused refused to marry the defacto complainant due to various other reasons.

7. Perused the materials available on record.

8. On a perusal of 164 Statements, it would indicate that both the accused and defacto complainant developed friendship and thereafter they were having consensual sexual intercourse for four and a half years. Merely, because the marriage proposal has broken, later on, criminal liability cannot be fastened and it is nothing but an abuse of process of law, as per

(i) *Pramod Suryabhan Pawar Vs. State of Maharashtra* reported in (2019) 9 SCC 608;

(ii) *Sonu Vs. State of Uttar Pradesh* reported in AIR 2021 SC 1405;

(iii) *K.U.Prabhu Raj Vs. State* reported in 2012-2-LW(Crl) 101;

(iv) *Harish Raj Urs Vs. State of Karnataka* reported in MANU/KA/0743/2019;

(v) *Venkatesh Vs. State of Karnataka* reported in



Crl. O.P. Nos.14303 and 16448 of 2022

MANU/KA/0067/2022;

WEB COPY

(vi) *Varun Kumar Vs. State* reported in **2018(3) MLJ(Crl) 604** and
(vii) *Mandar Deepak Pawar Vs. The State of Maharashtra* in Crl.A.NO.442
of 2022 dated 27.07.2022.

9. The Hon'ble Supreme Court in *Sonu Vs. State of Uttar Pradesh*
reported in **AIR 2021 SC 1405** has held in paragraphs 9 and 11 as follows:

"9. In Pramod Suryabhan Pawar (supra), while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

"Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false



WEB COPY



Crl. O.P. Nos.14303 and 16448 of 2022

promise, the maker of the promise should have had no intention of upholding his word at the time of giving it..."

11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established."

10. The Hon'ble Karnataka High Court in *Venkatesh and Ors Vs. State*



of Karnataka and Ors dated 13.01.2022 in Criminal Petition No.5865 of 2021

has held in paragraph 7 and 8 as follows:

"7. Learned counsel for the petitioners relied upon a Single Bench judgment of the High Court of Judicature at Madras, in the case of K.U.Prabhu Raj Vs. State by Sub Inspector of Police, A.W.P.S. Tambaram and another reported in 2012-3- L.W.770 wherein, the Court has held at paragraphs 16 and 17 as under:

"16. A cursory perusal of the above provision would make it clear that there are atleast three essential ingredients constituting an offence of cheating which should be made out from the materials available on record. They are as follows:-

- '(1) Deception of any person;*
- (2) Fraudulently or dishonestly inducing that person*
 - (i) To deliver any property to any person or;*



WEB COPY



CrI. O.P. Nos.14303 and 16448 of 2022

(ii) To consent that any person shall retain any property, or and

(3) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.'

17. The learned counsel for the second respondent would further submit that the offence involved in this case falls within the ambit of the third limb of Section 415 I.P.C as enumerated above. According to the learned counsel, but for the promise made by the petitioner, the daughter of the second respondent would have married someone-else and settled down in her life. Thus, according to him, the petitioner has committed a clear offence of cheating. In my considered opinion, it is not so. As has



been held by the Division Bench of the Calcutta High Court in Abhoy Pradhan v. State of W.B case (cited supra), mere promise to marry and later on withdrawing the said promise will not amount to an offence of cheating at all. On such false promise to marry, the person to whom such promise was made should have done or omitted to do something that he would not done or omitted to do but for the deception. In this case, absolutely, there are no materials available on record to show that because of the promise made by the petitioner, the daughter of the second respondent has done anything or omitted to do something which has the tendency to cause damage or harm to the body or mind or reputation or property of the daughter of the second respondent. In the absence of the same, the entire allegations found in the records, in my considered 8



opinion, would not make out an offence under Section 417 or 420 I.P.C., at all."

11. The Hon'ble Supreme Court also has categorically held in the case of S.W.PALANITKAR AND OTHERS VS. STATE OF BIHAR AND ANOTHER reported in (2002) 1 SCC 241 at paragraph No.11 held as follows:-

“Mere breach of contract cannot give rise to any criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and the time when the offence is said to have been committed. Here in this case, petitioner No.1 is said to have promised to marry respondent No.2, but failed to marry her. In view of the judgment of the Hon'ble Supreme Court, respondent No.2 has failed to make out a case of criminal intention of petitioner No.1 from the beginning for cheating the complainant. That apart, the aforesaid judgment of High Court of judicature at Madras is applicable to the case where the promise of marriage will not attract 9 Section 420 of IPC. This Court has held in Crl.R.P.No.233/2020 dated 24.02.2020 in the case of Sri.D.Ramesh Sinha Vs. State of Karnataka that as a promise of marriage and breach of contract will not attract the provisions of Sections 417 and 420 of IPC. Such



being the case, continuing the proceedings or investigation against the petitioners is abuse of process of law and therefore, the same is liable to be quashed."

12. The Hon'ble Supreme Court in ***Mandar Deepak Pawar Vs. The State of Maharashtra*** in Criminal Appeal No.442 of 2022, dated 27.07.2022 has held as follows:

"The parties chose to have physical relationship without marriage for a considerable period of time. For some reason, the parties fell apart. It can happen both before or after marriage. Thereafter also three years passed when respondent No.2 decided to register a FIR.

We are fortified to adopt this course of action by the judicial view in (2019) 9 SCC 608 titled "Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr." where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be



broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the context of Section 375 Explanation 2 and Section 90 of the IPC, 1860. The Criminal appeal is accordingly allowed."

13. Normally, while exercising power under Section 482 of Cr.P.C., if there is a prima facie allegation and it discloses a cognizable offence, the Courts will not interfere with the F.I.R. but at the same time, the materials produced before this Court prima facie indicate that the F.I.R. is nothing but motivated and filed for some other purpose or maliciously instituted with an ulterior motive, the Court can very well interfere with such F.I.R. Considering the nature of the allegations set out in the FIR, and even if the entire FIR is taken into its face value, the same would not constitute any offence. Therefore, continuing of the FIR is nothing but an abuse of process of law and a futile exercise and it is nothing but harassment.

14. As already discussed, both were having affair for more than four and a half years and knowingly they indulged in sexual act and there is no deception at all from the very inspection. Thereafter, the parties fell apart due to various



Crl. O.P. Nos.14303 and 16448 of 2022

other reasons.

WEB COPY

15. Such view of the matter, the Criminal Original Petition No.14303 of 2022 is allowed and the FIR in Crime No.22 of 2022, pending on the file of the fourth respondent police stands quashed. Consequently, the connected miscellaneous petition No.7815 of 2022 is closed.

16. Since FIR in Crime No.22 of 2022, pending on the file of the fourth respondent police itself stands quashed, Criminal Original Petition No.16448 of 2022 is dismissed.

1/9/2022

mvs

Index: Yes/No

Internet: Yes

Speaking/Non-speaking order

mvs

To

Page No:14/18



Crl. O.P. Nos.14303 and 16448 of 2022

1. The Commissioner of Police
Office of the Commissioner of Police
Sozhinganallur
Chennai.
2. The Inspector of Police
Perumbakkam Police Station
Chennai.
3. The Inspector of Police
Kanathur Police Station
Kanathur
Chennai.
4. The Inspector of Police
W 35 All Women Police Station
Tambaram Chennai.
5. The Commissioner of Police
Tambaram Range
Tambaram.
6. The Public Prosecutor
Madras High Court.



WEB COPY



Crl. O.P. Nos.14303 and 16448 of 2022

N. SATHISH KUMAR, J

mvs.

Crl. O.P. Nos.14303 and 16448 of 2022

1/9/2022



Crl. O.P. Nos.14303 and 16448 of 2022

Order dated : 16.03.2023

Crl. O.P. Nos.14303 and 16448 of 2022

N.SATHISH KUMAR, J.

Today, these petitions have been listed under the caption 'for being spoken to'.

2.Heard the learned counsel appearing on either side.

2.As per the direction of the Hon'ble Supreme Court, the Registry is directed to redact the name of the victim wherever it is mentioned in the order dated 01.09.2022 and upload order afresh after redacting the name of the victim forthwith.

16.03.2023

ta

Note: Issue redacted order copy on 17.03.2023.

Page No:17/18



WEB COPY



Crl. O.P. Nos.14303 and 16448 of 2022

N. SATHISH KUMAR, J

mvs.

Crl. O.P. Nos.14303 and 16448 of 2022

1/9/2022