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Crl. O.P.No.22378 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2022

CORAM:

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

Crl.O.P.No.22378 of 2022

and

Crl.M.P.Nos.14400 & 14401 of 2022

Thunaivansamy

...Petitioner

-Vs-

1. The Inspector of Police,
All Women Police Station,
Ulundurpettai,
Villupuram District.

2. R.Kanaga

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in SC No.170 of 2022 on the file of the Sessions Judge and Magalir Neethi Mandram, Villupuram and quash the same.

For Petitioner : Mr.B.Mahendra Naidu
For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records in SC No.170 of 2022 on the file of the Sessions Judge and



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Magalir Neethi Mandram, Villupuram and quash the same for the offences under Sections 313, 417, 376, 294(b) and 506(i) of IPC.

2. Heard, Mr.B.Mahendra Naidu, learned counsel appearing for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the 1st respondent.

3. The case of the prosecution is that in the year 2011, the petitioner and the victim had love with each other and on the pretext of marriage, he had physical relationship with the victim. Due to which, she got pregnant. However, the petitioner requested the victim not to have a child before their marriage. Therefore, he insisted to abort the child and it was aborted.

4. While being so, on her parental arrangement she got married with another man. Even then, their relationship was continued and on the request made by the petitioner, she got notarized divorce deed and stayed along with the petitioner herein. However, the petitioner suppressed the fact that she already married a man with one Vetrivel and



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had physical relationship. Due to which, she also got pregnant and again compelled her to abort child. Hence, the charge.

5. The learned counsel appearing for the petitioner would submit that both are major and as such, they had physical relationship with their consent. Therefore, no offence has been made out under Section 376 of IPC. Now, the defacto complainant given birth to a child and without even conducting DNA test, the charges were framed by the first respondent for the offences under Sections 313, 417, 376, 294(b) and 506(i) of IPC as against the petitioner. He further submitted that the child was not born to the petitioner and even according to the petitioner, the defacto complainant got married with one Vetrivel. Further, the marriage is still in existence.

6. On perusal of the final report and statement of the victim revealed that on the pretext of marriage, the petitioner had physical relationship with the victim. Due to which, she got pregnant and thereafter on the instigation and compulsion of the petitioner, she got aborted her pregnancy. Though, she got married with one Vetrivel, she



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live with the petitioner herein on the pretext of marriage. She also obtained notarized deed of divorce and produced before him. On production of the same, both are started living together and she got pregnant. It is also pertinent to note that the petitioner suppressed the fact that she got married with one Vetrivel and living with the petitioner and also gave birth to a child. Therefore, the petitioner committed a very serious offence. There is a material to charge the petitioner for the offence under Sections 313, 417, 376, 294(b) and 506(i) of IPC. That apart, the grounds raised by the petitioners is mixed questions of fact and which cannot be gone into in this quash the petition.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case



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made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, wherein, it has been held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made



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by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

9. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....



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13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in S.C.No.170 of 2022 on the file of the Sessions Judge and Magalir Neethi Mandram, Villupuram. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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To

1.The Sessions Judge,
Magalir Neethi Mandram,
Villupuram.

2. The Inspector of Police,
All Women Police Station,
Ulundurpettai,
Villupuram District.

3.The Public Prosecutor
Madras High Court.

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and

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