



BAIL SLIP in CrI.R.C.No.447 of 2014

Petitioner/Accused Viz., Dhanusu @ Ramabathiran, Male, 23 years, S/o.Gunasekaran was directed to be released on bail by order of this court dated 25.04.2014 in CrI.M.P.No.1/14 in CrI.R.C.No.447/2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Criminal Revision Petition No.447 of 2014

Dhanusu @ Ramabathiran ..Revision Petitioner/Appellant
/Accused

Vs.

State, Represented by
Station House Officer
All Women Police Station,
Puducherry.

..Respondent/Respondent/Complainant

PRAYER: This Criminal Revision Petition filed under Section 397 Cr.P.C., to call for the records and quash the order of conviction dated 26.02.2010 passed in C.C.No.216/2006 on the file of the Chief Judicial Magistrate, Puducherry and confirmed by the order dated 03.10.2013 passed by the learned II Additional Sessions Judge, Pondicherry in CrI.A.No.7 of 2010.

For Petitioner: Mr.D.Baskar

For Respondent : Mr.Balamurugane
Public Prosecutor (Puducherry)

ORDER

This Criminal Revision Petition has been preferred by the criminal revision petitioner/accused challenging the judgement of the learned II Additional Sessions Judge, Pondicherry dated 03.10.2013 made in CrI.A.No.7 of 2010 by which the judgement of the learned Chief Judicial Magistrate, Puducherry, dated 26.02.2010, made in C.C.No.216/2006 is confirmed.

2.The Criminal Revision Petitioner is the accused before the trial Court. The case of the prosecution is that the accused had influenced the defacto complainant/PW.1 and had repeated sexually intercourse with her by falsely promising that he would



marry her. After she became pregnant, when she was asked him to marry her, he refused to marry and asked her not to disclose it to anyone that she was pregnant because of him. Since the accused had cheated PW.1 by giving false assurance and thereby influenced her to deliver a child through him he was charged for the offences under Sec. 417 and 420 IPC.

2.1. Based on the complaint given by PW.1 on 27.08.2005. PW.13 registered a case in Cr.No. 49/2005 for the offences under Sec.417 and 420 IPC and prepared the FIR/Ex.P.8. The case was investigated by PW.13. She was examined as PW.1, her parents and some other witnesses. PW.13 also sent PW.1 to the hospital for medical examination.

2.2.PW.14/D.Ravindran/Inspector of Police who continued with the investigation thereafter, examined the Doctor who had conducted the medical examination on the victim and the accused and obtained medical certificates. After completing the investigation he filed the charge sheet against the accused for the offence under Sec.417 and 420 IPC.

2.3.After the case was taken on file and after observing the legal mandates, the learned trial Judge framed the charges against the accused for the offences under Sec.417 and 420 IPC and read over to the accused. The accused denied his involvement in the offences and pleaded innocent.

2.4. During the course of the trial, on the side of the prosecution 15 witnesses have been examined as PWs.1 to 15 and Exs.P1 to 8 were marked. The incriminating materials surfaced from the evidence of the prosecution were put to the accused under Sec.313 Cr.P.C. and he denied the same. On the side of the defense, DW1 and DW.2 were examined and no document was marked.

2.5.After conclusion of the trial and on consideration of the materials placed before the Court, the learned Trial Court found the accused guilty under Sec.417 IPC, and convicted and sentenced him to undergo Rigorous Imprisonment for One year and also to pay a fine of Rs.3000/- in default to undergo Rigorous Imprisonment for three months. The appeal preferred by the accused in CrI.A.No.7/2010 was dismissed on 03.10.2013 by confirming the judgement of conviction and sentence. As against the judgement of the Appellate Court, the revision petitioner/accused has preferred this Criminal Revision before this Court.

3.Heard, the submissions of Mr.D.Baskar, learned Counsel for the Petitioner and Mr.Balamurugane, Public Prosecutor (Puducherry) for the respondent police.

4.The learned counsel for the revision petitioner has



submitted that the accused did not have any intention of cheating the victim; because of his change of circumstances he could not marry her; the inability to marry PW.1 cannot be construed as committing an offence of cheating and hence the judgement of the Appellate Court should be set aside.

5.The learned Public Prosecutor (Puducherry) appearing for the respondent has submitted that the trial Court as well as the Appellate Court have appreciated the facts in a proper perspective on the basis of the materials placed before the Court; the revision petitioner had cheated PW.1 by falsely assuring her that he would marry her, after he came to know about her pregnancy , the petitioner insisted her not to disclose the same to others and not to give birth to the child and the accused avoided to talk with PW.1, with an intention to cheat her.

6.The point for consideration is

Whether the finding of the guilt of the accused for the offence under Sec.417 IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

7.Point:-The fact that the victim (PW.1) and the accused are known to each other was not denied. The records would reveal that the victim and the accused were neighbour and they developed an affair between themselves. Since he promised to marry her, she had consented to have sexual intercourse with him for the past 8 months. The accused was in the habit of coming to her house when her mother went outside. Sometimes he would take her to the house of his maternal aunt and have sexual intercourse with her. Due to such repeated physical contacts between the revision petitioner/accused and the victim (PW.1), PW.1 got pregnant. When the matter was conveyed to the petitioner/accused he retracted from his promise to marry her and asked her not to disclose the matter to anyone. Therefore he avoided to talk with her. The occurrence is said to have happened during the period between 2004-2005. After PW.1 became pregnant, she had no other option except to inform her mother/PW.2 and her elder sister/ PW.3. Only thereafter the family held talks with the accused. But the accused totally denied his involvement with PW.1. Apart from the evidence of PW.1,PW.2 and PW.3 have also corroborated the evidence of PW.1. In fact PW.1 had delivered a female child on 28.02.2006.

8.The evidence of PW.10/Dr.Kasthuri would show that PW.1 got admitted in the Government Maternity Hospital and delivered a female baby on 28.02.2006, her report is marked as Ex.P.6. Though the accused denied his involvement in the occurrence, the



DNA results proved that the accused is the biological father of the child, delivered by PW.1 on 28.02.2006. The DNA report is marked as Ex.P.7. So it cannot be denied by the revision petitioner/accused that he is not involved in the occurrence.

WEB COPY

9.To prove the occurrences of this nature, the evidence of the victim alone is sufficient and it does not even require any other corroboration. In this case, the evidence of PW.2., PW.3, the evidence of the Doctor and the DNA report would also corroborate with the evidence of PW.1 that frequent sexual intercourse with her and that made her pregnant. It is seen from the judgement of the learned trial Judge that PW.1 was suggested during the cross examination that she had sexual intercourse with the accused just for the pleasure of it and not for any other reason.

10.PW.1 belongs to lower state of society. Her mother is selling idlies and her father is an auto doctor. The accused was a neighbour and he could have access to the house of PW.1 whenever her mother was not at home. In the given social and economic status of PW.1, it cannot be presumed that she had chosen her relationship with the accused just for the sake of pleasure and not out of love or desire to marry. The vulnerability of the family status PW.1 would show that she believed the words of the accused that he would marry her. The love and confidence she had on him prompted her to yield to his desires. Only after she came to know that the accused never had an intention to marry her and he had given a false assurance, PW.1 had disclosed the affair to her family members. By that time she also became pregnant. Though PW.1 was a consenting party, her confidence on the accused was the reason to move closely with him. The accused got her consent by giving false promise to marry her. After knowing that she was pregnant, he abruptly denied his involvement and avoided to even talk with her.

11.The DNA test results prove that the accused is the biological father of the child born to PW.1. Subsequently, the accused has taken a different version of the defence that PW.1 had sexual intercourse with him only for pleasure. The above dishonesty exhibited from the conduct of the accused itself would show that he did not have any other intention except to cheat PW.1 on the assurance of marrying her.

12.The act of cheating is defined under 415 IPC:-

"415. **Cheating**

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the



WEB COPY

person so deceived to do or omit to do anything which he would not do 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, is said to "cheat".

Explanation. A dishonest concealment of facts is deception within the meaning of this section."

13.PW.1 was influenced on the promise of the accused that he would marry her. Thereafter she delivered her very person to the pleasure of accused. The accused after quenching his sexual thrust deserted PW.1. With his above acts PW.1 not only got humiliated but also delivered a female baby as an unwed mother. The harm and damage thus caused to the life of PW.1 is irreparable and immeasurable. So the act of the accused fits well within the definition of cheating. Since the act of the accused fulfills all the ingredients of Sec.415 IPC, the learned trial Judge had rightly convicted the accused for the offence under Sec.417 IPC. The learned Appellate Judge also re appreciated the evidence on record in a right perspective and got convinced with the findings of the learned trial Judge and confirmed the judgement of conviction of sentence passed by the trial Judge. As I do not find any factual and legal infirmity in the judgement of the Courts below, the same does not warrant any interference.

14.The learned counsel for the petitioner submitted that some leniency may be shown in the punishment of sentence.

15.It is learnt that subsequent to the occurrence, the accused had married another women and he has two children through her. He has not taken any steps to redress the damage caused to the life of PW.1 in any possible way. Neither had he taken up the responsibly to maintain the child born to him through PW.1. The indifference of the accused would show that he is remorseless to his action, but he is interested in perfecting his own life only.

In the result this Criminal Revision Petition is dismissed. The judgement dated 26.02.2010 passed in C.C.No.216/2006 on the file of the Chief Judicial Magistrate, Puducherry is hereby upheld.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jrs



To

1. The Chief Judicial Magistrate,
Puducherry.
2. The II Additional Sessions Judge,
Pondicherry.
3. The Public Prosecutor,
Puducherry.
4. The Station House Officer
All Women Police Station,
Puducherry.
5. The Section Officer,
Criminal Section,
High Court, Madras.

Criminal Revision Petition No.447 of 2014

PMK(CO)
RGA(08/03/2022)