



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P(MD)No.3457 of 2022

&

Cr1.M.P(MD)No.2570 of 2022

Sakthivel ... Petitioner/Accused Rank 1
Vs.

1. The State represented by
The Inspector of Police,
Pettai Police Station,
Pettai,
Tirunelveli Town.
(In Crime No.531 of 2020) ... Respondent/Complainant
2. N.Kalyani ... Respondent/Defacto Complainant
3. xxxxxxxxxxxx ... Respondent/Victim Girl

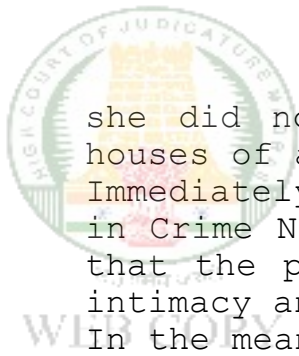
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the FIR in Crime No.531 of 2020 on the file of the first respondent Police and quash the same as illegal as against the Petitioner.

For Petitioner : Mr.V.Selvakumar
For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor(Criminal Side)
for R.1
Mr.S.Paulmuruges for R.3

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.531 of 2020 on the file of the first respondent Police.

2. The case of the prosecution is that the defacto complainant, namely, N.Kalyani gave a complaint before the respondent Police. Her husband died in January 2020. She is having one male child and one daughter. Her elder son, namely, Esakkiprakash is studying second year at MDT College, Pettai. Her daughter was aged about 17 years. On 08.06.2020, at about 11 o'clock, she informed to her mother that she went to her sister's house. After one hour later, the second respondent contacted her sister through phone. Her sister told that



she did not come to her house. Immediately, she searched in the houses of all relatives and friends, but she is unable to trace her. Immediately, she gave a complaint before the first respondent police in Crime No.531 of 2020. They conducted an enquiry and it revealed that the petitioner was introduced through Face book and developed intimacy and love affair with the victim girl for the past one year. In the meantime, the mother of the victim girl arranged the marriage for her and it came to the knowledge of the victim girl and she informed the same to the petitioner. On 08.06.2020, in the morning, the petitioner came to Pettai and waiting near the Kani Hospital at Pettai and the petitioner kidnapped the girl in a bike. At that time, the Accused Nos.2 and 3, who are the parents of the petitioner/ Accused No.1 consented for the marriage for them knowing the fact that the victim girl had not completed 18 years of age. On 12.06.2020, they got married. The Accused No.1/petitioner compelled her and committed penetrative sexual assault upon the victim girl. Accused Nos.2 and 3 have abetted the offences of sexual offences of sexual assault, sexual harassment and penetrative assault committed by the petitioner/accused No.1 upon the victim girl. Based on the occurrence, the present complaint was registered.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.531 of 2020 on the file of the first respondent Police as against the petitioner.

4. The learned Additional Public Prosecutor would submit that the investigation is completed and the respondent police are about to file the final report before the concerned court.

5. Heard both sides and perused the materials available on record.

6. It is seen from the First Information Report that there are specific allegation as against the petitioner, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** - ***Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.***, as follows:-

"4. The only point that arises for our consideration in this case is whether the High



Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on



the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

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7. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original Petition stands dismissed. However, the respondent police is directed to complete the investigation and file final report before the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2022

Sub Assistant Registrar(CS)

mga

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 Inspector of Police,
Pettai Police Station,
Pettai,
Tirunelveli Town.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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SE (CO)

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