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Crl.OP(MD)N



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29/04/2022

Pronounced on : 25/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.13105 of 2019
and
Crl.MP(MD)No.8060 of 2019

Karthik : Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
All Women Police Station,
Pattukottai,
Thanjavur District.
(Crime No.15 of 2018) : R1/Complainant

2.Sabarna : R2/De-facto complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records from the Judicial Magistrate, Pattukottai, in CC No.116 of 2019 and quash the same.

For Petitioner : Mr.R.Suresh Kumar

For 1st Respondent : Mr.P.Kottai Chamy
Government Advocate
(Criminal side)

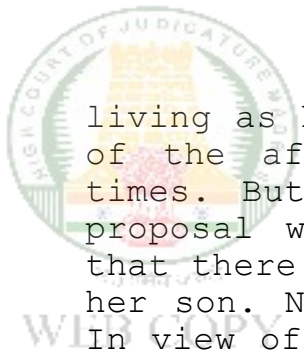
For 2nd Respondent : Mr.G.Kannan
(Legal Aid counsel)

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.116 of 2019 on the file of the Judicial Magistrate, Pattukottai.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that she was in love with his aunt's son for about five years and they were
<https://www.mhc.tn.gov.in/judis>



living as husband and wife. He also promised to marry her. In pursuance of the aforesaid promise, they were in physical contact for many times. But later, he shown distance from her. When the marriage proposal was made, the Aunt of the de-facto complainant replied that there was no such contact between the de-facto complainant and her son. Now another marriage proposal has also been taken place. In view of the aforesaid marriage proposal, the complainant lodged a complaint stating that the accused person had committed the offence of cheating and based on the aforesaid complaint, a case has been registered under sections 417 and 429 IPC.

3. Seeking quashment of the same, the accused person filed this petition on the ground that none of the allegations mentioned in the final report attract any of the ingredients of the offences under sections 417 and 493 IPC; During the course of investigation, the involvement of the second and third accused were not brought to book, so they were deleted from array of parties.

4. Heard both sides.

5. In spite of repeated summons, the de-facto complainant did not appear and so, on her behalf, an Advocate from the Legal Aid Panel was appointed to defend her case.

6. It appears that the de-facto complainant and accused person are close relatives. They had physical contact for some-time. According to the de-facto complainant, by giving false promise, she was subjected to sexual intercourse and later, something went wrong between them, as a result of which, the present complaint has been registered.

7. The learned counsel appearing for the petitioner straightaway relied upon the judgment of this Court in the case of **P.Murugappan Vs. State [(2017) 4 MLJ Cr1 412]** for the purpose of argument that even as per the allegation that was made in the complaint, no offence is attracted, because both are major in age and absolutely, there was no false promise on the part of the petitioner to marry the de-facto complainant.

8. Now, it is useful to refer the operative portion of the above said judgment, which reads as follows:-

"9. As per the dictum of the Hon'ble Supreme Court, there must be consistent evidence for the purpose of showing that from very inception, the petitioner herein has never really intended to marry the 2nd respondent herein. In the instant case, such aspect is totally absent. The specific evidence of the prosecutrix is that during the visit of the petitioner herein to his village from



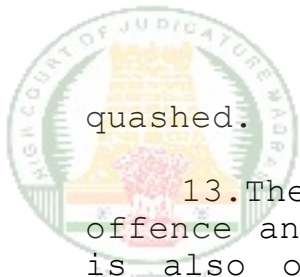
foreign country on several occasions, both of them have had sexual intercourse. Since on the side of the prosecution absolutely there is no evidence for the purpose of showing that from inception of episode, the petitioner/accused has never intended to marry the 2nd respondent, this Court cannot come to a conclusion that only under misconception, the 2nd respondent herein has given her consent for having sexual intercourse with the first accused. Since the decisions referred to supra are identical to the facts of the present case, this Court cannot take a different view. Under the said circumstances, the argument advanced by the learned counsel for the petitioner/accused is having merit.

9. On the basis of the aforesaid observation, now it has been contended on behalf of the petitioner to the effect that absolutely, no offences are attracted in the present case. Since a similar case has been decided in a like manner, this petition has also been decided on the very same line.

10. But reading of the above judgment referred above indicates that the facts in the case of **Uday Vs. State of Karnataka (2003) 4 SCC: FIR 2003 SC 1639**, which has been relied upon by this Court in the aforesaid judgment, the facts are entirely different to the present case on hand. In that case, the de-facto complainant and the accused person belonged to different caste and it was held that the de-facto complainant was well aware, even at the time of inception of their contact to the effect that their marriage may not take place, because of the difference of the caste and she had given a consent knowing fully about the consequences.

11. But here, as mentioned earlier, the de-facto complainant and the accused are close relatives and the custom permits the marriage between the daughter of the Uncle with a son of an Aunt. Absolutely, there is no material to show that even at the inception of the their contact between them, the de-facto complainant was well aware of the non-possibility of their marriage. When an allegation of serious nature has been made, I am of the considered view that the trial must be proceeded to its logical end.

12. The contention of the petitioner that the offence under section 417 IPC is barred by limitation and section 493 IPC is non-cognizable offence, for which, the police has no right to investigate the matter, cannot be taken into account at this stage. So far as this case is concerned, there is no limitation for the offence under section 417 IPC will apply. So far as the cheating continues, it can be construed only as a continuous offence from the date of knowledge and final report was filed within a year. So



quashed.

13.The next ground that section 493 IPC is a non-cognizable offence and so, the police has no right to investigate the matter is also out of place for the simple reason that a cognizable offence may also clubbed with non-cognizable offence, for which there is no bar for the police to investigate the matter. Even factually also, I am the considered view that this is not the fittest case to exercise the judicial jurisdiction under section 482 Cr.P.C. If such sort of defences are allowed, then it will give a seal of approval for cheaters like the petitioner.

14.For all the reasons stated above, this criminal Original petition is liable to be dismissed and accordingly, it is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.O)

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/11/2022

Sub Assistant Registrar(CS)

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To,

1.The Judicial Magistrate,
Pattukottai.

2.The Inspector of Police,
All Women Police Station,
Pattukottai,
Thanjavur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SURESH KUMAR, Advocate (SR-40863[F] dated 26/08/2022)

Crl.OP(MD)No.13105 of 2019

25.08.2022

AMS (03.11.2022) 4P 5C