



CrI.O.P.(MD) No.22358 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD) No.22358 of 2022

and

CrI.M.P.(MD) Nos.15801 and 15802 of 2022

1. Sudhagar,

2. Murugan,

: Petitioners

Vs

State through

The Inspector of Police,

Thirunagar Police Station.

Cr.No.290/2011.

: Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records relating to the S.C.No.23 of 2017, on the file of the Additional District Judge (Mahila), Madurai and quash the same as illegal.

For Petitioners : Mr.B.A.Muruganantham

For Respondent : Mr.S.S.Madhavan

Government Advocate (CrI.Side)



Crl.O.P.(MD) No.22358 of 2022

WEB COPY

ORDER

This criminal original petition has been filed seeking to quash the charge sheet in S.C.No.23 of 2017, on the file of the learned Additional District Judge (Mahila), Madurai.

2.It is evident from the records that on the basis of the complaint lodged by the defacto complainant, the FIR came to be registered in Crime No.290 of 2011 against the petitioners, under Section 366(A) IPC and after completing the investigation, the respondent police had laid the final report on 13.12.2012, for the offence under Sections 366(A) and 376 IPC r/w 4 of Tamil Nadu Prohibition of Harassment of Women Act. The case of the prosecution is that the first accused/first petitioner is a karate Master in a school, where the defacto complainant's daughter studied; that the first petitioner met the defacto complainant's daughter on 23.07.2011 and took her in his TVS Sports Motor Vehicle bearing Registration No.TN 58 T 8466 to his house at Muthupatty; that the first accused had touched the body parts of the victim and caused sexual harassment; that the first accused had kidnapped the victim on 24.07.2011 to Erode, where he raped the victim with the help of the second



Crl.O.P.(MD) No.22358 of 2022

petitioner/second accused.

WEB COPY

3.The learned Counsel appearing for the petitioners would submit that the first petitioner and the victim girl loved each other and wanted to live together; that the petitioners advised the victim girl to wait till she attains the majority, but she came on her own volition to the house of the first petitioner; that when the first petitioner and his family members convinced the victim girl to go back to her home, in the mean while, the victim's father gave a complaint to the respondent police and subsequently the respondent police arrested the petitioners; that the petitioners have not committed any offence, that the petitioners have never touched the victim girl and that therefore, there is no sexual harassment or rape occurred as alleged by the respondent police. The learned Counsel would further contend that the respondent police finds it difficult to bring the witnesses to the Court; that the victim girl has got married and is running her life very peacefully and that in order to safeguard the interest and safety of the alleged victim, it has become just and necessary to quash the charge sheet.



4. Admittedly, as per the prosecution, the victim girl was aged about fifteen years and the first petitioner/first accused was aged about twenty years at the time of alleged occurrence.

5. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for



proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

6. In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in **2019 (18) SCC 191**, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.



7. The Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and others*** reported in ***2021 (3) Crimes 247*** has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

8.A cursory perusal of the complaint, final report and the statements filed along with the final report makes out a *prima-facie* case to proceed against the accused and the points/aspects now raised by the petitioners cannot be gone into in the petition filed under Section 482 Cr.P.C., and the same are the matter for trial.

9.At this juncture, the learned Government Advocate (CrI.Side) would submit that the trial had already been commenced and one of the witness was examined as PW.1 and that since the mother of the victim is in abroad, the



Crl.O.P.(MD) No.22358 of 2022

trial could not be proceeded.

WEB COPY

10.Considering the above and also the fact that the above case is pending from the year 2017, the learned Additional District Judge (Mahila), Madurai, is directed to complete the trial in S.C.No.23 of 2017 and dispose of the same as expeditiously as possible, preferably, within a period of three months, from the date of receipt of a copy of this order.

11.With the above direction, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

19.12.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
lr



Crl.O.P.(MD) No.22358 of 2022

To

1. The Additional District Judge (Mahila), Madurai
2. The Inspector of Police,
Thirunagar Police Station.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD) No.22358 of 2022

K.MURALI SHANKAR, J.

lr

Crl.O.P.(MD) No.22358 of 2022

19.12.2022