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**Crl.O.P.(MD)No. 19309 of 2019**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06/04/2022

Pronounced on : 05/07/2022

CORAM:

**THE HON'BLE MR JUSTICE G.ILANGO VAN**

Crl.O.P.(MD)No.19309 of 2019

N.Viswanathan : Petitioner/A2

Vs.

1.State represented by  
The Inspector of Police,  
Karur CB-CID Police Station,  
Karur District.  
(In Crime No.1 of 2019)

: R1/Complainant

2.Ms.Rajeswari

: R2/De-fato Complainant

**Prayer:** Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the case in SC No.179 of 2019 on the file of the Mahila Court, Karur and quash the same as against the petitioner.

For Petitioner : Mr.Henri Tiphagne

For 1<sup>st</sup> Respondent : Mr.R.Meenakshi Sundaram  
Additional Public Prosecutor

For 2<sup>nd</sup> Respondent : Mr.N.Anantha padmanabam  
M/s.APN Law Associates



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**O R D E R**

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This criminal original petition is filed seeking quashment of the case in SC No.179 of 2019 on the file of the Mahila Court, Karur.

**2.The case of the prosecution in brief:-**

A1 was already married to one Poonkodi. A2 was residing in America for about 15 years. At that time, he was acting in favour of banned LTTE organisation. Because of the above said litigation problem, he went absconding and after that for about 10 years, he was living in Karur in his ancestral house and he started an organisation called 'Kavery River Bed Protection Organisation'. He carried out the work of the above said organisation from the house. The de-facto complainant and A1 became known to each other in 2016, when a protest was made with regard to cutting of 100 years old banyan tree (ஆலமரம்). They frequent their contact and participated in number of protests and demonstrations. A1 was also known to A2. He also started functioning and working in the above said organisation. A2 took control of the de-facto complainant. A1 had intention to commit sexual intercourse with the above said Rajeswari. On the false promise of marriage, A1



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committed sexual intercourse with the above said Rajeswari, for which, A2 was colluding. A2 took control of the above said Rajeshwari and threatened with the help of A1. A1 continuously subject to the de-facto complainant intercourse. On 10/02/2019, A1/Mookilan went absconding. At that time, A2 criminally intimidated and threatened the de-facto complainant. He was also providing shelter to A1 and also acted by disappearing the offence of sexual assault. So against A1, a case in Crime No.01 of 2010 was registered for the offences under sections 120B, 354, 376, and section 4 of Tamil Nadu Prohibition of Women Act. Against A2 for the offences under sections 120(B), 376 IPC r/w 201 IPC and section 4 of the Tamil Nadu Prohibition of Women Act has been registered and final report was also filed and it was taken cognizance in PRC No.20 of 2019 and now, it has been transferred to Mahila Court, Karur and assigned as SC No. 179 of 2019.

3. Seeking the quashment of the same, A2 is before this court.

4. Heard both sides.



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5.A1 is a well known person, who was running an organisation and also participated in several protests against some important issues and he also went hiding when trouble was created by the mother of the de-facto complainant. The mother of the de-facto complainant was under impression that A1 brought her daughter under his control and spoiled her life. At one point of time, when A1 was returning from the public meeting, the mother of the de-facto complainant started creating problem to him and quarrelled. This is evident from the perusal of the CD file. Apparently, the mother of the de-facto complainant was pleading with A1 to disconnect his contact with the de-facto complainant. Later, A1 went absconding. Suddenly on one day, he surfaced in Thirupathi, when he started protest against an event and remanded to judicial custody. This is the back ground of the entire occurrence, as I see from the CD file.

6.Now in so far as this petitioner is concerned, it is seen from the records that for sometime, A1 was staying in the house of the petitioner/A2 and during that period, the de-facto complainant had frequented A1 in the house of the petitioner. The relationship between A1 and the de-facto complainant was also known to the petitioner. At one



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point of time, this petitioner tried to make a compromise between A1 and the de-facto complainant. But later, it failed and this petitioner was not in a position to make compromise between the parties. This is also evident from the Whatsapp message, that was exchanged between the de-facto complainant and the petitioner. In the background of the above situation, at one point of time, the police wanted the petitioner to turn approver, so that the case against A1 can be strengthened.

7.The learned counsel appearing for the petitioner would submit that the petitioner was also directed to appear before the concerned Magistrate court for recording the statement. But during the above said proceedings, he expressed his unwillingness to give any statement. So on the very next day of the above said failure on the part of the petitioner to give a statement, the case was altered by implicating this petitioner as also one of the accused persons for the offences punishable under sections 120(B), 376 IPC r/w 201 IPC and section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. This is also evident from the CD file.



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8.The learned counsel appearing for the petitioner would heavily rely upon this circumstance to show that this is purely an after thought and false case, which has been foisted due to unwillingness on the part of the petitioner to turn approver or give statement in favour of the prosecution against A1. Even though, such sort of step is also on the face of the court, in the facts and circumstances of the case, the offence under sections 120-B, 376 and 201 IPC may not be attracted against this petitioner. But the fact remains that the allegation against this petitioner by the de-facto complainant is that there was criminal intimidation, when the issue was brought to his notice. So, this piece of allegation is entirely a factual one, which cannot be gone into by this court at this stage. But however, as mentioned earlier, this petitioner was giving shelter to A1 and during the process of his stay, it appears that there was illicit intimacy between the de-facto complainant and A1.

9.Simply because, A1 was staying in the house of A2, at no stretch of imagination, it will extend to implicate this petitioner to the offence under section 376 IPC r/w 120-B IPC. Absolutely, there is a wrong statement by the police.



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10.No doubt section 120-B IPC r/w 376 IPC may not be attracted against this petitioner. But certainly the allegation of criminal intimidation must be properly tried. So it is for the trial court, at the time of framing of charge to take all these things into account and frame appropriate charge. So, I am not going to discuss about whether in the facts and circumstances of the case, the relationship between A1 and the de-facto complainant will come under the definition of consent or not. Similarly, whether any false promise on the face of A1 to marry the de-facto complainant is also not arising for consideration in this petition.

11.Even though, number of decisions have been cited by the learned counsel appearing for the petitioner, it could not be considered, since only limited allegation is made against this petitioner. Those issues are not relevant. So, I am not discussing the judgments cited by the learned counsel appearing for the petitioner.

12.Another disturbing feature is that while the petitioner was in America, there is an allegation to the effect that through his bank account, money was transferred to the banned organisation called 'LTTE', who were

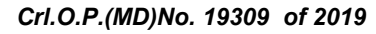


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operating through out the globe, though based in Srilanka. But steps have been taken by the American Court to initiate proceedings against the petitioner. The affidavit, that was filed by the prosecuting agency before the American Court is also filed. Further development is not known.

13.The learned counsel appearing for the petitioner for that purpose would submit that no case has been registered so far under the provisions of Extradition Treaty, that was entered between the USA and India. According to the learned counsel appearing for the petitioner, the offence that has been alleged against this petitioner in the American Court is only a political issue. I do not want to go into those issues now, which are not relevant for consideration or discussion. But suffice to say that the petitioner is facing the criminal case in USA.

14.For the above said reasons, I am of the considered view that quashment of the entire proceedings is not fair. But the trial court may take into consideration the above said observation on factual aspects, particularly in the light of the observation of this court to the effect that sections 120-B, 376 and 201 IPC may not be attracted. It is also open to the petitioner to put forth all his argument at the time of framing of charges.



05.07.2022

**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.



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To,

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- 01.The Inspector of Police,  
Karur CB-CID Police Station,  
Karur District.
- 02.The Mahila Court,  
Karur.
- 03.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**G . ILANGO VAN , J . ,**

er

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