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Crl.R.C.No.72 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.72 of 2023

P.Udhayakumar

... Petitioner

Vs.

State by Inspector of Police,
Arachalur Police Station,
Erode District,
(Cr.No.215 of 2018)

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 r/w.401 of Cr.P.C. to call for the records on the file of the learned Sessions Judge, Magalir Neethimandram, (Magalir Fast Track Court) Erode in respect of the order passed in Crl.M.P.No.876 of 2022 in Spl.S.C.No.2 of 2020 dated 25.11.2022 and to set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.V. Meganathan
Govt. Advocate (Crl.Side)



Crl.R.C.No.72 of 2023

WEB COPY

ORDER

This Revision is filed challenging the impugned order dated 25.11.2022 passed by the Sessions Judge, Magalir Neethimandram, Magalir Fast Track Court, Erode in Crl.M.P.No.876 of 2022 in Spl.S.C.No.2 of 2020.

2. The learned counsel for the petitioner contended that the respondent police registered a case against one Boopathy in FIR.No.215 of 2018 on 6.10.2018 for the offence punishable under section 366 IPC, in pursuance of a complaint given by one Kumarasamy, resident of Vilakethi Village, on the allegation that the said Boopathi had kidnapped his minor girl aged 14 years.

3. The learned counsel further contended that the said Boopathy and daughter of Kumarasamy having love affair with each other Hence, after enquiring the victim girl, a case has been registered against Boopathy in Cr.No.215 of 2018. But the respondent police, after investigation, filed a



Crl.R.C.No.72 of 2023

charge sheet against this petitioner as an accused and let out Boopathy.

During the examination of witnesses, PW1-Kumarasamy and victim girl PW3, they admitted in their evidence the relationship between the victim girl and Boopathy. In the circumstances, Boopathy married the victim girl. However, the respondent police instead of adding him as an accused, deleted his name from the FIR and cited the said Boopathi as witness in memo of evidence. Therefore, the petitioner filed a petition under section 319 Cr.P.C., before the court below to pass suitable order against the real accused persons involved in the offence as an accused in this case, but the trial court dismissed the same. Hence, the same is challenged in this criminal revision case.

4. When the matter is taken up for hearing, the learned Govt. Advocate (crl.side) submitted that though the respondent police registered a case against Boopathy based on the complaint of victim girl's father as he had already have a love affair with the victim girl, after registering the case



Crl.R.C.No.72 of 2023

against the said Boopathy, during the course of investigation, since it came to light that the victim girl was not kidnapped by the said Boopathy and it is the petitioner/accused who kidnapped the victim girl and raped her, a charge sheet has been laid against the petitioner. He further submitted that subsequently, the said Boopathy married the victim girl. Hence, he was cited as a witness. Therefore, the trial court rightly dismissed the petition and there is no reason to interfere with the same. Hence he pleaded to dismiss the criminal revision case.

5. I have considered the arguments advanced on both sides and perused the entire FIR, impugned order and other materials available on record.

6. On perusal of records, the fact reveals that the respondent police on 6.10.2018, registered a case against Boopathi, resident of Pudupalayam in FIR No.215 of 2018 for offence under section 366 IPC in pursuance of the complaint given by one Kumarasamy. In his complaint, as he had alleged that since her daughter had already love affair with the said Boopathy, he



Crl.R.C.No.72 of 2023

suspected that Boopathy might have kidnapped her. Based on his information, a case has been registered against Boopathi. After investigation, the police found that though the love affair between the victim girl and the said Boopathy was true, while the victim girl was residing at her mother's sister's house, the petitioner/ accused, who is a nearby resident, kidnapped her and sexually assaulted her. Therefore, on coming to know that the said Boopathy has not committed the offence, but the petitioner only committed the offence, the respondent police filed a charge sheet against the petitioner.

7. Perusal of records would further reveal that during the cross examination of prosecution witnesses, though the PW1-defacto complainant and PW3 victim girl in their 161 statements admitted the love affair between the Boopathy and the victim girl, on investigation, the respondent police found that Boopathy had not kidnapped and raped the victim girl, but the petitioner only kidnapped and raped her. Hence final report was filed against this petitioner. Therefore, this petitioner's application before the



Crl.R.C.No.72 of 2023

trial court under section 319 Cr.P.C., has been rightly dismissed by the trial court. In such a view of the matter, there is no reason to interfere with the impugned order passed by the trial court. I find no merits in the revision petition. Hence the same is dismissed.

12.01.2023

msr

Index:yes/no

Internet:yes/no

To

1. The Sessions Judge, Magalir Neethimandram,
(Magalir Fast Track Court),
Erode.
2. Inspector of Police,
Arachalur Police Station,
Erode District,
3. The Public Prosecutor,
High Court of Madras, Chennai.



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Crl.R.C.No.72 of 2023

V.SIVAGNANAM, J.,

msr

Crl.R.C.No.72 of 2023

12.01.2023

7 of 7