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Crl.O.P.No.1174 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.1174 of 2021 and
Crl.M.P.No.720 of 2021

Shanmugam

... Petitioner/Accused

/vs/

The State of Tamil Nadu
Rep by the Inspector of Police,
Varanjaram Police Station,
Villupuram District.
(Crime No.243 of 2012)

... Respondent/ Complainant

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records in S.C.No.163 of 2020 on the file of the Sessions Judge Mahalir Neethimandram (Fast Track Mahila Court) Villupuram and quash the same.

For Petitioner

... Mr.M.Devaraj

For Respondent

... Mr.A.Gopinath,
Govt. Advocate (Crl.Side)



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ORDER

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This Criminal Original Petition has been filed to call for the records in S.C.No.163 of 2020 on the file of the Sessions Judge Mahalir Neethimandram (Fast Track Mahila Court) Villupuram and quash the same.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

3. On the complaint given by the defacto complainant on the allegation that she had a love affair with the petitioner and in view of that, she was influenced by the petitioner and accepted for physical relationship between themselves. After she heard about the marriage arrangement of the petitioner with someone else, she went and asked him to marry her. But the petitioner refused to marry her. Thereafter, she had given a complaint. On the above complaint given against the petitioner, a case has been registered against the petitioner. After completing the investigation, a charge sheet has been filed for the offence under Sections 417, 376 & 506(i) IPC.

4. The learned counsel for the petitioner submitted that even according to the complaint, the defacto complainant has stated that she has



consensual relationship with the petitioner and hence there is no ingredient to make out an offence of rape; there is no allegation made in the complaint that the petitioner had the intention to deceive her; failure to fulfil the promise to marry cannot be construed as the offence of cheating and hence the petition should be allowed. He also submitted that the defacto complainant has not subjected herself for medical examination.

5. The learned counsel for the petitioner further submitted that the deceased has committed suicide only because her brother abused her. He also submitted that when there is no allegation in the complaint that the accused had the intention to deceive her, mere failure to fulfil the promise to marry the defacto complainant cannot be construed as the offence of cheating. In support of his contention, he drew the attention of this Court to the decision rendered in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr, reported in 2019 STPL 9627 SC.***

6. The learned Government Advocate (Crl.Side) submitted that the defacto complainant had committed suicide within three days of giving the



complaint and it is because the petitioner had attempted to marry some other girl; hence the petition should be dismissed.

7. Since the submission made by the learned counsel for the petitioner are all matters of facts, they has to be tried only during the trial. On perusal of the records it is seen that the defacto complainant who is no more now, had given the complaint on the allegation that she has conspired with the petitioner. Since she fell in love with him and in view of that, she had even subjected herself to physical relationship with him. But he attempted to marry some other girl and thereafter the defacto complainant went and requested him to marry her; after giving the complaint, the defacto complainant has committed suicide.

8. Only when the trial is conducted, it can be known about the transaction between the defacto complainant and the petitioner and their love affair and whether the assurance given by the petitioner is just a promise and he did not have any intention to deceive her at any point of time. The deceased had committed suicide shortly after the FIR was



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registered. When the matter had turned in such a way, it cannot be presumed now that the deceased has some other pressure other than the pressure and pain given by the petitioner. Hence, I do not feel it is a fit case where the powers of this Court should be exercised under Section 482 of Cr.P.C. by observing that no case is made out against the accused. At the threshold stage itself the Court cannot come to any conclusion about the facts by conducting a mini trial.

9. In view of the above stated reasons, this Criminal Original Petition is dismissed. It is made clear that the observations and discussions made herein is only for the purpose of this petition and the Trial Court has to appreciate the evidence and proceedings dispassionately without being influenced by the observations of this Court. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
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R.N.MANJULA ,J.

gsk

To

- 1.The Inspector of Police,
Varanjaram Police Station,
Villupuram District.
- 2.The Sessions Judge Mahalir Neethimandram
(Fast Track Mahila Court) Villupuram.
- 3.The Public Prosecutor,
High Court, Madras.

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