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Crl OP No. 4611 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 4611 of 2021

and

Crl.M.P. No. 2971 of 2021

Gunasekaran

... Petitioner

Versus

1. The Deputy Superintendent of Police,
Investigation Officer,
Paramathai Velur,
Namakkal District.

2. The Inspector of Police,
Nallur Police Station,
Namakkal District,
Crime No.678 of 2020.

3. Usha

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to charge sheet in Spl.S.C. No. 12 of 2021 on the file of the Special Court for SC / ST cases / Principal District and Sessions Court, Namakkal.

(amended as per order dated 23.02.2023 in Crl.M.P. No. 13851 of 2022 in Crl.O.P. No. 4611 of 2021)



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For petitioner : Mr. A. Padmanabhan.

For Respondents : Mr. S. Balaji,
Government Advocate (Crl.Side) for R1 & R2

No appearance for R3.

O R D E R

The Petition is to quash the final report in Spl.S.C. No. 12 of 2021 on the file of the Special Court for SC / ST cases, Namakkal for the alleged offence under Sections 376 of the Indian Penal Code read with Section 3 (2)(V) and 3 (1)(s) of the Schedule Caste and the Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015.

2.It is alleged in the final report that the defacto complainant was married to one Mahalingam on 16.05.2010 and two children were born out of the wedlock; that the defacto complainant did not live with the said Mahalingam and lived with her parents and started a tailoring business; that in the month of April 2018, she became acquainted with the petitioner who was a financier; that she used to borrow money from the petitioner for her tailoring business; that the petitioner promised that



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he will take care of her and induced her to have sexual intercourse; that on 14.01.2020 at about 11.30 a.m., the petitioner tied thali on her neck; that when the defacto complainant came to know that the petitioner was attempted to marry another lady, she met him on 20.10.2020 at 04.00 p.m. and when she questioned him, the petitioner abused her by using caste name within public view.

3. This petition was originally filed challenging the FIR in Crime Number 678 of 2020. At the time of admission, this Court had passed an order granting stay of the investigation in the said crime number. However, the respondents in violation of the said order had filed the impugned final report on 13.04.2021. The petitioner filed contempt petition in Cont.P. No. 221 of 2022 for punishing the respondents for contempt. This Court accepted the explanation offered by the respondents and gave liberty to the petitioner to challenge the final report by amending the prayer of this petition. The petitioner accordingly has filed Crl.M.P. No. 13851 of 2022 to amend the prayer in Crl.O.P. No. 4611 of 2021. This Court by order dated 23.02.2023 has allowed the said petition.



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4.The learned counsel for the petitioner would submit that the allegations even if accepted to be true, do not attract the offence under Section 376 of the Indian Penal Code. The third respondent is admittedly a married woman and the mother of two children; that she was mature enough to understand the significance and consequence of the act, she was consenting to. She should not have expected the petitioner to marry her. Therefore her consent cannot be said to be under a misconception. The allegations are an after thought and in any event would not amount to the offence under Section 376 of the Indian Penal Code. The learned counsel relied upon the Judgment of the Hon'ble Supreme Court in ***Naim Ahmed Vs. State (NCT of Delhi)*** reported in ***2023 LiveLaw (SC) 66*** and the order of the High Court of Jharkhand, Ranchi in ***Manish Kumar Sharma Vs.The State of Jharkhand*** in ***Cr.M.P. No. 488 of 2022*** dated ***06.12.2022*** in support of his submissions. The learned counsel would further submit that the allegation with regard to abusing the third respondent using her caste name is false and the third respondent cannot be believed.

5.The learned Additional Public Prosecutor appearing for the



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respondents 1 and 2 submitted that the question as to whether the consent of the third respondent was voluntary or obtained by false representation has to be adjudicated only before the trial Court. Further there are allegations in the impugned final report stating that the petitioner has abused the third respondent by caste name, attracting the offence under Section 3 (1)(s) of the Schedule Caste and the Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015. Hence, he prayed for dismissal of the quash petition.

6. Though notice was served on the third respondent / defacto complainant, none has entered appearance on her behalf.

7. This Court on perusal of the impugned final report finds that the third respondent is a married woman and was admittedly living away from her husband. She has two children out of the said wedlock. In such circumstances, she became friendly with the petitioner. It is her case that the petitioner promised to take care of her and forced himself on her and committed sexual intercourse on several occasions. It is also her case that on 14.01.2020, he tied a thali and represented that he was married to her. The above facts would clearly show that the consent was not



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obtained by any misrepresentation by the petitioner. The third respondent who is a married lady having two children would not have expected the petitioner to marry her. The facts are squarely covered by the Judgment of the Hon'ble Supreme Court in ***Naim Ahmed Vs. State (NCT of Delhi)*** reported in **2023 LiveLaw (SC) 66**. The relevant observations are extracted as follows;

“21. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015....”

In the instant case admittedly she was in relationship with the petitioner for nearly two years. Further, this Court had occasion to consider the question of consent given under a misconception of fact in ***Ravi Vs. The State rep., by the Inspector of Police*** in ***Crl.R.C. No. 126 of 2017*** dated **29.07.2022**. The relevant observations are extracted here for better



understanding;

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*“20.Thus from the above Judgments, we can see that though the Hon'ble Apex Court in **Deelip Singh's case** (cited supra) felt that Section 90 IPC cannot be construed as exhaustive definition of consent for the purpose of IPC, however, in the later portion of the said Judgment discussed the legal aspects bearing on the interpretation of the term consent with reference to Section 90 IPC. The subsequent judgments of the Hon'ble Apex Court also considered the validity of the consent of the victim only with reference to Section 90 IPC. The Hon'ble Apex Court further held that misrepresentation or false promise made in certain cases may be regarded as leading to misconception of fact. In **Pramod's case** the Hon'ble Supreme Court summed up legal principles which we have extracted in the earlier part of this judgment. In that case the Hon'ble Apex Court held that for a consent to be vitiated because of a false promise to marry two conditions have to be satisfied. Firstly, the promise of marriage must have been a false promise given in bad faith with no intention of fulfilling it. Secondly, the false promise must bear a direct nexus to the women's decision to engage in the sexual act. In **Maheshwar Tigga's case***



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(cited supra), the Hon'ble Apex Court held that the misconception of fact has to be proximate to the time of occurrence. If the occurrence is spread over a long period of time, then the consent cannot be said to have been obtained under a misconception of fact."

In the facts of this case, it cannot be said that the third respondent gave her consent under a misconception of fact, in view of her marital status and the fact that the alleged occurrence was spread over a long period of time. For all the above reasons, this Court is of the view that the offence under Section 376 of the Indian Penal Code is not made out in the facts of the instant case. Hence the offence under Section 3(2)(v) of the Schedule Caste and the Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015 is also not made out.

8. As regards the offence under Section 3 (1)(s) of the Schedule Caste and the Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015, this Court finds that the said allegation has been made out only to arm twist the petitioner. On an over all reading of the allegations in the impugned final report, this Court is of the view that the third respondent's grievance is that the petitioner had deserted her after having



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relationship for nearly two years. In view of the intimate relationship between the parties for a long time, the allegations with regard to the abuse clearly appears to be an after thought and improbable. Hence, this Court is of the view that the impugned proceedings are liable to be quashed.

9. Accordingly, this Criminal Original Petition is allowed by quashing the charge sheet in Spl.S.C. No. 12 of 2021 on the file of the Special Court for SC / ST cases / Principal District and Sessions Court, Namakkal. Consequently, the connected Miscellaneous Petition is closed.

19.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Deputy Superintendent of Police,
Investigation Officer,
Paramathai Velur,
Namakkal District.



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2. The Inspector of Police,
Nallur Police Station,
Namakkal District,
3. The Special Court for SC / ST cases
/ Principal District and Sessions Court,
Namakkal.
4. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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