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Crl.O.P.No.6485 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.6485 of 2019

and

Crl.M.P.No.3579 of 2019

Suresh Kumar

... Petitioner

Vs

1. State Rep. by
Inspector of Police,
All Women Police Station,
Coonoor.
(Crime No.05/2017)

2. Rahamath

... Respondents

PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records in C.C.No.89 of 2018 on the file of the Judicial Magistrate, Coonoor and quash the same.

For Petitioner : Mrs.Jayasri Baskar

For Respondent 1 : Mr.L.Baskaran
Government Advocate (Crl.Side)

For Respondents 2 : No appearance



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.89 of 2018 on the file of the learned Judicial Magistrate, Coonoor thereby taken cognizance for the offences under Sections 417 and 420 of IPC.

2. The case of the prosecution is that the 2nd respondent already got married one Abdul Kader on 12.01.2007. Thereafter he went to abroad and he failed to return to India. He did not contact the 2nd respondent for nearly seven years. Thereafter, the 2nd respondent went to the field of this petitioner for Cooli as daily wages. After knowing the position of the 2nd respondent, this petitioner had developed friendship with the 2nd respondent and also had sexual relationship on the pretext of marriage. In the month of June 2016, she got pregnant. The 2nd respondent insisted the petitioner for marriage, but the petitioner refused to marry her. Hence the complaint.

3. On receipt of the said complaint, the 1st respondent registered the



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same in Cr.No.05 of 2017 for the offences under sections.417 and 420 of IPC. After completion of investigation, the 1st respondent filed a final report and the same has been taken cognizance by the Trial Court.

4. The petitioner raised the ground that no offence under section 417, 420 of IPC are made out as against this petitioner, since, already the 2nd respondent was a married woman and her marriage was still in subsistence. That apart, she is a Muslim and the petitioner is a Hindu. She is a grown up woman and she must known the consequences of the physical relationship with the petitioner. This petitioner never promised her about marriage. The 2nd respondent freely, voluntarily and consciously consented to having sexual intercourse with this petitioner and her consent was not consequence of any misconception of fact.

5. On perusal of the records revealed that the 2nd respondent clearly deposed in her statement that on the pretext of marriage, the 2nd respondent gave her consent for sexual relationship. This petitioner also had knowledge about the 2nd respondent's previous marriage and also



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known the fact that the 2nd respondent's husband left her. The 2nd respondent went to the field of this petitioner as cooli and worked as daily wages. This petitioner had sexual relationship with the 2nd respondent under the pretext of marriage. Admittedly, the husband of the 2nd respondent went to abroad and his whereabouts are not known for the past seven years. That apart, the 2nd respondent also paid sum of Rs.1,20,000/- to the petitioner and thereby this petitioner cheated the 2nd respondent on the pretext of marriage. Hence, there are offences to attract under section 417 and 420 of IPC.

6. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie



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case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations



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made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or



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not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.89 of 2018 in Crime No.05 of 2017 on the file of the Judicial Magistrate, Conoor. The petitioner is at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.



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10. Accordingly, this criminal original petition is dismissed.

Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order

gvn



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To
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- 1) The Judicial Magistrate,
Coonoor
- 2) The Inspector of Police,
All Women Police Station,
Coonoor.
- 3) The Public Prosecutor,
High Court Madras.



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G.K.ILANTHIRAIYAN, J.

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