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Crl.O.P.No.6021 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.6021 of 2021

and

Crl.M.P.Nos.3943 & 3944 of 2021

- 1.R.Vinothkumar
- 2.Velusamy
- 3.Prasanth

...Petitioners

-Vs-

- 1.The State rep. by
The Inspector of Police,
All Women Police Station,
Vadapalani,
Chennai – 600 026.
(Crime No.9 of 2018)

- 2.Francis Rani

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.313 of 2021 on the file of the XVII Metropolitan Magistrate Saidapet, Chennai and to quash the same.



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For Petitioner : Mr.B.Kumarasamy
For R1 : Mr.S.Balaji
Government Advocate (Crl. Side)
For R2 : Mr.Swami Subramanian
For Mr.D.Lakshmipathy

ORDER

This Criminal Original Petition has been filed to quash the final report in C.C.No.313 of 2021 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, filed for the offences under Sections 417, 420 and 506(i) of IPC.

2.It is alleged in the final report that the 1st accused / 1st petitioner had sexual intercourse with the 2nd respondent / de-facto complainant between the year 2010 and 2018; that he promised to marry her; that during the said period, she gave huge sums of money to the 1st petitioner; that on 27.05.2018 she came to know that the 1st petitioner had betrothal function with one Vijayalakshmi; that thereafter when she tried to contact the 1st petitioner, he had not responded to her phone calls and that she went in-person and met the 1st petitioner and others on



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02.05.2018; that all the accused had abused her in filthy language and stated that the 1st petitioner would not marry her. Hence the complaint.

3.The learned counsel for the petitioner would submit that, even if all the allegations are accepted to be true, the alleged offences are not attracted. For the offence under Section 417 IPC, it has to be established that there was deception at the inception. The 1st petitioner and the de-facto complainant were both educated persons and they were aware of the consequences and entered into a relationship. He further submitted that the relationship was for a period of eight years. The very fact that the relationship continued for eight years would show that, it was not a case of false representation or an unilateral act of the petitioner. The allegations as against the 2nd and 3rd petitioners that they had threatened the de-facto complainant is invented for the purpose of the case and in any case, it would not attract the offences, since there is no real threat.

4.The learned Additional Public Prosecutor appearing of the 1st respondent would submit that the allegations in the final report and the material filed in support of the final report would show that the petitioner



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is guilty of the offences alleged. The points raised by the petitioner cannot be adjudicated in a quash petition and hence, he prayed for dismissal of the petition.

5.The learned counsel for the 2nd respondent would submit that since the 1st petitioner had deceived the 2nd respondent and obtained huge sums of money including the salary of the 2nd respondent, the offence of cheating is made out. The learned counsel further submitted that the allegations has to be adjudicated only during the trial and prayed for dismissal of the quash petition.

6.This Court on the reading of the impugned final report finds that, admittedly, the 1st petitioner and the 2nd respondent were in physical relationship between 2010 and 2018. During those years, it appears that the 2nd respondent had parted with a portion of the salary and also paid huge sums of money to the 1st petitioner. The reading of the final report does not suggest that the said sums were made due to any deception practiced by the 1st petitioner. The only alleged act is that the 1st petitioner promised to marry the 2nd respondent.



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7.Considering the fact that, they were in a relationship for nearly eight years, this Court is of the view that the 2nd respondent was aware of the consequences of her act. They were in relationship and it cannot be said that she had parted with the money only because of the alleged deception. Even according to the final report, their relationship was cordial and the 2nd respondent was aggrieved only on 02.05.2018 when she came to know that the 1st petitioner was engaged with another lady. The reading of the allegations at best would indicate that there was a breach of promise by the 1st petitioner. Thus, this Court is of the view that the offences under Sections 417 and 420 of IPC are not made out.

8.As against the 2nd and 3rd petitioners, the only allegation is that when the 2nd respondent / de-facto complainant went on 02.05.2018 that they asked her avoid the 1st accused. This cannot attract the offence under Section 506(i) IPC.

9.For all the above reasons, this Court is of the view that the impugned final report in C.C.No.313 of 2021 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, deserves to be quashed.



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This Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

30.03.2023

smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

To,

- 1.The Inspector of Police,
All Women Police Station,
Vadapalani,
Chennai – 600 026.
- 2.XVII Metropolitan Magistrate Court,
Saidapet, Chennai.
- 3.The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.
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