IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2023
Pronounced on : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.28662 of 2019
and
Crl.M.P.No.15261 of 2019

1.Dilip Kumar
2.D.R.Kumar Rao
3.Premalatha
4.Dinesh Kumar …Petitioners

Vs.

1.State represented by
The Inspector of Police,
W-32, All women Police Station,
Madipakkam,
Chennai – 600 091.

2.Mr.C.Narayana Rao

(demised on 03.04.2021)

3.N.Asha Devi

[R3 impleaded as Legal Heir of the deceased R2 as per order dated 31.01.2023 in Crl.M.P.No.119 of 2023 in Crl.O.P.No.28662 of 2019]

...Respondents

Prayer: This Criminal Original Petition has been filed to call for the records in C.C.No.364 of 2019 on the file of the Judicial Magistrate Alandur and quash the same.

For Petitioners : Mr.A.Abdul Hameed
Senior Counsel
for M/s.AAV Partners, Mr.J.Prajoy

For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : Deceased

For R3 : Mr.R.Thiagarajan

ORDER

The petition is to quash the final report for the alleged offences under Sections 417, 406 and 506 (i) I.P.C.

2.The allegation in the final report is that there was a betrothal between the first petitioner and the de-facto complainant on 06.07.2015; that the date of marriage between them was fixed as 11.04.2016; that the first petitioner was working in Singapore and since he could not obtain leave, he requested the marriage to be postponed to the month of September; that during the period between July 2015 and August 2016, the first petitioner and the de-facto complainant were talking to each other over phone and had exchanged gifts. While so on 26.08.2016, when the de-facto complainant and their family members were making arrangements for the marriage, the first petitioner approached the de-facto complainant's father and demanded 100 sovereigns of gold jewels; the third petitioner demanded Rs.2,00,000/- towards marriage expenses and the second petitioner demanded Rs.50,000/- towards decoration of the stage and the 4th petitioner who is the brother of the first petitioner demanded Rs.25,000/- for purchase of dress for the first petitioner; that when the defacto complainant refused to accede to the request of the petitioners, the first petitioner called off the marriage; that when the de-facto complainant's daughter requested the first petitioner to marry her, he had threatened her saying that if she insisted on marriage, he would kill her.

3.The learned senior counsel for the petitioners submitted that:

(i) the marriage between the first petitioner and the de-facto complainant did not take place because of the conduct of the de-facto complainant in demanding an apartment at Chennai for the first petitioner and the de-facto complainant's daughter to live. Though this demand made by the de-facto complainant's father was unreasonable, the petitioners agreed to take a separate house on rent for the first petitioner and the de-facto complainant's daughter to live. However, on 29.08.2016, the de-facto complainant called the first petitioner and told him to cancel the marriage.

(ii) The learned counsel for the petitioners would submit that the allegations besides being false and improbable do not constitute the offences alleged. There is no allegation in the impugned final report to attract the offences under Sections 417, 406 and 506(i) I.P.C. As regards the offence of cheating, he would submit that the first petitioner was always willing for the marriage and he did not call off the marriage. In fact, he had booked flight tickets for honeymoon and purchased the dress materials for the marriage besides gifting articles and sending cash to the de-facto complainant's daughter. There was no intention on his part to deceive the defacto complainant's daughter. As regards the offence under Section 406 of I.P.C., the learned counsel would submit that there is no allegation that articles given by the defacto complainant's family members were retained by them. Even as regards 506 (i) of I.P.C., the allegation is only against the first petitioner. The words said to have been uttered by him would not constitute the offence of criminal intimidation.

(iii) The learned counsel further submitted that the first petitioner had filed a suit in O.S.No.3921 of 2017 against the defacto complainant and his daughter praying for mandatory injunction to return the jewels and cash listed in Schedule A to the plaint and a mandatory injunction directing them to refund the expenses incurred towards preparation for the marriage. The learned counsel would submit that therefore, the impugned charge sheet is nothing but an abuse of the process of law and liable to be quashed.

4.The learned Additional Public Prosecutor appearing for the first respondent would submit that there are allegations that the petitioners demanded dowry and on account of which, the marriage was called off. The first petitioner had called off the marriage without any reasonable excuse and therefore, he is guilty of the offence under Section 417 IPC. Further, the first petitioner had threatened the defacto complainant's daughter which would constitute the offence under Section 506 (i) IPC.

5.Mr.R.Thiagarajan, learned counsel appearing for the defacto complainant would submit that the de-facto complainant is no more. However, his daughter was impleaded as per the order of this Court in Crl.M.P.No.1119 of 2023 dated 31.01.2023 and he is representing the defacto complainant's daughter. The learned counsel would submit that there are serious allegations relating to the demand of dowry and this can be adjudicated only in the trial. The disputed facts cannot be appreciated in a quash petition. The learned counsel would further submit that the petitioners have not mentioned in their quash petition about the written statement with the counter claim filed by the defacto complainant in the suit filed by the first petitioner. In the said written statement, the defacto complainant had stated about the illegal demands made by the petitioners. That apart, the defacto complainant had lost money due to the change of date of marriage. Hence, he had made a counter claim claiming a sum of Rs.24,00,000/- from the petitioners being the expenses incurred towards betrothal ceremony and for preparation for the marriage. The learned counsel further submitted that the first petitioner's family was in the habit of cheating and indulging in such activities. In fact, the first son of the second petitioner had illegally detained his wife's family and extorted Rs.9,00,000/- from them. The learned counsel hence prayed for dismissal of the quash petition.

6.Heard Mr.A.Abdul Hameed, learned senior counsel for the petitioners, Mr.A.Damodaran, learned Additional Public Prosecutor for the first respondent and Mr.R.Thiagarajan, learned counsel for the third respondent.

7. Admittedly, the first petitoner and the defacto complainant's daughter were in talking terms and exchanged gifts between them during the period between the betrothal function and few days before the intended date of marriage. The learned counsel had produced certain receipts and cash transactions to show that the first petitioner had bought several gifts and jewels for the defacto complainant's daughter besides transferring cash to her. The allegation in the FIR is that the petitioners came to the residence of defacto complainant's daughter and insulted her. The second petitioner demanded Rs.50,000/-, the third petitioner demanded Rs.2,00,000/- and the fourth petitioner demanded Rs.25,000/- for various reasons and they threatened to stop the wedding if the demand was not met. However in the final report, the reasons

for the demand made by the petitioners two to four is furnished. This allegation attributing individual overt acts to each of the petitioners as if they separately demanded the amounts for various reasons by itself appears to be highly artificial and improbable. In any case, the impugned final report does not charge the petitioners for demand of dowry.

8.In the final report, the petitioners are charged for the offences of cheating, criminal mis-appropriation and criminal intimidation. As regards cheating, the conduct of the parties does not suggest that there was any deception practiced by the petitioners. The petitioners were actively involved towards preparation of the marriage and it is not a case where they had made a representation which was false at the very inception. Both the parties had proceeded on the basis that the marriage would be conducted on 04.09.2006 as could be seen from the materials available on record. Admittedly, there were exchange of gifts between the first petitioner and the defacto complainant's daughter. The marriage was called off only on 26.08.2016. The petitioners and the defacto complainant blame each other for the same. Till then both the parties were preparing for the marriage. As stated earlier, there was no deception at the inception. Even if the allegations are accepted to be true, there was only a breach of promise. Therefore, the offence under Section 417 I.P.C., is not made out.

9.That apart, there is nothing in the impugned final report to show as to what were the articles entrusted to the petitioners and mis appropriated by them. Exchange of articles and gifts given to the petitioners in anticipation of the marriage would not amount to entrustment to constitute the offence of criminal breach of trust. The Hon'ble Supreme Court in ***Bhaskar Lal Sharma and another vs. Monica*** reported in ***(2009) 10 SCC 604*** held as follows :

> *"52.It was furthermore held :*
>
> *"The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all its imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit...."*

53.The offence of criminal breach of trust as defined in Section 405 of the IPC may be held to have been committed when a person who had been entrusted in any manner with the property or has otherwise dominion over it, dishonestly misappropriates it or converts it to his own use, or dishonestly uses it, or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or willfully suffers any other person so to do."

...

57...Any gift made to the bridegroom or his parents – whether in accordance with any custom or otherwise also would not constitute any offence under Section 406 of the Code.

The above observations would make it clear that in the instant case, the offence under Section 406 I.P.C., is also not made out.

10.As regards the offence under Section 506(i) I.P.C., the allegations as against the first petitioner is that he had threatened the defacto complainant's daughter/third respondent stating that he would kill her if she insisted on marriage. This Court had time and again held that inorder to constitute the offence of criminal intimidation mere words are not sufficient. There must be real threat. There is nothing in the impugned final report to suggest that there was real threat made to constitute the offence of criminal intimidation.

11.The overall reading of the final report shows that there was a clear misunderstanding between the family members of the defacto complainant and the petitioners. This is sought to be given a criminal colour. In any case, the first petitioner has filed a suit in O.S.No.3921 of 2017 on the file of XV Additional City Civil Judge at Chennai and the third respondent and her deceased father have filed a written statement with counter claim. It is said that the said suit is pending. The parties can agitate all the issues relating to their respective claims in the said civil suit. The impugned final report does not disclose the offences alleged and therefore, liable to be quashed for the reasons stated above. Accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

23.03.2023

dk
Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

1. The Judicial Magistrate Alandur.

2. The Inspector of Police,
W-32, All women Police Station,
Madipakkam,
Chennai – 600 091.

3.The Public Prosecutor
High Court of Madras,
Chennai.

SUNDER MOHAN, J

dk

Pre-delivery order in

Crl.O.P.No.28662 of 2019

and

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