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CRL.O.P.No.31299 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.31299 of 2019

and

Crl.MP.No.17072 of 2019

Sathishkumar

.. Petitioner/Accused

Versus

1 State Rep by

The Inspector Of Police

All Women Police Station,

Suramangalam, Salem City

(Crime No.12of 2018)

... 1st Respondent / Complainant

2 Chitra

... 2nd Respondent / Defacto complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to quash the final report in S.C.No.99 of 2019 pending trial on the file of the learned Additional District and Sessions Judge, Mahaleer Neethi Mandram, Salem.

For Petitioner	:	Mr. K.Selvakumaraswamy
For Respondents 1	:	Mr.A.Gopinath
		Government Advocate (crl.side)
For Respondent-2	:	No appearance



ORDER

This Criminal Original Petition has been filed to quash the proceedings in FIR in S.C.No.99 of 2019 pending trial on the file of the learned Additional District and Sessions Judge, Mahaleer Neethi Mandram, Salem.

2.The petitioner is the sole accused against whom the second respondent defacto complainant has given a complaint by alleging that she is working in a private company by staying in a hostel. Her father died ten years back and she has her mother alone. Her parents place is at Salem and she used to visit her mother during holidays. The accused is known to her for five years and whenever she comes to her parents house, she would meet the accused and they were in love for five years.

2.1. On 22.03.2016 at about 11.00 am the second respondent and the petitioner / accused had been to her friends place at S.Kollapatti, Salem. As her friend had some engagement outside, the second respondent and the petitioner were alone. At that time the petitioner insisted her to have physical relationship with him and gave an assurance that he would marry her. Though she refused to do so the accused compelled her and had physical relationship with her. Subsequently the accused avoided her calls



and refused to marry her. When she enquired she came to know that he was seeking some other alliance and when the second respondent enquired the petitioner about this, he threatened her. On the complaint given on the above allegation, case was registered in Cr.No.12 of 2018 of All Women Police Station, Suramangalam Police Station. After completing the investigation, charge sheet has been filed against the petitioner for the offences under Sections 376, 417 and 506(i) IPC.

3. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

4. The learned counsel for the petitioner submitted that the second respondent and the petitioner had attained the age of majority and they were able to make decisions on their own accord; the occurrence had taken place only with the consent of the second respondent and in fact, it was prearranged one and in which, her friend also facilitated; in the 161 Cr.PC statement of the second respondent, she has stated that herself and the petitioner had visited several places and they had sexual intercourse on several occasions; the complaint has been given with an inordinate delay of two years and four months since the incident. The physical intimacy



between the petitioner and the second respondent had occurred only out of the voluntary consent given by the second respondent and hence no criminality can be fastened against the petitioner.

4.1. In support of the above submission, he relied on the judgment of the Hon'ble Supreme Court held in the case of **Pramod Suryabhan Pawar Vs. The State of Maharashtra & Anr** made in **C.A.No.1165/2019** and **SLP.No.2712/2019**.

5.The learned Government Advocate (crl.side) for the respondent submitted that if the consent of the prosecutrix is given due to the misconception of the fact about the promise to marry and it was given due to the belief that the petitioner would marry her the petitioner should be prosecuted for the offence of rape and he cannot escape the criminal liability.

5.1. In support of the above statement he relied on the judgment of the Hon'ble Supreme Court held in the case of **Anurag Soni Vs. State of Chhattisgarh [reported in (2019) 13 SCC]**

6.The petitioner and the second respondent were known to each other. According to the statement of the second respondent, they were lovers for 5



years; on the day of the occurrence, they had been to her friend's house and the petitioner made use of the occasion and had physical intimacy with her on the assurance that he would marry her.

7.The learner Counsel for the petitioner submitted that the prosecutrix have given 161 Cr.P.C. statement, wherein she has stated that they had such relationship on several times and hence it should be considered as an act out of consent and willingness and not out of coercion or influence. From the statement of the petitioner, it is seen that her consent was obtained by the petitioner only on his assurance to marry her. He has further stated that on the assurance of marriage, he had taken her to different places and repeated the physical relationship and thereafter, avoided her.

8. Even in the judgment cited by the learned counsel for the petitioner, it is stated that the consent of a woman should be active and it should be given after a reasoned deliberation towards the proposed act. If the consent is vitiated by misconception of the promise to marry, then the petitioner would be liable for criminal prosecution. In the said case, it is held as under

“18.To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect



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to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act. “

Thus, the Hon'ble Supreme Court laid down the law of misconception of fact with regard to Section 375 IPC by stating that the prosecution must prove that the promise to marry should have been a false promise given in bad faith and with no intention of adhering the same and the false promise should be immediate relevance or direct consequence to the woman's decision to engage in sexual act.

9. From the facts of the case referred in the above judgment, it is seen that the promise is said to have been given in the year-2008 and the failure was reported in the year-2016 and further the prosecutrix was also aware of the hurdles that existed in getting married to the accused. In that case if the prosecutrix continued to indulge in the sexual acts with the petitioner/ accused knowing pretty well that the chances of getting married to the



accused is weak. But in the case in hand, no such factual or matrix is seen to be present.

10.First of all the sexual intimacy between the petitioner and the second respondent is said to have been occurred only on the assurance of the petitioner that he would marry the second respondent. So, it is stated that they continued to engage in such intimacy and there was no strain in their relationship. Only when the petitioner started to avoid the second respondent, she got disturbed and came to know that the assurance to marry her was a false one and the accused without having an intention to marry her had cheated her.

11.In the context of these facts, I feel it is appropriate to cite the decisions of the Hon'ble Supreme Court held in the case of **Anurag Soni Vs. State of Chhattisgarh [reported in (2019) 13 SCC]**. The relevant portion is extracted below:

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent



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obtained on a misconception of fact as per [Section 90](#) of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under [Section 375](#) of the IPC and can be convicted for the offence under [Section 376](#) of the IPC. “

12. The facts about the dishonest interest of giving false assurance to marry can naturally be inferred only from the subsequent conduct exhibited by the petitioner. With the material facts now produced before the Court the prosecution appears to have made a case under section 375 IPC against the accused. Only if the accused is subjected to trial and the witnesses are made to speak about the facts leading to the occurrence and the other facts and circumstances, it is possible for the Court to come at any conclusion as to whether the ingredients for proving misconception of fact with regard to the consent of the prosecutrix has been proved. It is premature to come to any conclusion about the facts which have been narrated already. Hence, I do not feel that it is not an appropriate case to exercise the powers of the Court under Section 482 CrPC to quash the proceedings on such premature conclusion.



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In the result, this Criminal Original Petition is **dismissed**. The learned

Additional District and Sessions Judge, Mahaleer Neethi Mandram, Salem is directed to complete the trial as expeditiously as possible. Consequently, connected miscellaneous petition is dismissed.

02.02.2023

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking

Neutra : Yes /No

jrs

To:

1. The Additional District and Sessions Judge,
Mahaleer Neethi Mandram,
Salem.
2. The Inspector Of Police
All Women Police Station,
Suramangalam, Salem City
3. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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