



*Crl.O.P.No.32054 of 2019
and Crl.MP.No.17569 of 2019*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2023

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.32054 of 2019

and

Crl.MP.No.17569 of 2019

P.Balasubramani

...Petitioner

-Vs-

1. State by Inspector of Police,
Puzhal Police Station,
Puzhal, Chennai-600 066.
(Crime No.508 of 2019)
2. Dhanalakshmi

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records in Crime No.508 of 2019 on the file of the 1st respondent and quash the complaint therein.

For Petitioners : Mr.V.V.Sairam

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side) for R1
R2-Served. No Appearance



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ORDER

This Criminal Original Petition has been filed to call for the records in Crime No.508 of 2019 on the file of the first respondent Police and quash the same.

2. The petitioner is the sole accused. The case of the prosecution is that the 2nd respondent/*defacto* complainant and the accused were in love for 5 years. On 21.09.2019, the petitioner/accused came to the house of the 2nd respondent at 1.00.a.m. The 2nd respondent told him that it is not proper on his part to come to her house at odd hours before marriage. But the accused assured that that he would marry her for sure and immediately, tied a Thali on her neck. He would also assure that he would marry her publicly and had sexual intercourse with her on several occasions. Subsequently, the accused refused to marry her, due to which, the 2nd respondent/*defacto* complainant got frustrated and attempted to commit suicide by consuming rat poison. On the above allegations, a case has been registered against the accused for the offences under Sections 417, 376 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.



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3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the first respondent. Perused the entire materials available on record.

4. The learned counsel for the petitioner submitted that the 2nd respondent, who was in love with the accused for nearly 5 years, had given her free consent to have sexual relationship with him. No force was said to have been used by the accused. So, mere promise to marry will not make out an offence of cheating and physical relationship out of consent will not make out an offence under Section 376 IPC. There is no ingredient to make out an offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act also. Since the complaint has been filed without any ingredients to make out the cognizable offence, it is liable to be quashed. In support of the above contention, the learned counsel for the petitioner cited the decision of the Hon'ble Supreme Court held in ***Dr.Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and Ors*** reported in ***AIR 2019 SC 327***.

5. The learned Government Advocate (Crl.Side) appearing for the first respondent submitted that the consent of the 2nd respondent was obtained due to misconception of fact that she got married to the petitioner. The petitioner



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came to the house of the 2nd respondent and influenced her to have sexual intercourse with her by tying Thali on her neck. So, the alleged consent was not a free consent. But, it was obtained due to misconception of fact that she got married to the accused.

6. The case has been registered on the complaint given by the 2nd respondent that she was in love with the petitioner and he convinced her to have sexual relationship with him by tying a Thali on her neck. The 2nd respondent assured that he would also marry her publicly after some time. By believing that tying Thali is a symbol of marriage, the 2nd respondent had conceded to the request of the petitioner/accused and hence, it cannot be considered as a valid consent as alleged by the petitioner/accused. The quality of the consent given by the 2nd respondent can be tested only when a detailed investigation is done and the statements of the witnesses are obtained.

7. In the citation relied on by the learned counsel for the petitioner, it is held as under:-

“21. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an



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Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometime at his home." Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. There were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite sometime together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit



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consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2) (b) cannot be sustained.”

8. In the said case, the consent of the complainant is not under misconception of fact. The facts of the case as it appears from the above extract would show that the present case is different from the above case on facts. Hence, the above judgement is applicable to the facts of its own case.

9. In this regard, it is worthwhile to refer the decision of the Hon'ble Supreme Court held in **Anurag Soni Vs. State of Chattisgarh** reported in **(2019) 13 SCC** cited by the learned Government Advocate (Crl.Side) appearing for the first respondent. In the said case, in paragraph 19 of the above judgement, the Hon'ble Supreme Court has held as under :-

“19. As observed hereinabove, the consent given by the prosecutrix was on misconception of fact. Such incidents are on increase nowadays. Such offences are against the society.



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Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by this Court in a catena of decisions, while a murderer destroys physical frame of the victim, a rapist disgrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both her esteem and dignity. Therefore, merely because the accused had married with another lady and/or even the prosecutrix has subsequently married, is no ground not to convict the appellant-accused for the offence punishable under Section 376 IPC. The appellant-accused must face the consequences of the crime committed by him.”

10. The petitioner, without having any intention to marry the 2nd respondent, had utilized her to satiate his carnal fleshs. The consent cannot be construed as a free consent in the absence of any materials. Hence, at the threshold stage itself, it cannot be presumed that the consent is a free consent



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and that the criminal liability cannot be fastened against the accused. Since the investigation is at threshold stage, the investigation should be allowed to continue to bring out all the facts and circumstances and the quality of the consent given by the 2nd respondent.

11. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petition is closed.

14.02.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation Case: Yes/No
kmi

To

1. The Inspector of Police,
Puzhal Police Station,
Puzhal, Chennai-600 066.
2. The Public Prosecutor,
High Court of Madras
Chennai-600 104.



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R.N.MANJULA, J

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