



Crl.R.C.(MD)No.434 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2023

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.R.C.(MD)No.434 of 2019

K.T.Raja

... Petitioner

Vs.

1.Selvakumar

2.Selvakumari

3.The State rep by
The Sub Inspector of Police,
Town Police Station,
Srivilliputhur.
Crime No.772 of 2015

... Respondents

PRAYER : Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the impugned order made in Cr.M.P.No.2752 of 2017 dated 31.10.2018 in C.C.No.20 of 2017 on the file of the learned Judicial Magistrate No.II, Srivilliputtur and set aside the same.

For Petitioner : Mr.S.Venkatesh



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For R1 : Mr.P.Banuprasath
For R2 : Mr.C.Suresh Kannan
For R3 : Mrs.M.Aasha,
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Petition has been filed to set aside the impugned order made in Cr.M.P.No.2752 of 2017 dated 31.10.2018 in C.C.No.20 of 2017 on the file of the learned Judicial Magistrate No.II, Srivilliputtur.

2.The case of the prosecution is that A2 is the wife of the defacto complainant and she had illegal intimacy with A1. Due to the family dispute, there are frequent quarrel between them and on 21.04.2015 A2 went missing and hence, a complaint was lodged by the defacto complainant before the Srivilliputhur Town Police Station and FIR in Cr.No.374 of 2015 was also registered and thereafter, she was traced out.



Thereafter, the defacto complainant came to know that A1 had illegal intimacy with A2. Then, A2 living with her parents. In the meantime, the defacto complainant lodged a complaint alleging that the second petitioner had taken 49 sovereigns of gold jewels and abused in obscene words and thereby, FIR was registered for the offence under Sections 294(b), 448, 497, 506(2), 120(B), 379 IPC and after investigation filed final report for the above said offences. In the meantime, the accused have filed discharge application in Cr.M.P.No.2752 of 2017 before the learned Judicial Magistrate No.II, Srivilliputtur. After analysing the documents, the trial Court allowed the application and discharged the accused from the charges. As against the order passed by the learned Magistrate, the petitioner filed the present petition.

3.The learned counsel appearing for the petitioner would contend that there are prima facie materials available to proceed with the case further as against the accused. Without considering the same, the learned Magistrate discharged the accused. As per the final report prima facie materials available to frame charges for the offence under Sections 294(b), 448, 497, 506(2), 120(B), 379 IPC. The prosecution examined 9



witnesses and they have categorically stated about the occurrence and thereby, the order passed by the learned Magistrate is liable to be set aside.

4.The learned counsels appearing for the private respondents would contend that all the offences committed through over phone and there are no material to show that the accused purchased the jewels and A2 taken the jewels from the custody of the petitioner/defacto complainant. Further, as far as offence under Section 497 IPC is concerned, the Hon'ble Supreme Court of India struck down the said Section. As far as offence under Section 448 IPC is concerned, the second respondent herein has resided in the same roof as wife and thereby, the above said offence would not attract. As far as offence under Section 294(b) IPC is concerned, the alleged offence committed through over phone and thereby, the trial Court after taking into consideration of the materials, held that there are no materials to frame charges as against them and discharged the private respondents herein. Therefore, the present petition is liable to be dismissed.



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5. Heard both sides and perused the materials available in the records.

6. Upon hearing both side counsels and on perusing of records, the points for determination in the case is whether the order passed by the trial Court in Cr.M.P.No.2752 of 2017 is sustainable or not.

7. The main contention of the petitioner is that there are prima facie materials available as against the accused and the trial Court has not considered the witnesses examined by the investigating officer. More over 9 witnesses were examined. The accused persons contacted over phone and the same can be established through trial. At this stage, the trial Court has to see whether any prima facie materials available to constitute the offence or not. As per statement of the witnesses, there are prima facie materials available.

8. As per contention of the private respondents, the allegations as against them is that they contacted over phone and there are only telephone conversation. But in order to prove the same, no records were



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seized at the time of investigation. That apart, already the offence under Section 497 IPC was struck down by the Hon'ble Supreme Court.

9.As rightly contended by the learned counsel appearing for the private respondents, already, the Hon'ble Supreme Court has struck down the provision of Section 497 IPC. As far as the offence under Section 294(b) IPC is concerned, based on the telephone conversation, the offence is made out, but no telephone conversation have been recovered during investigation. As far as the offence under Section 448 IPC is concerned, admittedly, the second accused lived with the defacto complainant and therefore, the said offence would not attract. As far as the offence under Section 379 IPC is concerned, no materials available as to what kind of jewels were stolen and whether those jewels are belonged to the defacto complainant or not and in order to prove the same, no documents seized by the prosecution.

10.The trial Court elaborately discussed about the above said facts and correctly discharged the accused as no materials to frame charges. Therefore, there is no any infirmity in the order passed by the trial Court



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and this Court has no warrant to interfere with the order of the trial Court. In view of the said discussions, this petition has no merits and deserves dismissal and accordingly, this criminal revision petition is dismissed.

15.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate No.II,
Srivilliputtur.
- 2.The Sub Inspector of Police,
Town Police Station,
Srivilliputhur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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