



Crl.O.P.(MD)No.22810 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	22.08.2023
Delivered on	25.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.22810 of 2022
and Crl.M.P.(MD) No.16140 of 2022

1.Vigneshwari
2.Yasotha

... Petitioners/
Accused Nos. 2 & 3

Vs.

1. The State represent through the
Inspector of Police,
All Women Police Station,
Golden Rock, Tiruchirappalli.
Crime No.5 of 2021.

2. A.Shyamala Mary

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records relating to the proceedings in S.C.No.168 of 2022 on the file of the learned Mahila Court, Tiruchirappalli, pending disposal of the Crl.O.P.



Crl.O.P.(MD)No.22810 of 2022

For Petitioners : Mr.L.Romeo Roy Alfred
For Respondents : Mr.E.Antony Sahaya Prabahar
Addl. Public Prosecutor
for R1
No appearance for R2

ORDER

Accused Nos.2 and 3 in S.C.No.168 of 2022 have filed this petition seeking quashment of the same pending on the file of the learned Mahila Judge, Tiruchirappalli.

2. According to the prosecution the accused No.1, who is the son of the second petitioner herein and defacto complainant were in love since 2009. From 2010 onwards both them had sexual intercourse on the promise by A1 to marry her. Both of them lived together for 13 years. The defacto complainant had pledged her jewels and gave Rs.3 lakhs to A1 in order to discharge his debt. Later A1 has come in contact with one Divya and started neglecting the defacto complainant. The defacto complainant has met A1 at Ponmalaipatti where altercation took place and A1 has beat the defacto complainant.



CrI.O.P.(MD)No.22810 of 2022

3. On 10.06.2021, the defacto complainant filed a complaint before the first respondent police basing on which a case in Crime No.5 of 2021 has been registered on 14.06.2021 for the offences punishable under Sections 417, 420, 323, 354, 376 of IPC r/w. 4 of TNPHW Act and charge sheet filed after completion of the investigation. So far as the petitioners are concerned, for the offences 294(b), 420 and 109 of IPC, the Mahila Court has taken cognizance and final report filed by the respondent police.

4. The petitioners have filed this application challenging the said charge sheet alleging that as per the charge sheet the allegation levelled against the petitioners is that the petitioners have threatened the defacto complainant over phone and that the petitioners have recommended the defacto complainant to give money to A1. It is also submitted further that the issue of defacto complainant with A1 is a broken love affair. In order to harass A1, a false case has been filed against the petitioners who are sister and mother of A1. It is also submitted that even allegations levelled against the petitioners are taken on real face value, no offence is made out against the petitioners. It is also submitted that the defacto



Crl.O.P.(MD)No.22810 of 2022

complainant has given money to A1 voluntarily knowing that she is about to marry A1 and there are no averments in respect of Section 420 of IPC.

5. The petitioners are charge sheeted for the offences punishable under Sections 294(b), 420 and 109 of IPC.

Section 420 of IPC runs as under:-

"Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

6. The defacto complainant has alleged that A1 who has promised to marry her and had intercourse for about 13 years has ultimately failed to marry. This, according to her is offence of cheating. The allegation levelled against the petitioners is that the second petitioner advised the



Crl.O.P.(MD)No.22810 of 2022

defacto complainant to give money to A1 and both of them stated to have abused and threatened. If all these allegations mentioned in the charge sheet are expected to be correct, even then there is not even whisper against the petitioners which attracts the offence under Section 417 of IPC for which punishment can be imposed under Section 420 of IPC. It is not case of the prosecution and the defacto complainant that the petitioners have cheated her, according to prosecution, A.1 has cheated defacto complainant, thereby the offence under Section 420 of IPC will not sustain against the petitioners.

7. Section 294(b) of IPC runs as under:-

"294. Obscene acts and songs.-- Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both. "



Crl.O.P.(MD)No.22810 of 2022

8. On considering above provisions, the prosecution is expected to make out a case that the petitioners have either with the sings or recitations or utterances of any obscene or words in or near any public place. According to the complaint, on 16.05.2021 both the petitioners have physically abused her that they will kill her with hooligans. However, as per the charge sheet filed by the respondents police, the petitioners 1 and 2 who are accused for abusing her as a prostitute and threatened that they would pour acid and kill her. On a perusal of the statement recorded by the police under Section 161(3) of Cr.P.C., the defacto complainant has clearly narrated the entire story and specifically mentioned that the petitioners herein went in person and threatened her to leave Dinesh/A1 otherwise they will kill her with hooligans. She has also stated that on 16.05.2021, she went to the house of one Murali, who is uncle of A1 in Trichy, at that time, when the defacto complainant asked for justice, the petitioners 2 and 3 told A1 that he should not marry the defacto complainant as she is prostitute and the first petitioner/A2 looked at her and threatened her that she would pour acide on heer and it is also stated that the defacto complainant questioned them why they have behave in such a way even without considering that it was a public



Crl.O.P.(MD)No.22810 of 2022

place. Insofar as Section 294(b) of IPC is concerned, the defacto complainant has changed her version, initially she has stated that the petitioner have abused her over phone whereas she also stated that both of them personally came to her and abused. Even then as per her statement that both of them came personally and abused her, still the place where the petitioners have abused either in her house or in the house of Murali, both of them are not the public places. Section 294(b) attracts only when the offence made as prescribed above in the public places. Since both of them are not in public place, Section 294(b) will not attract.

9. Section 109 of IPC runs as under:

"Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. "

10. In order to prove the offence under Section 109 of IPC, the



Crl.O.P.(MD)No.22810 of 2022

prosecution is expected to place before the Court material thta on account of the alleged abetment by the accused, the other accused must be committed offence. Here the allegation levelled against A1 according to the defacto complainant that the petitioners 2 and 3 have asked the defacto complainant to given money to A1 and that the petitioners have advised A1 not to marry the defacto complainant and the allegation against A1 by the defacto complainant is that he has committed cheating after spending 13 years of sexual life with her with a promise to marry and subsequently not married. In order to attract Section 109 of IPC against the petitioners, the prosecution is expected to place material that the petitioners have abated A1 to commit the offence of cheating. As per the prosecution and the defacto complainant, A1 and A3 were living amicably for a long period. The defacto complainant and A1 have maintained relationship to the knowledge of everybody including A1 and A2. It is not the allegation of the prosecution that both these petitioners have abusing for their relationship, there is no allegation anywhere in the charge sheet that both the petitioners have encouraged A1 to commit any of the offence alleged against A1. Therefore, when there is no allegation against the petitioners that both of them have encouraged A1 to commit



Crl.O.P.(MD)No.22810 of 2022

offence, Section 109 of IPC will not attract.

WEB COPY

11. In the result, this Criminal Original Petition is allowed and the entire proceedings in S.C.No.168 of 2022, pending on the file of the learned Mahila Court, Tiruchirappalli, is hereby quashed. Consequently, connected miscellaneous petition is closed.

25.09.2023

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

PKN/mvs.

To

1. Inspector of Police,
All Women Police Station,
Golden Rock, Tiruchirappalli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

DR.D.NAGARJUN,J

PKN/mvs.



WEB COPY



Crl.O.P.(MD)No.22810 of 2022

Pre-delivery order made in
Crl.O.P.(MD)No.22810 of 2022

Dated: 25.09.2023