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CRL O.P. No.6127 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2024

CORAM

The Hon'ble Mr.Justice P.DHANABAL

CRL OP.No.6127 of 2022

Thiyagarajan S/o. Velu ... Petitioner / Accused
Vs.

W25, All Women Police Station,
T.Nagar, Chennai-600 017. ... Respondent / Complainant

PRAYER :-This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records in respect of Criminal case in S.C. No.372 of 2021 on the file of the Mahila Court, Chennai and to quash the same.

For petitioner : Mr. N. Ramesh
For Respondents : Mr. S. Vinoth Kumar
 Government Advocate (Criminal side)
 [for R1]
 Ms. S. Deepika [for R2]

ORDER



CRL O.P. No.6127 of 2022

This Criminal original petition has been filed to quash the proceedings in S.C. No.372 of 2021 on the file of Mahila Court, Chennai.

2. The case of the prosecution is that both the accused and the defacto complainant are working in Cinema field and the defacto complainant had acquaintance with the petitioner and both fell in love and the petitioner promised to marry her and had sexual intercourse and on various occasions, he had physical relationship with the defacto complainant and thereafter, they lived together. While so, in the year 2016, she got pregnancy and the same was informed to the petitioner and he advised her to abort the child and thereby, the child was also aborted. When they lived together, the defacto complainant gave money and also jewels and thereafter, he left abandoned the defacto complainant and when she asked him to marry her, he refused and thereby, she gave a complaint before the All Women Police Station, T.Nagar, Chennai on 06.03.2020. On 07.07.2020, she went to the house of the accused and asked to marry her, but he refused and abused the defacto complainant and also assaulted her. Therefore, she lodged a complaint and based on



CRL O.P. No.6127 of 2022

the complaint, FIR has been registered in Cr. No.2 of 2020 under Sections 417, 420, 313, 376(2)(n), 506(i) of IPC and Section 4 of Women Harassment Act. Thereafter, the respondent police have conducted elaborate investigation and filed final report for the offences under Sections 417, 376(2)(n), 323, 406 and 506(ii) of IPC. The said case has been committed to the Sessions Court and now the case is pending before the Mahila Court, Chennai in S.C. No.372 of 2021. Now the petitioner has challenged the said pending proceedings as against the petitioner.

3. The learned counsel appearing for the petitioner would contend that the petitioner has not committed any offence as alleged in the FIR and in the charge sheet, that he has been falsely implicated in this case, that the petitioner and 2nd respondent loved each other and had sexual intercourse and even as per the allegations, no case of rape has been made out, since the complainant is a grown up educated woman, aged 32 years, who is claiming to be a cine-artiste and obviously knowing the consequences of sexual relationship before marriage. It was a consensual sexual relationship between two adults and the same would not fall under



CRL O.P. No.6127 of 2022

Section 376 of IPC. There is inordinate delay of 9 years in lodging the complaint and there is no explanation for the delay. Even according to the prosecutrix, the alleged occurrence took place from the year 2011 to 2018 and that all happened with the consent of the defacto complainant only. Now after dispute, the excuses taken regarding 'consent' that it was given under misconception, are prima facie appears to be flimsy and unconvincing. The allegations in the charge sheet indicate that the prosecutrix continued to engage in sexual relationship with the petitioner for a long period of 9 years and several occasions have been reported when she was made to establish physical relationship. Therefore, the offence under Section 375 of IPC would not attract and the 1st respondent without conducting proper investigation, wrongly filed the final report and the same was also taken cognizance before the Sessions Court. Therefore, the pending proceedings as against the petitioner are liable to be quashed.

3.1. In support of his contention, the learned counsel appearing for the petitioner has relied upon the following judgments:

3.1.1. ***Maheshwar Tigga v. State of Jharkhand reported in (2020)***



CRL O.P. No.6127 of 2022

WEB COPY

10 SCC 108.

3.1.2. *Pramod Suryabhan Pawar vs. State of Maharashtra reported in (2019) 9 SCC 608.*

3.1.3. *Sonu alias Subhash Kumar vs. State of Uttar Pradesh reported in 2021 SCC Online SC 181.*

3.1.4. *D. Santhanam & Anr. Vs. State reported in CDJ 2021 MHC 4258.*

3.1.5. *Prashant Bharti vs. State of NCT of Delhi reported in 2013 SC 2753.*

3.1.6. *State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors. reported in 1992 Supp. (1) SCC 335.*

4. The learned counsel appearing for the 2nd respondent / defacto complainant would submit that the petitioner and the 2nd respondent fell in love and they lived together for the past 9 years and the petitioner had sexual relationship with the 2nd respondent by promising to marry her and thereafter, she paid money to him and he also obtained jewels from her and thereafter, he refused to marry her and also he did not repay the



CRL O.P. No.6127 of 2022

money borrowed by him and jewels obtained by him. Therefore, she lodged a complaint and thereafter, the respondent police have investigated the case and filed final report. As per the final report, there are prima facie materials available and the offences are grave in nature. Therefore, the petitioner has to face the trial and at this stage, the petition is liable to be dismissed.

5. The learned Government Advocate (Criminal side) would contend that the petitioner and the 2nd respondent were lovers and they lived together and thereafter, the 2nd respondent gave a complaint before the 1st respondent alleging that the petitioner had sexual intercourse with her on promising to marry her and thereafter, he refused to marry the 2nd respondent, thereby, she lodged a complaint before the 1st respondent. The 1st respondent also registered an FIR and investigated the case and filed final report for the offences under Sections 417, 376(2)(n), 323, 406 and 506(ii) of IPC. The case was also committed by the learned Magistrate to the Sessions Court. As per the investigation, there are prima facie materials available to proceed the case further and now the



CRL O.P. No.6127 of 2022

case is posted for framing of charges. Therefore, the petitioner has to face the trial and the grounds raised by the petitioner have to be agitated before the trial Court and hence this petition is liable to be dismissed.

6. This Court heard both sides and perused the materials available on record.

7. In this case, there is no dispute that the petitioner and the 2nd respondent had lived together and the petitioner has not denied the relationship between the parties and also he admitted that both had loved each other and thereafter, they also lived together. According to the petitioner, for the past 9 years, the 2nd respondent has not taken any steps and the alleged relationship is with the consent of the 2nd respondent, that the 2nd respondent is a well educated and aged about 32 years and it was a consensual sexual relationship before marriage and even as per the prosecution case, they had lived together for 9 years and thereafter, she has given this complaint. It is an admitted fact that the petitioner and the defacto complainant were lived together and had physical relationship for



CRL O.P. No.6127 of 2022

more than 9 years. But no complaint was lodged in the year 2020. The delay in lodging the complaint by the 2nd respondent and the explanation for delay, cannot be considered at this stage and as per the materials collected by the prosecution during the investigation and the statement of witnesses, there are prima facie materials available to proceed the case further as against the petitioner and the grounds raised by the petitioner are nothing but defence to be taken before the Trial Court.

8. As far as the judgments relied on by the learned counsel appearing for the petitioner are concerned, in ***Maheshwar Tigga v. State of Jharkhand reported in (2020) 10 SCC 108***, the Hon'ble Supreme Court in para 14 held as follows:-

"14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. the prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her".

8.1. In ***Pramod Suryabhan Pawar vs. State of Maharashtra***



CRL O.P. No.6127 of 2022

WEB COPY

reported in (2019) 9 SCC 608, the Hon'ble Supreme Court has observed

as follows:-

"14. In the present case, the "misconception of fact" alleged by the complainant is the Appellants' promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled.

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it...
..

10. Further, the Court has observed:

18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 175 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".

In *Anurag Soni vs. State of Chattisgarh*, the Hon'ble Supreme Court held as follows:-

"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



CRL O.P. No.6127 of 2022

on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the Indian Penal Code 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 Indian Penal Code and can be convicted for the offence under Section 376 of IPC”.

8.2. In the case of *Sonu alias Subhash Kumar vs. State of Uttar*

Pradesh reported in 2021 SCC Online SC 181, the Hon'ble Supreme

Court in para 10 held as follows:-

"10. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 Cr.P.C., no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 Cr.P.C. on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established".

8.3. In *D. Santhanam & Anr. Vs. State reported in CDJ 2021*

MHC 4258, the Madras High Court held as follows:-

"30. In this case, both the prosecutrix and the 1st petitioner are in the same profession as Advocates. The possibility of professional relationship is very much there. The possibility of professional relationship is very much there. Admittedly, both were married and the 2nd respondent's marriage was in subsistence and she intended to seek divorce from her husband N.T.



CRL O.P. No.6127 of 2022

Vishwanath and thereafter, to marry the 1st petitioner. Hence, the 2nd respondent agreed for physical relationship and continued the same from the year 2015 to 2019.

The 2nd respondent needed companionship of the 1st petitioner and they were living together for a considerable period. It is not the case of the 2nd respondent that the 2nd respondent was forcibly raped. Thus, the 2nd respondent was consciously with active mind participated in the act. Further, it is not the case of passive submission in the face of any psychological pressure exerted and there was tacit consent and the tacit consent given by her was not the result of any misconception created in her mind. It is not in dispute that the 2nd respondent had sufficient intelligence to understand the significance and moral quality of the act she was consenting and show no objection. Thus, there is a clear distinction between rape and consensual sex. Admittedly, in this case, some amount was transferred by her to the 1st petitioner through online and some amount handed over in cash over a period of time on 18 occasions as borrowings, which cannot now be termed as offence of cheating. There is nothing to show that during the initial period of relationship, there was any false representation and the 2nd respondent deceived. The specific complaint is that the 1st petitioner failed to continue his relationship and the 2nd petitioner is the cause for it.

35. Now, this Court in the light of the ratio laid down by the Hon'ble Apex Court and on existing facts of this case as discussed above in detail, Court holds that the acknowledged consensual physical relationship between the parties would not constitute an offence of rape under Section 376 of IPC. Thus, allowing to continue the investigation in Cr. No.07 of 2021 on the file of 1st respondent police would amount to abuse of process of Court. Hence, the FIR registered against the petitioners is liable to be quashed and, is hereby quashed”.

8.4. In Shambhu Kharwar vs. State of Uttar Pradesh reported in 2022 SCC Online SC 1032, wherein, the Hon'ble Supreme Court in



CRL O.P. No.6127 of 2022

para 13, held as follows:-

"13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376 IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge sheet as they stand, the crucial ingredients of the offence under Section 375 IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent".

8.5. In Ms.X.... Appellant vs. Mr. A... and others reports in 2024

SCC Online SC 316, wherein, the Hon'ble Supreme Court, in para 11,

held as follows:-

"11. The issue similar to the one which arises for consideration in the present matter also arose for consideration before this Court in the case of Pramod Suryabhan Pawar v. State of Maharashtra, wherein this Court observed thus:

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



CRL O.P. No.6127 of 2022

19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:

19.1. The complainant and the appellant knew each other since 1998 and were intimate since 2004.

19.2. The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant.

19.3. The appellant expressed his reservations about marrying the complainant on 31.01.2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015".

8.6. In ***Shiv PratapSingh Rana vs. State of Madhya Pradesh and another reported in 2024 SCC Online SC 1653***, wherein, the Hon'ble Supreme Court, in para 23, held as follows:-

"23. This Court also examined the interplay between Section 375 IPC and Section 90 IPC in the context of consent in the case of Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608, and held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action (or inaction), consents to such action. After deliberating upon the various case laws, this Court summed up the legal position as under:

"To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards



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CRL O.P. No.6127 of 2022

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".

8.7. In *Prashant Bharti v. State of NCT of Delhi* reported in AIR

2013 SC 2753, it is held by the Supreme Court as follows:-

"23. Based on the factors canvassed in the forgoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the4 factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refused by the prosecution / complainant, and / or the material is such, that it cannot be justifiably refused by the prosecution / complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the Court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal Procedure. Such exercise of power, besides doing justice to the accused, would save precious court time, which would



CRL O.P. No.6127 of 2022

otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.

8.8. In State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors reported in 1992 Supp. (1) SCC 335, the Apex Court has discussed the scope of powers of High Court to quash FIR / Complaint / all criminal proceedings under Section 482 of Cr.P.C. in detail and has determined such instances where FIR / complaint / all criminal proceedings can be quashed. The relevant part of the above mentioned judgment reads as follows:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report*



CRL O.P. No.6127 of 2022

and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. On a careful perusal of the above said judgments, it is clear that

‘misconception of fact’ has to be in proximity of time to the occurrence and cannot be spread over a period of more than years and the prosecution has to prove from the inception, the accused who gave the



CRL O.P. No.6127 of 2022

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 obtained on a misconception of fact as per Section 90 of the Indian Penal Code 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 Indian Penal Code. Further, the consent of a woman with respect to Section 375 of the Code 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.

10. In the case on hand, the allegations against the petitioner is that they lived together and the petitioner made a false promise to marry her,



CRL O.P. No.6127 of 2022

but he refused to marry. The said intention has to be decided based on the evidence and it needs elaborate trial. Moreover, in this case, prima facie materials available to proceed with the case for other offences also. Therefore, in this case, elaborate trial is required and the petitioner has to face the trial and the judgments relied on by the petitioner will not be applicable to the present facts of the case. It is for the trial Court to frame appropriate charges based on the available materials and to proceed with the case in accordance with law. Therefore, this petition has no merits and deserves to be dismissed.

11. Accordingly, the Criminal Original petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

24.09.2024

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P.DHANABAL,J

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To

1. The Mahila Court, Chennai

18/19



CRL O.P. No.6127 of 2022

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2. The Public Prosecutor, High Court, Madras.

3. The The Inspector of Police,
W25, All Women Police Station,
T.Nagar, Chennai-600 017.

CRL.O.P. No.6127 of 2022

24.09.2024