



CRL. R.C. No.2226/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
22.07.2024	29.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRL. R.C. NO. 2226 OF 2023
AND
CRL. M.P. NOS.19963 & 19964 OF 2023**

Maran Venance

.. Petitioner

- Vs -

1. State, rep. By
The Inspector of Police
CB-CID Police Station
Puducherry.

2. A.Shakila

.. Respondents

Criminal Revision Case filed u/s 397 & 401 Cr.P.C. praying to set aside the order dated 10.11.2023 rendered by the learned Court of III Addl. District Judge at Puducherry in Crl. M.P. No.3133 of 2023 in S.C. No.1 of 2023 by dismissing the petition filed by the petitioner under 227 of Code of Criminal Procedure.

For Petitioner : Mr.John Sathyan, SC, for
M/s.Swamisubramanian



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For Respondents : Mr. K.S.Mohandass, PP (Pondy)
For R-1

ORDER

The dismissal of the discharge petition in Crl. M.P. No.3133/2023 in S.C. No.1/2023, filed by the petitioner u/s 227 Cr.P.C. before the trial court, vide order dated 10th Nov., 2023, is put to challenge by the petitioner by filing the present petition.

2. It is the case of the petitioner that the petitioner along with his wife are running a NGO in the name of Uthavumkarangal Home for the desolate at Nonankuppam, Puducherry. The defacto complainant/2nd respondent herein was teaching English to the children in the said orphanage and she has been working there for the past five years. As there was some marked behavioural changes in the 2nd respondent, the wife of the petitioner denied her entry into the orphanage. To wreak vengeance, the 2nd respondent made a false complaint against the petitioner making false and baseless allegations incriminating the petitioner for the offences u/s 376 IPC. It is the further averment of the



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petitioner that the medical records and the opinion of the medical examiner upon registration of the case, which was issued on 21.08.2008, is against the allegations made by the 2nd respondent. It is the further averment of the petitioner that the 2nd respondent pressurised the petitioner to marry her by divorcing his wife and as the petitioner did not accede to the same, the 2nd respondent has filed the complaint and is spreading the allegation that the petitioner had physical relationship with the 2nd respondent on the promise of marriage. Therefore, the petitioner prayed for discharge from the case, as the materials are against the allegations raised by the 2nd respondent.

3. Countering the same, the prosecution filed objections alleging that the petitioner had committed sexual offence against the 2nd respondent, who is a physically challenged person, who was working at the rehabilitation centre run by the petitioner for the upliftment of street children during her free time as social service. It is the further case of the prosecution that the petitioner, under the pretext of false promise of marriage, had sexual intercourse with the 2nd respondent and cheated her and committed rape under false assurance and, thereby, committed the offence u/s 376 IPC. Due to the act committed by the



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petitioner, the 2nd respondent became pregnant and the petitioner threatened her and due to the same, the 2nd respondent suffered miscarriage, which led to the filing of the case in Crime No.14/2008 for the offence u/s 417 and 376 IPC, which was later altered to one u/s 417, 376 & 376 (C) IPC and charge sheet has been filed against the petitioner.

4. The court below, considering the averments and counter averments placed before it by both sides, held that it would be premature to discharge the petitioner on the materials available before it as there is ground for presuming that the accused has committed the offence and declined to discharge the accused. Assailing the same, the present revision has been preferred.

5. Learned senior counsel appearing for the petitioner submits that the court below, without advertng to the statement of the witnesses, had, as a matter of routine, dismissed the discharge petition. It is the further submission of the learned senior counsel that all the persons, who have been enquired, have spoken in unison that such an act has not been done by the petitioner and in fact,



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the inmates of the Home had clearly spoken that no such act had been done by the petitioner.

6. It is the further submission of the learned senior counsel that the occurrence is said to have taken place between 2006 and 2007, however, no complaint was preferred by the 2nd respondent at the earliest point of time, even at the end of 2007. After a lapse of more than a year, the complaint had been given by the 2nd respondent, which itself creates a doubt with regard to the veracity of the complaint.

7. It is the further submission of the learned senior counsel that even the report of the investigating officer clearly reveals that no case has been made out against the petitioner with regard to the allegation made by the 2nd respondent. However, all the aforesaid facts have not been taken into consideration while the petition for discharge was considered and dismissed. It is the submission of the learned senior counsel that the 2nd respondent, only to wreak vengeance against the petitioner, on account of his wife preventing the 2nd respondent from entering the orphanage, the present allegation had been raised by the 2nd



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respondent. It is the further submission of the learned senior counsel that the act of the 2nd respondent had been brought to the notice of the 2nd respondent's sister and only after the same, the 2nd respondent had raised allegations against the petitioner, which clearly shows that it is a calculated attempt to tarnish the image of the petitioner in front of the public. Therefore, he prays that this court may consider all the above and interfere with the order of the court below.

8. Per contra, learned Public Prosecutor (Pondy) appearing for the 1st respondent/defacto complainant submits that the petitioner had promised to marry the 2nd respondent and only based on the promise, the 2nd respondent had submitted herself to sexual intercourse with the petitioner. Thereafter, not only the petitioner declined to marry the 2nd respondent, but even threatened her with dire consequences and the 2nd respondent, being a physically challenged person, had no other option other than to seek justice by filing the complaint.

9. It is the further submission of the learned Public Prosecutor that at the time of discharge, the merits of the evidence cannot be gone into and the duty of the court is to only see whether the complicity of the accused is made out and



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only if there are no sufficient materials warranting the continuance of the trial, discharge is permitted. However, in the present case, the court below has given a finding that there are *prima facie* materials to presume that the allegations have been committed by the accused and, therefore, had declined to discharge the petitioner, which cannot be found fault with. Accordingly, he prays that no interference is warranted with the order passed by the court below.

10. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned Public Prosecutor (Pondy) appearing for the 1st respondent and perused the materials available on records.

11. The fact that the 2nd respondent was engaged as English Instructor in the orphanage run by the petitioner and his wife is not in dispute. The allegation of the 2nd respondent is that under the promise of marriage, the petitioner had sexual relations with the 2nd respondent and when the 2nd respondent asked the petitioner to marry her, he declined and threatened her.



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12. The complaint filed by the 2nd respondent has resulted in the registration of a crime. A perusal of the typed set of papers reveal that on 19.2.2008, a report has been submitted by the Inspector of Police, AWPS, Puducherry, which is stated to be on the basis of the complaint given by the 2nd respondent. Thereafter, on 25.04.2008, the FIR has been registered in Crime No.14/2008 by the Inspector of Police, AWPS, Puducherry and upon investigation alteration report has been filed on 30.12.2019 and final report has also been filed on the same day along with the statement of witnesses.

13. A perusal of both the statements, one recorded before the registration of crime and the other statement recorded after registration of the crime, it is seen that the persons, who have deposed in those two statements have deposed diametrically opposite to each other. While one set of witnesses have deposed in favour of the petitioner, which has been recorded before the registration of the crime, however, the statements which have been recorded after the registration of the crime, the witnesses have deposed in favour of the 2nd respondent and against the petitioner. Therefore, there are two versions of the statements of the witnesses. Therefore, it cannot be held in favour of one of the parties to the *lis*.



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14. The incident is said to have taken place multiple times between 9.9.2006 and 18.08.2007 for which complaint had been lodged on 25.04.2008 resulting in the registration of the case in Crime No.14/2008. Between 18.8.2007 and 25.4.2008, there is a time gap, which according to the petitioner is delay and the same is fatal.

15. True it is that there is a delay in the filing of the complaint by the 2nd respondent. However, it should not be lost sight of that the 2nd respondent is a physically challenged lady and she alleges she had underwent the trauma of being sexually abused by the petitioner. As a lady, it would have definitely taken time to weigh the pros and cons in the case before approaching the police authorities with the complaint. Merely because the complaint has been filed after a period of eight months, it cannot be brushed aside as one clothed with delay and, therefore, the veracity of the same is suspicious. The complaint has to be tested only at the time of trial and at the outset, while considering the case of discharge, the same cannot form the basis to discharge the petitioner.



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16. A careful perusal of Section 227 Cr.P.C. reveals that while considering the petition for discharge, the duty cast on the court is to hear the prosecution and the accused and thereafter see whether there is sufficient ground for proceeding against the accused. It is not necessary for the court below to see whether the evidence are sufficient to prove the charge against the accused. The duty of the court is to only see whether there are *prima facie* materials, which implicates the accused in the offence.

17. In the present case, a perusal of the materials available on record, as detailed above, reveals that there are materials for and against the accused and in such a backdrop, without weighing the evidence, the court below has thought it fit to proceed against the accused. It is not a case of no materials, but it is a case of contradicting materials, which materials could be best looked into only at the time of trial and not at the nascent stage of discharge.

18. Though strenuous effort was made by the learned senior counsel for the petitioner to take this Court deep into the evidence, this Court, at the stage of discharge cannot look into the materials in detail to arrive at any finding, as such



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an approach would be arbitrary and against the interest of the parties. The court below had taken the right decision to dismiss the petition for discharge on the aforesaid reasons, which cannot be said to be erroneous and this Court is not inclined to interfere with the same.

19. For the reasons aforesaid, this petition is liable to be dismissed and, accordingly the same is dismissed. The petitioner and respondents are directed to co-operate with the trial court for the early completion of trial. Further, taking a holistic view of the case, the appearance of the petitioner before the trial court is dispensed with except for the purpose of receiving the documents u/s 207 Cr.P.C., appearance for the purpose of questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioner is necessary, the trial court, at its wisdom, shall direct his appearance on those days. Consequently, while Crl. M.P. No.19963/2023 is dismissed, Crl.M.P. No.19964/2023 is ordered in the abovesaid terms.

29.07.2024



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Index : Yes / No

GLN

To

1. The III Addl. District Judge
Puducherry.
2. The Public Prosecutor (Pondy)
High Court, Madras.
3. The Inspector of Police
CB-CID Police Station
Puducherry.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
CRL. R.C. NO.2226 OF 2023**

Pronounced on



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