



Crl.O.P.(MD) No.5908 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2024

CORAM

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.5908 of 2021

and

Crl.M.P.(MD) No.3397 of 2021

T.Balamurugan

... Petitioner

Vs.

1.State, Rep. by Inspector of Police,
Sindupatty Police Station,
Madurai District.
(Crime No.126/2019)

2.Singarajan

3.Sivanjothi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records pertaining to the charge sheet in P.R.C.No.36 of 2020 on the file of the Judicial Magistrate, Thirumangalam as against the petitioner and quash the same.

For Petitioner : Mr.T.J.Ebenezer Charles

For R1 : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



Crl.O.P.(MD) No.5908 of 2021

For R2 & R3 : M/s.Kalaiyarasi Bharathi

WEB COPY

ORDER

Challenging the final report in P.R.C.No.36 of 2020 before the learned Judicial Magistrate, Thirumangalam, the present Criminal Original Petition is filed.

2. The case of the prosecution in a nutshell is as follows:

(a) The second respondent/*de facto* complainant Singarajan has two sons and two daughters. The first daughter had epilepsy and was therefore not married. The present petitioner/accused married the second daughter. When the wife of the present petitioner/accused (second daughter of the second respondent/*de facto* complainant) was hospitalized, the present petitioner/accused had sexual intercourse with the first daughter of the second respondent/*de facto* complainant, as a result of which, she got pregnant. The second respondent/*de facto* complainant came to know that his first daughter was pregnant for 7 months. When the second and third respondents enquired her about the pregnancy, she informed them that the present petitioner/accused was responsible for the same and that he had sexual intercourse with her stating that he would marry her.



WEB COPY



Crl.O.P.(MD) No.5908 of 2021

(b) Subsequently, the first daughter of the second respondent/*de facto* complainant (Tamilarasi) consumed pesticides and was hospitalized on 11.07.2019 and subsequently died on 18.07.2019.

(c) Based on the complaint given by the second respondent/*de facto* complainant, the first respondent police registered F.I.R. in Crime No.126/2019 against the present petitioner/accused for the offences punishable under Section 376 of IPC. After conducting investigation, a final report in P.R.C.No.36 of 2020 was filed against the petitioner/accused before the learned Judicial Magistrate, Thirumangalam for the offences punishable under Section 376(2)(i) of IPC and Section 4B(1) of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

3. Mr.T.J.Ebenezer Charles, learned counsel for the petitioner/accused drew the attention of this Court to the Deoxyribonucleic Acid (DNA) Test Report submitted by the Regional Forensic Science Lab, Madurai, wherein, the present petitioner/accused was excluded from being the biological father of the foetus and would contend that when the petitioner/accused is not the father of the foetus, provisions of Section 376 of IPC would not be attracted as far as the



Crl.O.P.(MD) No.5908 of 2021

present case is concerned. It is also his contention that the police did not record the statement of the deceased Tamilarasi (first daughter of the second respondent/de facto complainant) though she was hospitalized for about a week i.e., from 11.07.2019 to 18.07.2019 and therefore, the present petitioner/accused did not commit any offence as alleged by the prosecution.

4. He also relied on the decision of the Hon'ble Supreme Court in ***Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and another***, reported in ***(2021) 18 SCC 517*** and contended that 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. His specific contention is that the Hon'ble Supreme Court had quashed the entire F.I.R. which was registered in that case and the facts of the present case would squarely apply to the said facts.



Crl.O.P.(MD) No.5908 of 2021

WEB COPY 5. Per contra, Mr.M.Sakthi Kumar, learned Government Advocate (Crl. Side) appearing for the first respondent police would contend that the DNA Test Report cannot be a sole reason to quash the final report and that in the instant case, there are specific averments made by the second respondent/*de facto* complainant to invoke the provisions of Section 376(2)(i) of IPC and Section 4B(1) of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. He would therefore contend that there is no valid reason to quash the final report filed by the police.

6. It is true that the Regional Forensic Science Lab, Madurai had excluded the present petitioner/accused from being the biological father of the foetus. However, the father of the deceased Tamilarasi (second respondent/*de facto* complainant) in his complaint as well as in his Section 161(3) of Cr.P.C. statement had clearly stated that his first daughter Tamilarasi confided him that the present petitioner/accused had sexual intercourse on the promise of marrying her.

7. In the circumstances, the report of Forensic Lab cannot be a reason to come to a definite conclusion that the present petitioner/accused



Crl.O.P.(MD) No.5908 of 2021

had not committed any offences punishable under Section 376(2)(i) of IPC and Section 4B(1) of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. The other witnesses have also spelt out that they have frequently seen the present petitioner/accused in the company of the deceased Tamilarasi.

8. In the instant case, the deceased Tamilarasi was not married as she had epilepsy and her younger sister was married to the present petitioner/accused. In fact, the present petitioner/accused is the son-in-law of the second and third respondents and there is no reason to infer that the second respondent/*de facto* complainant had given a false complaint against his own son-in-law especially when his second daughter was married to him. It is not the case of the petitioner/accused or the prosecution that the relationship between the petitioner and his wife is strained. Even in the decision of the Hon'ble Supreme Court in the case of ***Sonu alias Subhash Kumar*** cited *supra* which was relied on by the learned counsel for the petitioner/accused, it is observed that if the maker of the promise had no intention to abide by it at the time of giving it, it would amount to false promise. The petitioner was already married and however he allegedly had sexual intercourse with his sister-in-law under



Crl.O.P.(MD) No.5908 of 2021

the protects of marrying her especially when he was actually leading a happy life with his wife.

9. In the circumstances, I do not find any reason to quash the final report filed by the police. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

05.02.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

To

- 1.The Judicial Magistrate,
Thirumangalam.
- 2.The Inspector of Police,
Sindupatty Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.O.P.(MD) No.5908 of 2021

R.HEMALATHA, J.

JEN

Crl.O.P.(MD) No.5908 of 2021
and
Crl.M.P.(MD) No.3397 of 2021

05.02.2024