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Crl.O.P(MD).No.15673 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	13.12.2023
Pronounced On	22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD).No.15673 of 2021

and

Crl.M.P.(MD).Nos.8443 & 8444 of 2021

G.Karthickeyan

... Petitioner

Vs.

1. The State represented by
The Inspector of Police,
Rural Police Station,
Bodinayakkanur,
Theni District.
(Crime No.303 of 2019)

2.Vijayalakshmi

... Respondents

(Amended as per the order of this Hon'ble Court dated 22.03.2022 in Crl.M.P. (MD).No.3716 of 2022 in Crl.O.P.(MD).No.15673 of 2021)

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the entire records relating to the proceedings in S.C.No.93 of 2021 (Mahila Judge) District and Sessions Judge, Fast Track Court, Theni.



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For Petitioner : Mr.S.Alagarsamy
For Respondents : Mr.P.Kottaichamy
Government Advocate (Criminal Side)
for R1
: Mrs.G.Prabahari
Legal-Aid-Counsel for R2

ORDER

The petitioner herein is the fifth accused in S.C.No.93 of 2021, on the file of the learned District and Sessions Judge (Mahila), Fast Track Court, Theni, filed this petition to quash the proceedings against him in Crime No.303 of 2019, on the basis of the complaint given by the second respondent for the alleged offences punishable under Sections 449, 376(1)(n), 376-D, 506(i) of IPC and 67, 67-A of Information Technology Act 2000.

2. The learned counsel for the petitioner submitted that on reading of an entire allegation in the final report, FIR and the statement recorded under section 161 of Cr.P.C., of the victim and other witness statements, the above offences are not made out against the petitioner. The petitioner is the Manager of ICICI Bank. The allegation against the remaining accused and the petitioner is that the defacto complainant's husband was working in Kerala and he sent his salary to the defacto complainant, through the ICICI Bank. In the said bank, the accused Nos.1 to 5, including the petitioner are working as employees of the said bank.



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During the course of the financial transactions in the bank, A1 made a false promise that he would obtain a job for her in ICICI bank and he forced her to have sexual intercourse with him and took the video without knowledge of the defacto complainant. Subsequently, on showing the said video, he asked to have the sexual intercourse with A1. He further transmitted the video graph to A2 to A5. Thereafter, all the accused were using this videos and criminally intimidated the victim and they also had the sexual intercourse threatening publication of video, if she had not consented for the sexual intercourse. In the said circumstances, she yielded for sexual intercourse. But they further transmitted the video graph and hence she approached the sixth respondent, who is none other than the first husband. He also got the said video and forcibly had the sexual intercourse, exploiting the situation. Hence, she made a complaint to take action against all the persons and the same was registered in Crime No.303 of 2019, on the file of the respondent police and the same was investigated and final report has been filed before the jurisdictional Court for the alleged offences punishable under Sections 449, 376(1)(n), 376-D, 506(i) of IPC. To quash the proceedings, the fifth accused filed this quash petition.



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3. The learned counsel for the petitioner submitted that on reading the entire allegation made in the final report and the statement and other documents, the offences are not made out. He further submitted that she consented for the sexual intercourse is false. There are lot of discrepancies between the statement recorded under Section 164 of Cr.P.C., by the Judicial Officer and 161 statement recorded by the police officer. Hence, he seeks to quash the proceedings of the S.C.No.93 of 2021.

4. The learned Additional Public Prosecutor submitted that the defence of the petitioner can not be looked into at this stage. The defence plea could be verified and discussed only during the course of trial. It is the specific case of the prosecution that the victim was subjected to the sexual intercourse on threat of the publication of the video graph taken by A1, during the course of sexual intercourse. The investigating officer collected the materials and also seized the mobile phone of the accused and all the relevant materials. In the said circumstances, all the offences are made out except 67 A of the Information Technology Act. The learned Public Prosecutor, submitted that Section 67 A of the Information Technology Act was struck down by the Hon'ble Supreme Court as ultra vires. Hence, this Court can direct to delete the offence under Section 67



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A of the Information Technology Act and direct the trial Court to proceed with the trial for the remaining offences.

5. In spite of the notice, there was no representation on the part of the defacto complainant and hence, this Court issued fresh notice to the defacto complainant. The defacto complainant appeared and sought for legal-aid-assistance. Pursuant to which, Mrs.G.Prabahari was appointed and she also reiterated the argument of the learned Additional Public Prosecutor and specifically stated that all the accused namely A1 to A5 committed offence of the gang rape by threatening to publish the video graph. Hence, the commission of offence are made out. Hence, she sought for dismissal of the quash petition.

6. This Court considered the rival submission made on either side and perused the materials available on records.

7. The allegation made as stated above clearly disclosed the offence under Sections 449, 376(1)(n), 376-D, 506(i) of IPC. It is the specific allegation against the petitioner that he threatened the victim woman by showing the video graph transmitted by A1 to his mobile phone and committed sexual assault on the



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victim and the consent was said to have been obtained by force ie., by threatening of the publication of the video. Therefore, the case of the petitioner that the offence under Section 376(d) of IPC was not made out, is a matter for trial.

8. The contention of the petitioner is that there is a contradiction between the statements recorded under Sections 161 of Cr.P.C., and 164 of Cr.P.C., that are the matter for trial. At this stage, this Court has no power to look into the defence of the accused and also has no jurisdiction to consider the contradiction between the statement of the witnesses. Therefore, a *prima facie* case is found to have made out in the final report and other records.

9. As rightly pointed out by the learned Additional Public Prosecutor, Section 67 A of the Information Technology Act is struck down by the Hon'ble Supreme Court.

10. Therefore, this Court issues direction to the trial Court to delete Section 67 A of the Information Technology Act and proceed with the trial for the remaining offence.



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11. Accordingly, this Criminal original petition stands dismissed. The accused is at liberty to raise all the points before the learned trial Judge. The learned trial Judge is directed to conduct a trial without being influenced by this order. Consequently, connected miscellaneous petitions are closed.

22.02.2024

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

To

1. The Learned District and Sessions Judge (Mahila)
Fast Track Court,
Theni.
2. The Inspector of Police,
Rural Police Station,
Bodinayakkanur, Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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