



CrI.O.P.(MD)No.17190 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CrI.O.P.(MD)No.17190 of 2021 &
CrI.M.P.(MD)Nos.9340 & 9341 of 2021

1.Krishnan
2.Indhira
3.Gandhi
4.Kottaiammal
5.Karthigai Deepa
6.Thenmozhi

...Petitioners

VS.

1.State rep by.
The Inspector of Police,
All Women Police Station,
Manamadurai.
(Crime No.2 of 2019)

2.Menagagandhi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in P.R.C.No.5 of 2020 on the file of the District Munsif cum Judicial Magistrate Court, Thirupuvanam and quash the same.



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For Petitioners

: Mr.R.Senthil Kumar

For Respondents

: Mr.S.Manikandan
Government Advocate (Criminal Side)
for R1

Mr.C.M.Marichellaiah Prabhu for R2

ORDER

Seeking to quash the final report in P.R.C.No.5 of 2020 on the file of the District Munsif cum Judicial Magistrate Court, Thirupuvanam, the present Criminal Original Petition is filed by accused 2 to 7.

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

The defacto complainant, Menagagandhi and the first accused, Karthikeyan were related to each other and they were also in love with each other. According to the defacto complainant, the first accused under the promise of marrying her, forcibly had sexual intercourse with her. Her specific contention is that he used to visit her house whenever her mother leaves the home and had sexual intercourse on several occasions. Subsequently, he started evading her. Therefore, the defacto complainant called the first accused on 21.01.2019 to their usual place of meeting, at



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about 07.00 pm. Accordingly, the first accused went there and when the defacto complainant requested him to marry her, he refused, as a result of which, she consumed 20 thyroid tablets and fainted. She was immediately rushed to Poovanthi Medical Hospital in 108 ambulance from where, she was referred to Government Hospital at Thirupuvanam. She was discharged from the hospital on 23.01.2019. From then onwards, she was staying in her maternal aunt's house at Ilamanoor. On 26.01.2019, when the defacto complainant and her parents went to the house of the first accused and requested the first accused to marry the defacto complainant, all the accused took broom sticks and wooden logs and abused the defacto complainant and her parents in filthy language and also attacked them. They refused to get the defacto complainant married to the first accused. Based on the complaint given by the defacto complainant, the Inspector of Police, All Women Police Station, Manamadurai registered FIR in Crime No.2 of 2019 against the accused and after investigation, laid a final report in P.R.C.No.5 of 2020 against the accused for the offences punishable under Sections 294(b), 417, 376 and 109 IPC before the District Munsif cum Judicial Magistrate,



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Thirupuvanam. The learned Judicial Magistrate committed the case to the Court of Sessions and the same is now pending before the Mahila Court, Sivagangai in S.C.No.26 of 2022.

3. Mr.R.Senthil Kumar, learned counsel appearing for the petitioners would contend that the fifth petitioner namely Karthigai Deepa was admitted in Hindusthan Hospital, Coimbatore on 25.01.2019 where she delivered a female child on 27.01.2019. He filed a copy of the discharge summary issued by Hindusthan Hospital, Coimbatore to prove the same. His specific contention is that the fifth petitioner was discharged only on 31.01.2019 and the second petitioner, the mother of the fifth petitioner was with her daughter on the date of the alleged occurrence i.e., on 26.01.2019. It is also his contention that this is not a case attracting the offence punishable under Section 376 IPC since even as per the versions of the prosecutrix, she has given consent to have sexual intercourse with the first accused. He therefore, prayed for quashing the final report.



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4. Per contra, Mr.C.M.Marichellaiah, learned counsel appearing for the second respondent / defacto complainant would contend that the Police after conducting proper investigation laid a final report and there is no valid ground to quash the same. He therefore, prayed for dismissal of this petition.

5. Mr.S.Manikandan, learned Government Advocate (Criminal Side) reiterated the contentions of the learned counsel appearing for the second respondent / defacto complainant.

6. The contention of the learned counsel appearing for the petitioners is that Section 376 IPC would not be attracted to the facts of the present case as the second respondent / defacto complainant has given her consent to have sexual intercourse with the first accused. In this regard, it is appropriate to extract Section 90 and Section 375 IPC.

"90. Consent known to be given under fear or misconception.—

A consent is not such a consent as it intended by any section of this Code, if the consent is given by a



person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or
Consent of insane person.— if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or
Consent of child.— unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

"375.Rape - A man is said to commit "rape" if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or



(d)applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,under the circumstances falling under any of the following seven descriptions:—

First.— Against her will.

Secondly. — Without her consent.

Thirdly. — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. — With or without her consent, when she is under eighteen years of age.



Seventhly. — When she is unable to communicate consent."

7. The case of the prosecutrix is that, she had sexual intercourse with the first accused since the latter promised to marry her. The petitioners had not denied this. Section 375 IPC clearly describes seven circumstances under which, rape could be said to have been committed. A rape can be said to have been committed if a man has sexual intercourse without the consent of the woman. Section 90 IPC defines the situations in which the consent apparently to be given by a person is not sufficient for purposes of the Code. If a consent is given under misconception of facts, it is not a consent. In the instant case, the first accused's family and the defacto complainant's family are related to each other. The prosecutrix has given consent to the first accused to have sexual intercourse with her since he promised to marry her. Therefore, *prima facie* Section 376 IPC would be attracted to this Case.

8. The next ground urged by the learned counsel for the petitioners is that the fifth petitioner was admitted in the Hospital at



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Coimbatore on 25.01.2019 and delivered a female child on 27.01.2019. She was discharged on 31.01.2019. The discharge summary issued by the Hospital where the fifth petitioner was admitted is filed before this Court. It is not known as to why the Investigation Officer has not taken this aspect into consideration. The offences alleged against the fifth petitioner is that she abused the defacto complainant in filthy language and also attacked her. However, a perusal of the discharge summary issued by Hindusthan Hospital clearly shows that she was admitted on 25.01.2019 and discharged only on 31.01.2019. The alleged occurrence took place on 26.01.2019. Therefore, it would have been impossible for the fifth petitioner to have been present in the scene of occurrence. Therefore, this Court has to necessarily draw the presumption under Section 114 of Indian Evidence Act with regard to existence of any fact. When this Court draws the said presumption under Section 114 of the Indian Evidence Act, this Court finds that the presence of the fifth petitioner in the scene of occurrence is highly improbable.

9. The contention of the learned counsel for the petitioners is



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that the second petitioner being the mother of the first petitioner was also in the Hospital. Though normally, a mother will take care of her daughter during delivery time, it is for the second petitioner to prove that she was in the hospital at the time of alleged occurrence.

10. In view of the discussions, the present Criminal Original Petition is partly allowed and the final report in P.R.C.No.5 of 2020 on the file of the District Munsif cum Judicial Magistrate Court, Thirupuvanam (now before the Mahila Court, Sivagangai in S.C.No.26 of 2022) is quashed as far as the fifth petitioner alone is concerned. The petition against the other accused is dismissed. Since the matter is of the year 2020, the trial court is directed to dispose of the same as expeditiously as possible with regard to the other petitioners. Consequently, the connected Miscellaneous Petitions are closed.

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NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To
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- 1.The District Munsif cum
Judicial Magistrate Court, Thirupuvanam
- 2.The Mahila Court,
Sivagangai.
- 3.The Inspector of Police,
All Women Police Station,
Manamadurai
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.HEMALATHA, J.

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