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Crl.O.P.No.5152 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2025

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.5152 of 2025

Dr.Karthik Gunasekaran

....

Petitioner

Vs

Dr.Deepa

....

Respondent

Prayer: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in C.C. No.3457 of 2024 pending on the file of the learned II Metropolitan Magistrate, Egmore and quash the summon and complaint.

For Petitioner : Ms.S.P.Arthi

For Respondent : No Appearance

ORDER

This Petition has been filed to quash the proceedings in C.C. No.3457 of 2024 on the file of the II Metropolitan Magistrate, Egmore. The petitioner is an accused in C.C. No.3457 of 2024 having been taken cognizance for the offences under Section 493 of IPC and Sections 66 E and 67A of the Information Technology Act, 2000.



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2. The case of the prosecution is that during the month of April 2016, the petitioner was introduced to the respondent by their common friend. The petitioner and the respondent are Doctors by profession. The petitioner expressed that his marital life is a failure, though he had one Daughter and Son, out of their wedlock. Further, he also stated that he has filed a petition for divorce before the Family Court, Chennai, and expressed his intention to marry the respondent. Believing his words, the respondent also interacted with him. On the pretext of marriage, he took a rented premises, stayed with the respondent and has also taken the respondent to abroad for attending a conference. Therefore, the respondent had strong hopes in the relationship and requested the petitioner to make their relationship as legal as soon as possible. Whenever the respondent asked for the date of marriage, the petitioner used to tell that his wife was not in the mental state to receive this information.

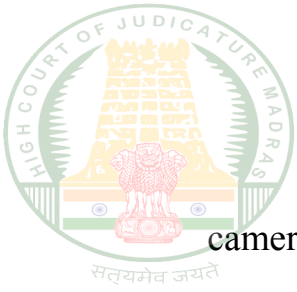
3. Even during Pongal 2021, he assured that he would marry the respondent at the earliest. He also further assured that he got divorce from his first wife and when the respondent questioned the petitioner



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about his divorce and insisted for production of decree of divorce, he assured that he would show it when he obtains certified copy of the order. The petitioner got married to the respondent in the Temple at Mylapore, Chennai in the year 2021. Thereafter, they both resumed their living together relationship in the rented premises and the respondent became pregnant and informed the same to the petitioner herein. At the instance of the petitioner, the respondent was sent to USA for delivery. She got admitted and gave birth to a Twin at New Jersey. While being so, she suffered from Cardiac Arrest and she managed to recover from her heart ailments. While being in USA, the respondent came to an understanding that the petitioner also had affair with another girl called Savitha. Further, the respondent also came to the understanding that the said Savitha had lodged a police complaint as against the petitioner after his arrival to India. Thereafter, the respondent came back to India in January, 2022. The petitioner has never seen the babies born through him.

4. Further, when the respondent insisted the petitioner, to get their marriage registered, he threatened the respondent that he had captured their intimate pictures with her in the bedroom by hidden



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camera without her knowledge and he would not hesitate to publish the pictures in the public domain, if the respondent insisted him to marry her.

Hence, she lodged a complaint before the Inspector of Police, T.5, Kannagi Nagar Police Station, Thiruvallikeni, Chennai. However, no FIR has been registered.

5. After recording the sworn statement of the respondent and on perusal of the records, the Trial Court had taken cognisance for the offence under Section 493 of IPC and Section 60 E and 67 A of Information Technology Act and issued summons to the petitioner.

6. The learned counsel for the petitioner would submit that the offence under Section 493 of IPC is not attracted as against the petitioner. Admittedly, the petitioner and the respondent were in a live in together relationship. The petitioner never promised the respondent to marry her. The respondent had full knowledge about the petitioner's status that he was a married person and a father of two children. When the first marriage is very much in existence, the petitioner cannot legally register their second marriage. The respondent has been in a live in relationship with the petitioner for the past 6 years. Further, she alleges that



WEB COPY

purported wedding between the petitioner and respondent was solemnized in the month of January 2021. The respondent was sexually involved with the petitioner from the year 2017, even prior to his alleged promise to marry her. In order to constitute the offence under Section 493 IPC, there must be inducement by the man in a deceitful manner so as to make the women believe that she is lawfully married to him to cohabit or have sexual intercourse, which is not met, since the respondent was in consensual relationship with the petitioner since 2017.

7. Further, the learned counsel for the petitioner submitted that the respondent alleged that the petitioner threatened to expose her intimate photos in the public domain is not an accusation found in her earlier police complaints. All of a sudden, the said allegation has been arised only in the private complaint to attract the offences under Sections 66E and 67A of the Information Technology Act. Further, mere threat would not attract the offences under Section 66E and 67A of the Information Technology Act,

8. On perusal of the complaint lodged by the respondent, there are specific allegations as against the petitioner which constitute the



Crl.O.P.No.5152 of 2025

WEB COPY

offence under Section 493 IPC and under Sections 66E and 67A of the

Information Technology Act. As per the complaint, though the respondent had knowledge about the petitioner's first marriage, he had stated that he is not with his wife and she is living separately. Furthermore, it is stated that she has mental illness and a divorce petition has been filed and the same is pending. Thereafter, he also stated that the divorce decree is granted in his favour and he assured that he will marry her. Therefore, during their live in relationship, she got pregnant and gave birth to a twin. When the respondent insisted the petitioner to marry her, after giving birth to a twin, the petitioner threatened that he will publish the photographs and videographs in the social media which were captured when they were intimate. Therefore, these allegations clearly attract the offence under Sections 493 IPC and 66E and 67A of the Information Technology Act.

9. The Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)** while dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of



Crl.O.P.No.5152 of 2025

WEB COPY

the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

10. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of ***Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019*** dated 17.10.2019) held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

11. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr,*** held that while considering the



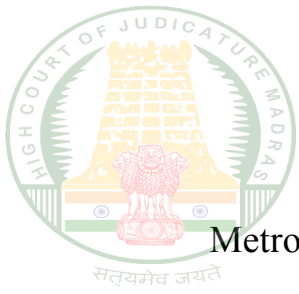
Crl.O.P.No.5152 of 2025

WEB COPY

petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

12. Further this Court cannot observe at this stage that the initiation of criminal proceeding itself is malicious. Whether the criminal proceeding is malicious or not, is not required to be considered at this state. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioner to quash the charge sheet cannot be entertained to quash the entire proceedings.

13. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.3457 of 2024 on the file of the II



Crl.O.P.No.5152 of 2025

Metropolitan Magistrate, Egmore The petitioner is at liberty to raise all the grounds before the trial Court.

14. Accordingly, the Criminal Original Petition stands dismissed.

25.02.2025

rkp

Index: Yes/No

Internet: Yes/No

To

1.The II Metropolitan Magistrate,
Egmore.

2.The Public Prosecutor,
High Court, Madras.



WEB COPY



Ctrl.O.P.No.5152 of 2025

G.K.ILANTHIRAIYAN,J.
rkp

CRL.O.P.No.5152 of 2025

25.02.2025