



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.04.2025

Pronounced on : 23.04.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.Nos.21373 of 2023 and 20254 of 2022

and

Crl.MP.Nos.14711 of 2023 and 13308 of 2022

N.Harikrishnan .. Petitioner/A1 in Crl.O.P.No.21373 of 2023

1.N.Kalirajan

2.N.Chitra

.. Petitioners/A2 & A3 in Crl.O.P.No.20254 of 2022

Versus

1. State Rep by
The Inspector of Police
W32-All Women Police Station
Madipakkam, Chennai
(Crime No.10 of 2022)

2. XXXX (Defacto complainant)

.. Respondents in both Crl.O.Ps.

Common Prayer:- Criminal Original Petitions filed under Section 482 of Cr.P.C., seeking to call for the records in Crime No.10 of 2022 dated 25.07.2022 pending on the file of the first respondent police and to quash the same.

**Both OPs**

For Petitioners

:

Mr.G.Peranban

For Respondents

:

Mr.R.Venkatesa Perumal for R1
Government Advocate (Crl.Side)
Mr.R.C.Paul Kanagaraj
and Mr.S.V.Jayakumar for R2

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COMMON ORDER

These petitions have been filed seeking to quash the F.I.R. in Crime No.10 of 2022, on the file of the first respondent police, for the offences punishable under Sections 376, 417, 406, 294(b) and 506(i) of IPC.

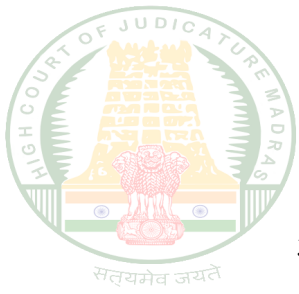
2. The petitioner in Crl.O.P.No.21373 of 2023 is arrayed as A1. The petitioners in Crl.O.P.No.20254 of 2022 are A2 and A3/brother and mother of the A1.

3. The crux of the allegations in the FIR are that the defacto complainant/second respondent an MCA graduate working as software engineer at Bank of America had met the A1 who was also a software engineer working at SI systems in a conference. A1 proposed the defacto complainant and thereafter, they were in love affair. A1 took the defacto complainant to Tirupathi and exchanged rings and promised that he will marry her. Further, on 03.10.2020 against her wish, he forcibly took her and



had sexual intercourse with her and convinced that it is common between husband and wife and thereafter, they had sexual intercourse for several times. Subsequently, A1 had demanded 100 sovereigns and Rs.10 lakhs for marriage which ended in quarrel and thereafter, the A2 and A3 abused her. On intervention of the police, A1 convinced the defacto complainant and started as husband and wife and had sexual intercourse. During January 2021, the family of A1 threatened the defacto complainant with dire consequences. Thereby, a complaint was given and FIR was registered in Cr.No.10 of 2022 for the offences punishable under Sections 376, 417, 406, 294(b) and 506(i) of IPC and now the same is sought to be quashed by the petitioners/accused 1 to 3.

4. Though initially the petitions were opposed by the defacto complainant by filing counter, later, she has filed an affidavit before this Court stating that due to intervention of well wishers, she has received a sum of Rs.12 lakhs as compensation by way of Demand Draft No.000690 dated 19.03.2025, HDFC Bank. Therefore, she has filed an affidavit expressing no objection to quash the FIR in Cr.No.10 of 2022 dated 25.07.2022 against the accused 1 to 3/petitioners herein.

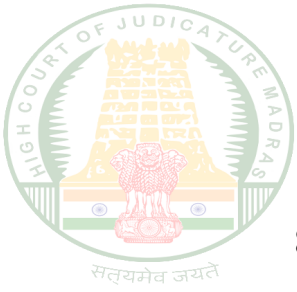


5. Heard both sides and perused the materials placed on record.

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6. At the outset, this Court is of the view that the offences of serious nature, compounding is not permissible, however, taking note of the allegations pressed in the FIR, this Court is inclined to dispose of the matters on merits.

7. Perusal of the FIR makes it very clear that the defacto complainant is not an illiterate or rustic person. The very allegations raised by her indicate that she is a MCA graduate working as a software engineer at Bank of America and she had affair with the A1 and both have gone to extent of exchanging the rings and started living as husband and wife and had sexual intercourse on many occasions. Though it is alleged that A1 has deceived her and had sexual intercourse, when the FIR carefully perused, it clearly indicates that they had sexual intercourse as husband and wife for multiple times from the year 2020 to 2022. Thereafter, it appears that relationship got strained, they fell apart and as a result, the complaint came to be filed as against the A1 and his brother and mother.



8. It is relevant to note that the defacto complainant is a fully grown woman and working as a software engineer and consented to sexual intercourse. According to her, as the accused promised to marry her, she continued to indulge in sexual intercourse till their relationship become strained. Therefore, it cannot be stated that only because of deception played by A1, she had succumbed to such a pressure. To bring the case within the ambit of misconception of fact, there must be materials to show that bad faith or deception was present from the very inception. Whereas, the entire allegations in the FIR clearly indicate that the defacto complainant and the A1 had indulged in sexual intercourse for several times and lived as husband and wife for considerable period. In fact, defacto complainant also consented to have sexual intercourse for many times. In such a situation, to bring the act of A1 under the ambit of misconception of facts, there must be evidences or atleast some materials, which is not available on perusing the entire materials.

9. The very factum that both were living as husband and wife and had sexual intercourse many times indicate that the alleged deception from the very inception is absent. Therefore, merely, because the relationship later



strained due to some or other reasons and they fell apart, in such a situation,

it cannot be held that such consent would fall within the ambit of misconception of fact to hold that offence of rape is attracted.

10. In this regard, it is relevant to rely upon the judgment of the Hon'ble Apex Court in *Pramod Suryabhan Pawar Vs. State of Maharashtra* reported in (2019) 9 SCC 608, wherein, in paragraphs 16, 21 and 23, the Hon'ble Supreme Court has held as follows:

“16. 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.

21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside



with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 of the IPC has occurred.

23. Without entering into a detailed analysis of the content of the WhatsApp messages sent by the appellant and the words alleged to have been spoken, it is apparent that none of the offences set out above are made out. The messages were not in public view, no assault occurred, nor was the appellant in such a position so as to dominate the will of the complainant. Therefore, even if the allegations set out by the complainant with respect to the WhatsApp messages and words uttered are accepted on their face, no offence is made out under SC/ST Act (as it then stood). The allegations on the face of the FIR do not hence establish the commission of the offences alleged.”

11. The Hon'ble Supreme Court in *Sonu Vs. State of Uttar Pradesh* reported in *AIR 2021 SC 1405* has held in paragraphs 9 and 11 as follows:

“9. In Pramod Suryabhan Pawar (supra), while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

“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...?”



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11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.”

12. The Hon'ble Karnataka High Court in *Venkatesh and Ors Vs. State of Karnataka and Ors* dated 13.01.2022 in Criminal Petition No.5865 of 2021 has held in paragraph 7 and 8 as follows:

“7. Learned counsel for the petitioners relied upon a Single Bench judgment of the High Court of Judicature at Madras, in the case of *K.U.Prabhu Raj Vs. State by Sub Inspector of Police, A.W.P.S. Tambaram* and another reported in 2012-3-L.W.770 wherein, the Court has held at paragraphs 16 and 17 as under:

“16. A cursory perusal of the above provision would make it clear that there are atleast three essential ingredients constituting an offence of cheating which should be made out from the materials available on record. They are as follows:-

- (1) Deception of any person;
 - (2) Fraudulently or dishonestly inducing that person
 - (i) To deliver any property to any person or;
 - (ii) To consent that any person shall retain any property,
- or and
- (3) Intentionally inducing that person to do or omit to do



anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.-

17. The learned counsel for the second respondent would further submit that the offence involved in this case falls within the ambit of the third limb of Section 415 I.P.C as enumerated above. According to the learned counsel, but for the promise made by the petitioner, the daughter of the second respondent would have married someone-else and settled down in her life. Thus, according to him, the petitioner has committed a clear offence of cheating. In my considered opinion, it is not so. As has been held by the Division Bench of the Calcutta High Court in *Abhoy Pradhan v. State of W.B* case (cited supra), mere promise to marry and later on withdrawing the said promise will not amount to an offence of cheating at all. On such false promise to marry, the person to whom such promise was made should have done or omitted to do something that he would not do or omitted to do but for the deception. In this case, absolutely, there are no materials available on record to show that because of the promise made by the petitioner, the daughter of the second respondent has done anything or omitted to do something which has the tendency to cause damage or harm to the body or mind or reputation or property of the daughter of the second respondent. In the absence of the same, the entire allegations found in the records, in my considered 8 opinion, would not make out an offence under Section 417 or 420 I.P.C., at all.“

8. The Hon'ble Supreme Court also has categorically held in the case of *S.W.PALANITKAR AND OTHERS VS. STATE OF BIHAR AND ANOTHER* reported in (2002) 1 SCC 241 at paragraph No.11 that mere breach of contract cannot give rise to any criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and the time when the offence is said to have been committed. Here in this case, petitioner No.1 is said to have promised to marry respondent No.2, but failed to marry her. In



view of the judgment of the Hon'ble Supreme Court, respondent No.2 has failed to make out a case of criminal intention of petitioner No.1 from the beginning for cheating the complainant. That apart, the aforesaid judgment of High Court of judicature at Madras is applicable to the case where the promise of marriage will not attract 9 Section 420 of IPC. This Court has held in Crl.R.P.No.233/2020 dated 24.02.2020 in the case of Sri.D.Ramesh Sinha Vs. State of Karnataka that as a promise of marriage and breach of contract will not attract the provisions of Sections 417 and 420 of IPC. Such being the case, continuing the proceedings or investigation against the petitioners is abuse of process of law and therefore, the same is liable to be quashed. “

13. The Hon'ble Supreme Court in *Mandar Deepak Pawar Vs. The State of Maharashtra* in Criminal Appeal No.442 of 2022, dated 27.07.2022 has held as follows:

“The parties chose to have physical relationship without marriage for a considerable period of time. For some reason, the parties fell apart. It can happen both before or after marriage. Thereafter also three years passed when respondent No.2 decided to register a FIR.

We are fortified to adopt this course of action by the judicial view in (2019) 9 SCC 608 titled “*Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr.*” where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the context of Section 375 Explanation 2 and Section 90 of the IPC, 1860. The Criminal appeal is accordingly allowed.”

14. Considering the above settled position of law and the very



allegations in the FIR itself indicate that out of strained relationship, FIR has been filed not only against the A1 but also against his brother and mother.

That apart, now, the defacto complainant has also filed an affidavit expressing no objection in quashing the FIR as against the accused 1 to 3/petitioners herein. She has also received a sum of Rs.12 lakhs. In view of the above, continuing the FIR is nothing but an abuse of process of law and a futile exercise and it is nothing but harassment of the petitioners.

15. Such view of the matter, the Criminal Original Petitions are allowed and the FIR in Crime No.10 of 2022, pending on the file of the first respondent police stands quashed. Consequently, the connected miscellaneous petitions are closed.

23.04.2025

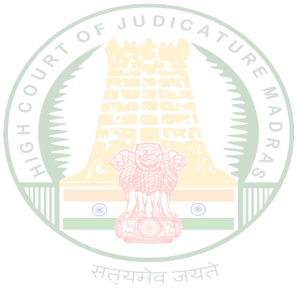
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Internet : Yes/No

Index : Yes/No

Neutral Citation : Yes/No

N.SATHISH KUMAR, J.



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To

1. The Inspector of Police
W32-All Women Police Station
Madipakkam, Chennai

2. The Public Prosecutor
Madras High Court.

Crl.O.P.Nos.21373 of 2023 and 20254 of 2022

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