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Crl.O.P.No.7098 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.7098 of 2023 and
Crl.MP.Nos.4455 & 4457 of 2023

U.Kishore Kumar

... Petitioner

Vs.

1.The State Represented by
The Inspector of Police,
W-12 AWPS Police Station,
Washermenpet,
Chennai 600 081
2.S.Sneha

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. praying to call for the records in CC.No.1406 of 2022 pending on the file of XV Metropolitan Magistrate Court, George Town, Madras and quash the same.

For Petitioner : Mr.R.Dhanasekar

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : Mr.K.Bommuraj

ORDER

This criminal original petition has been filed to quash the

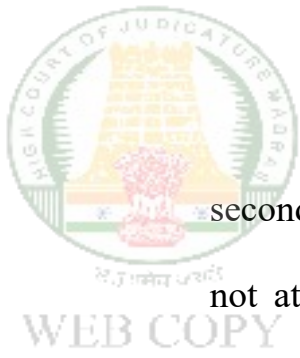


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proceedings in CC.No.1406 of 2022 on the file of XV Metropolitan Magistrate, George Town, Madras.

2. The case of the prosecution is that the petitioner fell in love with the second respondent. Thereafter, they had physical relationship on 29.12.2021 in a private lodge. Once again on 20.01.2022, the petitioner had physical relationship with the second respondent on compulsion. Thereafter, he neglected the second respondent and refused to speak to her. Further, he also refused to marry her. On a complaint, the first respondent registered FIR in crime No.3 of 2022 for the offence punishable under Sections 417, 506(ii) of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002. After completion of investigation, the first respondent filed final report and the same was taken cognizance by the trial court.

3. The learned counsel for the petitioner would submit that the petitioner never had physical relationship with the second respondent on the pretext of marriage. Even according to the second respondent, both fell in love and they had physical relationship. She was aged about 19 years at the time of the alleged occurrence and it was a consensual relationship. Further, the petitioner never had undertaken to marry the



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second respondent. Therefore, the offence under Section 417 of IPC is not at all made out against the petitioner. Though the first respondent filed FIR for the offence under Section 4 of Prohibition of Harassment of Women Act, while filing final report, the said offence had been deleted by the first respondent. It shows that there was absolutely no threatening at the hands of the petitioner. Even as per her statement, there is no averment to attract the offence under Section 506(ii) of IPC.

4. Per contra, the learned Government Advocate(crl.side) appearing for the first respondent submitted that the petitioner fell in love with the second respondent and on the pretext of marriage, he had physical relationship on 29.12.2021. Thereafter on his compulsion, on 20.01.2022 also, he had physical relationship with the second respondent. Thereafter, the petitioner failed to marry the second respondent and when it was questioned by the second respondent, she was threatened by the petitioner with dire consequences. Hence, he prayed for dismissal of this criminal original petition.

5. Though notice was served on the second respondent and a counsel entered appearance earlier, no one appeared before this Court today either by person or through pleader.



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6. Heard the learned counsel appearing on either side and perused all the materials placed before this Court.

7. According to the second respondent, she and the petitioner fell in love. Thereafter, they had physical relationship on 29.12.2021 in a private lodge. Admittedly, the second respondent was a major at the time of the alleged occurrence. Once again on 20.01.2022, they had stayed in the very same hotel and had physical relationship. Though the second respondent alleged that on compulsion, he had physical relationship with her, there was no complaint on that allegation. Only allegation made against the petitioner is that thereafter the petitioner failed to speak to her and repeatedly neglected her. Though the petitioner and the second respondent fell in love, it is not the case of the prosecution that the petitioner had physical relationship with the second respondent under the pretext of marriage. The second respondent never whispered that the petitioner undertook to marry the second respondent and on the pretext of marriage, he had sexual relationship. Therefore, the second respondent had absolute knowledge about the consequences of the physical relationship and the second respondent herself voluntarily had physical relationship with the petitioner without any objection. As such, the offence under Section 417 of IPC would not attract against the petitioner.



8. Cheating is defined under Section 415 of IPC which reads as follows:

"415. Cheating- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived 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, is said to "cheat"."

9. A perusal of the aforesaid provision shows that the offence of cheating is in two parts. The first is where a person fraudulently or dishonestly deceives another in inducing that person to deliver any act which causes damage or harm to that person "in body, mind, or reputation or property is said to have cheated". Time and again, this Court has reiterated that in order to make out an offence under cheating the intention to cheat or deceive should be right from the beginning. By no stretch of imagination, this is even reflected from the complaint made by the informant.



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10. In the case of ***Hridaya Ranjan Prasad Verma v. State of Bihar***, reported in (2000) 4 SCC 168, the Hon'ble Supreme Court of India held as under:

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

11. Further, in the case of ***Indian Oil Corpn. v. NEPC (India) Ltd.*** reported in (2006) 6 SCC 736, the above position was reiterated in the following manner:



"33. The High Court has held that mere breach of contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no "cheating". The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise. Illustrations (f) and (g) to Section 415 make this position clear:

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.' "



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12. The punishment of cheating is given under Section 417 of IPC

which reads as under:

"417. Punishment for cheating- Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

13. There can be multiple reasons for initiating a marriage proposal and then the proposal not reaching the desired end. It may in a given case involve cheating; it is possible theoretically yet in order to prove an offence of cheating in such cases prosecution must have reliable and trustworthy evidence in order to first prosecute such a case. In the case on hand, there is absolutely no evidence before the prosecution and therefore, no offence under Section 417 of IPC is made out.

14. Insofar as the offence under Section 506(ii) of IPC, this Court, in the case of ***Murugavel Vs State represented by the Inspector of Police, All Women Police Station***, reported in ***2019 SCC Online Mad 26824***, has held as under:-

"4.

9. This Court in a decision in Noble Mohandass Vs State. 1989 Crl.J 669 has held as follows:

Further for being an offence under Section 506(ii)



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Madras, is quashed and this criminal original petition stands allowed.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

1.XV Metropolitan Magistrate Court, George Town, Madras

2.The State Represented by
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W-12 AWPS Police Station,
Washermenpet,
Chennai 600 081



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