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CRL RC No.2402 of 2



CrI.M.P.No.21628 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL RC No.2402 of 2025

and

CRL MP No.21628 of 2025

R. Nithish Kumar
S/o.Ranganathan,
No.42 D, Vethappar Street,
Natham,
Chengalpattu.

...Petitioner/Accused

Vs

1. The State Rep by,
The Inspector of Police,
All Women Police Station,
Chengalpattu.
2. S.Devika
D/o.T.Selvam,
Main Road, Keelakattur,
Thiruvidaimaruthur Taluk,
Tanjavur District - 609807.



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(R2 is *suo motu* impleaded as per the order of this Court dated 18.11.2025 in Crl.RC.No.2402 of 2025 and Crl.MP.No.21628 of 2025)

...Respondents

Prayer : Criminal Revision Petition filed under Section 438 r/w 442 of B.N.S.S., to set aside the order dated 07.08.2025 passed in Crl.M.P.No.2 of 2025 in S.C.No.236 of 2024 by the learned Sessions Judge, Mahila Court, Chengalpattu.

For Petitioner:

Mr.Christopher Vijayachandran

For Respondents:

Mr.R.Vinoth Raja
Government Advocate (Criminal Side)
for R1

No Appearance for R2

ORDER

This Criminal Revision challenges the dismissal of the discharge petition filed by the petitioner/accused, who is facing prosecution for the offences under Sections 376(2)(n) and 313 of the Indian Penal Code, 1860 (hereinafter referred to as the “*IPC.*”)

2 (a). The case of the prosecution is that the petitioner/accused aged about 20 years, at the time of occurrence had a love affair with the *de-facto* complainant who was aged about 22 years at the time of the occurrence; that the



petitioner had promised to marry the *de-facto* complainant and had sexual intercourse on several occasions between the period from 15.05.2019 to January 2020; that in the meanwhile, the *de-facto* complainant became pregnant; that the petitioner had given medicines to the *de-facto* complainant to abort the child; that thereafter, the petitioner promised to marry the *de-facto* complainant after four years; that the *de-facto* complainant waited for four years and when she approached the petitioner and his parents, the petitioner refused to marry the *de-facto* complainant and thus, committed the aforesaid offences.

(b). On a complaint given by the *de-facto* complainant on 17.02.2024, a case was registered as C.S.R and subsequently registered as an FIR on 27.02.2024 in Crime No.3 of 2024 for the offences under Sections 376(2)(n) and 417 of IPC. The respondent police, after conducting the investigation, had filed the Final Report against the petitioner for the offences under Sections 376(2)(n) and 313 of the IPC.

(c). The petitioner sought for discharge before the Trial Court on the ground that the statement of the witnesses and the evidence collected by the prosecution only suggest that it was a consensual affair between the petitioner and the *de-facto* complainant; that the alleged occurrences took place in the year 2020; that the complaint was lodged only in the year 2024; that the materials



suggest that consent of the *de-facto* complainant was not obtained by fraud or any false representation; and considering the age of the petitioner and the *de-facto* complainant, the alleged offences are not made out.

(e). The trial Judge, dismissed the said petition on the ground that there is *prima facie* material to show that the petitioner has obtained consent by false promise of marriage; and that in any case, the question of whether the consent was obtained by fraud or not cannot be adjudicated at the stage of the charge framing.

3(a). Mr.Christopher Vijayachandran, the learned counsel for the petitioner/accused, would submit that the alleged occurrences is said to have taken place in the year 2019 and 2020; that the petitioner was aged 20 years at the time of occurrence and the statements recorded by the investigating officer from the *de-facto* complainant and other witnesses would suggest that the relationship was consensual and the *de-facto* complainant was aware of the consequences of her act and her consent was not because of any alleged false promise of marriage even assuming that the petitioner has made such false promise and the consent was only because of their relationship and therefore, there is no material to frame the charge under Section 376(2)(n) of IPC.



(b). The learned counsel would further submit that the offence under

Section 313 of the IPC is said to have been committed in the year 2020, and there is absolutely no material collected by the prosecution to substantiate that there was any abortion at the relevant point of time and in the absence of such material, the charge under Section 313 of the IPC cannot be sustained.

4. Mr.R.Vinoth Raja, the learned Government Advocate (Crl.Side), submitted that the question of whether the consent was obtained on the false promise of marriage or the *de-facto* complainant was aware of the consequences cannot be decided at the stage of the charge framing and the prosecution should be permitted to adduce evidence to establish its case, and considering the materials produced by the prosecution, submitted that the impugned order is justified and there is no reason to interfere with the said order.

5. This Court had earlier *suo moto* impleaded the *de-facto* complainant by an order dated 18.11.2025 and issued notice to the *de-facto* complainant/second respondent. Though notice has been served on the *de-facto* complainant/second respondent, and her name is printed in the cause list, none has entered an appearance on the side of the *de-facto* complainant/second respondent.



6. The allegation in the Final Report as stated above is that the petitioner, aged about 20 years, had a love affair with the *de-facto* complainant, aged about 22 years, at the time of occurrence, namely in the year 2019. The allegation is that on the promise of the marriage, the petitioner had sexual intercourse with the *de-facto* complainant between 15.05.2019 to January 2020 for about fifty times. Thereafter, it appears they fell apart. The allegation is that the petitioner promised to marry the *de-facto* complainant after four years.

7. It is also seen from the materials collected and from the statement of the *de-facto* complainant that on 11.04.2022, the *de-facto* complainant went voluntarily with the petitioner to Kodaikanal, and the petitioner is said to have had sexual intercourse with the *de-facto* complainant. Therefore, the materials collected by the prosecution would suggest that the relationship between the petitioner and the *de-facto* complainant was consensual.

8. There is no material produced by the prosecution to show that the consent of the *de-facto* complainant was obtained only on the false promise of the marriage. The *de-facto* complainant was older than the petitioner and was fully aware of the consequences of her act. The materials produced by the prosecution do not suggest that she consented to the sexual intercourse only because of the false promise of marriage. Even according to the *de-facto*



complainant, the alleged occurrences took place for a long time. The Hon'ble Supreme Court in ***Mahesh Damu Khare vs. State of Maharashtra and another*** reported in **(2024) 11 SCC 398** held that the offence of 376 IPC would not be made out if there is no evidence or material to show that the consent of the victim was purely on the basis of the false promise of marriage. The relevant portion reads as follows:

“28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the women, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.”

As stated above, the consent was not only due to the false promise of marriage, and hence, it cannot be said that consent was due to a misconception of fact.

9. That apart, the alleged occurrence took place between 15.05.2019 and January 2020. The *de-facto* complainant had not chosen to give any complaint for a period of four years. Her only grievance is that the petitioner had asked her to wait for four years, and after four years, when she approached the petitioner and his parents, the petitioner refused to marry her. The prosecution had deleted



the offence under Section 417 of the IPC in the Final Report as even according to them, the offence of cheating is not made out.

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10. Even with regard to the offence under Section 313 of the IPC, it is seen that the alleged offence is said to have taken place in the year 2020. The prosecution had not produced any material in support of the allegation that there was a miscarriage and that the medicines were administered by the petitioner. Even according to the *de-facto* complainant, there is no evidence to establish the same.

11. Considering all the above facts, this Court is of the view that there is no *prima facie* ground to proceed against the petitioner for the alleged offences and the learned Judge ought to have discharged the petitioner. In view of the aforesaid discussion, the impugned order is liable to be set aside and hence is set aside.

12. With the above observations, this Criminal Revision is allowed by setting aside the order dated 07.08.2025 in Crl.M.P.No.02 of 2025 on the file of the learned Sessions Judge, Mahila Court, Chengalpattu. The petitioner is consequently discharged. The connected miscellaneous petition is closed.

03-02-2026

Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The Sessions Judge, Mahila Court,
Chengalpattu
2. The Inspector of Police,
All Women Police Station,
Chengalpattu.
3. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.

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SUNDER MOHAN J.

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