

Crl.O.P.(MD)No.15401 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15401 of 2024

and

Crl.M.P.(MD)Nos.9626 and 9627 of 2024

Abdul Gani Raja

... Petitioner

Vs.

1. The State of Tamilnadu rep. by
The Inspector of Police,
Kodaikanal Police Station,
Kodaikanal,
Dindigul District.

2. ~~Murugesu~~

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS,
to call for the records in P.R.C.No.9 of 2023 on the file of Judicial
Magistrate II, Kodaikanal and quash the same.

For Petitioner : Mr.S.Veeraraghavan

For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



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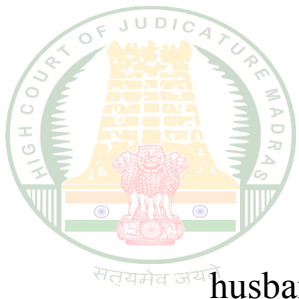
ORDER

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The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to quash the charge sheet in P.R.C.No.9 of 2023 pending on the file of the Judicial Magistrate Court No.II, Kodaikanal.

2. On the basis of the complaint lodged by the second respondent/ defacto complainant, FIR came to be registered in Crime No.138 of 2023 for the alleged offences under Sections 354A, 376 and 511 IPC against the petitioner/sole accused and after completing the investigation, final report came to be filed and the case was taken on file in P.R.C.No.9 of 2023 and the same is pending on the file of the Judicial Magistrate Court No.II, Kodaikanal.

3. The case of the prosecution is that the second respondent and her friend Kayalvizhi along with their children went to Kodaikanal on 07.05.2023 for sight seeing, that they have stayed in room Nos.303 and 304 in Roshan Residency at Naidupuram, which is owned by the petitioner, that since the petitioner is a friend of the second respondent's

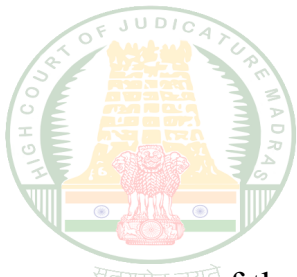


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husband, they had stayed at Roshan Residency, that the second respondent was not well and hence, she was taking rest in the room on 08.05.2023, that the second respondent's friend Kayalvizhi along with their children went for sight seeing in their car, that the second respondent unable to contact anyone as their rooms were situated in the underground portion of the hotel, she contacted the petitioner and requested for room heater and blanket, that the petitioner, by informing that he would bring the said articles, came to the room No.303, that the petitioner under the guise of checking the second respondent's health, had touched all over her body and inserted his hand inside the blanket and touched her private part with intention to commit rape and that when the second respondent had shouted at him that she would inform her husband, he went out of the room.

4. The petitioner's main contention is that though the incident was alleged to have occurred at 02.00 p.m., the complaint was lodged at 19.45 hours and immediately, FIR came to be registered but the respondent police has arrested the petitioner at 06.05 p.m. at his hotel Roshan, which is evidenced by CCTV footage installed in the reception



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of the hotel and that the above aspects would reveal that the case on hand is a put up case and there is no iota of truth in the complaint.

5. No doubt, the petitioner has produced the photographs of the CCTV footage for the incident occurred on 08.05.2023. But as rightly contended by the learned Government Advocate (Criminal Side), the genuineness of the photographs of the CCTV footage attached with the present petition cannot be gone into at this stage and the petitioner can very well take this defence and prove the same before the trial Court.

6. The next contention of the petitioner is that there are several contradictory statements given by the second respondent, her husband and her driver, that all the hearsay witnesses have alleged different timings and incidents and that the same would go to show that it is a put up case. Even assuming that there are some contradictions in the statements of the witnesses recorded under Section 161(3) Cr.P.C., that by itself is not a ground to quash the charge sheet at this point of time and that the petitioner can very well elicit the contradictions during the cross-examination of the said witnesses.



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7. The learned counsel appearing for the petitioner would submit that there existed disputes between the petitioner and the second respondent's husband with regard to commission on sale transaction of the land at Kodaikanal and only to get ransom from the petitioner, the above false complaint came to be lodged through the second respondent. He would further submit that the complaint, FIR and seizure mahazar were prepared within a short period of 45 minutes which brings the suspicion in mind whether the police has abused their power and acted as puppet in the hands of the second respondent. Just because, the complaint, FIR and seizure mahazar came to be prepared within a period of 45 minutes, it cannot be stated that the case of the second respondent is false and there existed some suspicion over the prosecution case. As already pointed out, the motive attributed by the petitioner for lodging the present complaint can only be tested from the evidence to be adduced by the petitioner's side during trial.

8. The learned counsel appearing for the petitioner would mainly contend that there is absolutely no material in the complaint that the petitioner had attempted to commit rape on the second respondent and



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hence, there is absolutely no basis for registering the FIR for the offences under Sections 376 r/w 511 IPC and for filing the charge sheet for the said provisions.

9. It is pertinent to note that subsequent to *Nirbhaya's* case, the Criminal Law (Amendment Bill) received the Presidential Assent on 02.04.2013 and came into force from 03.04.2013 which introduced major amendments to the Indian Penal Code, the Code of Criminal Procedure, the Indian Evidence Act and the Protection of Children from Sexual Offences Act. Sections 375, 376 and 376-A to 376-D came to be substituted by Act 13 of 2013 with effect from 03.02.2013. In the earlier provision under Section 375, penetration with male organ was shown to be the main ingredient to constitute sexual intercourse necessary to the offence of rape, but the amended Section 375 reads as follows:-

“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



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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:- ”

10. The amended Section 375 broadens the definition, making it clear that penetration with male organ is not at all necessary and penetration can be with any body part or object and that even attempt to penetrate or manipulate any body part can be considered as rape. As per the amended Section, use of fingers, objects or any body part to penetrate or manipulate is sufficient and that even attempt or manipulate without penetration can constitute rape.

11. In the case on hand, as rightly pointed out by the learned Government Advocate (Criminal Side), there are specific allegations against the petitioner that he had touched all over the body of the second



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respondent and removed her clothes and that after removing her clothes, he had touched her private part. Considering the above, it cannot be stated that there is no basis for levelling the charge under Sections 376 r/w 511 IPC.

12. No doubt, the learned counsel appearing for the petitioner has relied on the judgment of the Hon'ble Supreme Court of India in the case of *Abhishek Vs. The State of Madhya Pradesh* in *Crl.A.Nos.1456 and 1457 of 2015 dated 31.08.2023*, wherein, the judgment of the Hon'ble Supreme Court in the case of *State of Haryana and others Vs. Bhajan Lal and others* reported in *1992 SCC (Cri) 426* was referred.

13. The Hon'ble Apex Court in *Bhajan Lal's* case has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the



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extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected



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in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior



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motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. In *Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others* reported in *2019 (18) SCC 191*, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

15. The Hon'ble Supreme Court in *Kaptan Singh Vs. The State of Uttar Pradesh and others* reported in *2021 (3) Crimes 247* has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials,



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if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

16. A cursory perusal of the final report and the statements filed along with the final report would make it clear that there existed a *prima facie* case to proceed against the petitioner.

17. Considering the above facts and circumstances and also the submission made by the learned Government Advocate (Criminal Side) and also taking note of the fact that this is not a fit case to quash the charge sheet against the petitioner, this Court concludes that the petition is devoid of merits and the same is liable to be dismissed.

18. In the result, the Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

18.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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- 1.The Judicial Magistrate No.II,
Kodaikanal.
- 2.The Inspector of Police,
Kodaikanal Police Station,
Kodaikanal,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Order made in
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and
Crl.M.P.(MD)Nos.9626 and 9627 of 2024

Dated: 18.09.2024