

R.Rajeshkumar Vs. State Through

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Court : Chennai

Decided On : Dec-04-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : R.Rajeshkumar

Respondent : State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 04.12.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA Criminal Revision Case (Md.No.195 of 2014 and M.P.(Md.No.1 of 2014 R.Rajeshkumar : Petitioner/Accused versus State through The Inspector of Police, AWPS-Thirupparankundram Madurai crime No.21 of 2011 : Respondent Prayer: Criminal Revision Case is filed under Sections 397 and 401 of the Criminal Procedure Code, against the judgment passed by the Additional District Sessions Court, F.T.C.No.2, Tuticorin dated 03.12.2007 made in C.A.No.152 of 2006, confirming the judgment of conviction and sentence dated 27.04.2006 made in S.C.No.166 of 2005 on the file of the Chief Judicial Magistrate.

!For Petitioner : Mr.Gopalakrishna Lakshmana Raju, senior counsel for Mr.P.Aju Tagore ^For Respondent : Mrs.S.Prabha, G.A.(Crl.

Side) :

ORDER

***** Challenging the impugned order passed in Cr.M.P.No.644 of 2012 dated 17.02.2014 for dismissing the application filed under Section 227 of Cr.P.C.to discharge the petitioner from the charges leveled against him, the present revision has been filed.

2.The learned senior counsel appearing for the revision petitioner would submit that on the basis of the complaint given by L.W.1, the victim girl, a case in crime No.21 of 2011 has been registered for the offence under Sections 417, 376 and 506(i) of I.P.C.and after investigation, charge sheet has been filed and the same was taken on file in S.C.No.158 of 2012 by the Additional District and Sessions Judge, Mahila Court, Madurai.

During the pendency of the case, before framing of charges, the petitioner filed an application to discharge him from the charges stating that the medical evidence and the evidence of L.W.1 is contradictory with each other.

3.The learned senior counsel would further submit that the 161(3) of Cr.P.C.statement of L.W.1 is an exaggerated one and the facts mentioned therein has not been mentioned in the fiRs.information report and hence, the 161(3) of Cr.P.C.statement itself is further development and that factum has not been considered by the trial Court.

4.He would further submit that in the medial evidence, it has been stated that the hymen was intact, whereas the case of L.W.1 is that she had sexual intercours.for only one time and that has been falsified by the medial evidence and there was no charge was framed for the offence under Section 376 read with 511 of I.P.C.and hence, the charge for the offence under Section 376 of I.P.C.would not be attracted and there is no prima facie case for framing the said charge and that factum was not considered by the trial Court and hence he prayed for setting aside the order of the trial Court and allowing of the revision.

5.Resisting the same, the learned Government Advocate (criminal side) would submit that the 161(3) of Cr.P.C.statement would clearly show as to how the occurrence has been taken place and it is not a further development.

She would further submit that the complaint has been given after one year from the date of occurrence and hence, the doctor has to be cross examined to find out as to whether the victim was subjected to sexual assault or not and on prima facie, the statement of L.W.1, who is the victim girl is sufficient for framing of charges and the trial Court has considered the aspect on proper perspective and dismissed the application and hence, she prayed for the dismissal of the application.

6. Heard the learned senior counsel for the petitioner and the learned Government Advocate (criminal side) appearing for the State.

7. The fiRs. point raised by the learned senior counsel is that there was a delay in preferring the complaint.

The admitted case of the revision petitioner is that he is the owner of cotton go down, where the mother of L.W.1 was working and L.W.1 used to visit the go down and at that time, she had acquaintance with the revision petitioner.

The alleged occurrence was said to have been taken place one year prior to the date of complaint.

Perusal of the complaint would show that both the accused and L.W.1 are belonging to same community and after giving false promise to marry L.W.1 and even L.W.1 refused, the accused had sexual intercourse with L.W.1 and when she claimed to marry her, he has given his father's number and when L.W.1 contacted his father, he replied that he would contact his son and then only, since, she came to know that the petitioner is not willing to marry her, she gave a complaint.

Considering the fiRs. information report and the 161 (3) of Cr.P.C. Statement of L.W.1, I am of the view that the delay has been explained and the delay in preferring the complaint is not fatal to the case and hence, the argument advanced by the learned senior counsel that the delay in preferring the complaint is fatal does not merit acceptance.

8. The learned senior counsel has raised the second point that the fiRs. information report and the 161(3) of Cr.P.C. statement of L.W.1 are further developments.

It is well settled factum of the Apex Court that the fiRs.information report is not an encyclopedia and it would not content each and every details of the incident.

Furthermore, fiRs.information report and the 161(3) of Cr.P.C.statement are not substantial piece of evidences and that can be used for corroboration and contradiction at the time of chief and cross examination and now, it is premature to decide the same.

Therefore, I am of the view that the argument advanced by the learned senior counsel that the 161(3) of Cr..P.C.statement of L.W.1 is further development does not merit acceptance.

9.It is true, in the medical report, it was specifically mentioned that hymen was intact and the question as to whether L.W.1 was subjected to sexual intercouRs.or not has to be decided only at the time of cross examination of the doctor and hence I am of the opinion that now, it is premature to decide as to whether it is a fit case for conviction at the time of framing of charges and considering the discharge application, the only point to be decided is whether the materials before the court are sufficient for framing of charges.

10.It is well settled principle of the Apex Court that at the time of considering the discharge application before framing of charges, the Court ought to have seen whether there is any prima-facie case made out for framing of charge and it need not go into the question as to whether it is a fit case for conviction.

Therefore, considering the dictum of the Apex Court and considering the fiRs.information report and the 161(3) of Cr.P.C.statement of L.W.1, I am of the view that prima-facie case is made out for framing of charges.

11.For the foregoing reasons, I do not find any merits in the revision and the same deserves to be dismissed and hence, the revision petition is dismissed.

Consequently, connected miscellaneous petition is also dismissed.

However, the observations made by this Court will not be influenced by the trial Court.

04.12.2014 Index:Yes/No Internet:Yes/No Arul To 1.The Inspector of Police, AWPS-Thirupparankundram Madurai.

2.The Additional District and Sessions Court, Mahila Court, Madurai R.MALA,J Arul 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Order made in Criminal Revision Case (Md.No.195 of 2014 Dated: 04.12.2014

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