

VERDICTUM.IN

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.562 OF 2024
(Arising out of SLP(Criminal) No.11685/2022)

XXX

APPELLANT

VERSUS

THE STATE REPRESENTED THR.
THE INSPECTOR OF POLICE & ANR.

RESPONDENTS

O R D E R

1. The Registry is directed to amend the memo of parties. The description of the petitioner be shown as "XXX". This order shall be released with the necessary correction as directed above.

2. Leave granted.

3. The appellant is aggrieved at the order dated 14.12.2020 of the Judicial Magistrate-II, Puducherry, which has been further upheld by the High Court of Judicature at Madras vide impugned order dated 20.10.2021. Vide these orders, the application moved by the appellant seeking further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 (in short, Cr.P.C.), on the ground that a part of the vital material to substantiate the allegations of commission of offences

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under Sections 376, 417 and 420 of the Indian Penal Code, 1860 (in short, IPC) was not collected by the Investigating Agency, was turned down by the Trial Magistrate and that order has been affirmed by the High Court.

4. The appellant lodged FIR No.09/2014 on 04.08.2014, under Section 417, 376, 420, 354A, 506(i) read with Section 34 of IPC and Section 66A of the Information Technology Act, 2000 at Police Station CB CID. She alleged that after completing her B.Tech at Pondicherry Engineering College in 2004, she got married in September 2005. However, the marriage was dissolved by a decree of divorce in May, 2006. At that time, the appellant was pregnant and she gave birth to a girl child on 09.02.2007. Thereafter, she started working as a Lecturer at the Rajiv Gandhi Engineering College. Her hard work and commitment helped her rise to the rank of Associate Professor at Dr. Paula Engineering College. In the course of time she met respondent no.2, who subsequently professed his love for her. Some ceremonies were alleged to have been performed on 13.09.2012 at Pollachi, whereby respondent no.2 pretended to have married the appellant. They started living together as husband and wife. During this time the appellant got pregnant twice, but was asked to abort the foetus in June, 2013 and May, 2014 respectively. Soon thereafter, respondent no.2 allegedly stopped meeting the appellant, thus, prompting her to

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lodge the FIR on 04.08.2014.

5. It appears that after investigation, a chargesheet under Sections 354A and 506 of IPC was filed. Instead of filing a Protest Petition against the dropping of certain charges by the Investigating Agency, the appellant was advised to move an application under Section 173(8) of Cr.P.C., in which she averred that there was ample material to establish the performance of marriage between her and respondent no.2 and/or that they had been staying together as husband and wife. It was specifically pointed out that respondent no.2 was already married to one Ms. Meena and, thus, was ineligible to marry the appellant during the subsistence of his first marriage.

6. The Judicial Magistrate, vide impugned order dated 14.12.2020, declined to entertain the appellant's application under Section 173(8) of Cr.P.C. She then approached the High Court and vide the impugned order, her Criminal Revision was summarily dismissed on the ground that the recourse under Section 173(8) of Cr.P.C. was not available/attracted.

7. The aggrieved appellant is before us. The office report suggests that respondent no.2 has been duly served; however, he has not entered appearance.

8. We have heard learned counsel for the appellant as well as the learned State counsel and perused the record.

9. It is true that the prescribed and appropriate

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recourse for the appellant would have been to submit a Protest Petition against the chargesheet filed by the Investigating Officer, in which the second respondent was not put up for trial for offences under Sections 376, 417 and 420 of IPC. The appellant, instead, moved an application captioned as "under Section 173(8) of Cr.P.C." The averments made in that application reveal that the appellant protested against deletion of charges under Sections 376, 417 and 420 of IPC and she made an endeavour to bring on record the material which would *prima facie* establish the commission of these offences. We fail to understand what prevented the Magistrate from treating that application purportedly filed under Section 173(8) of Cr.P.C. as a Protest Petition and then decide the same on merits. A technicality like the caption of the application/petition could not be an impediment to consider the substance thereof and then determine whether or not the matter required further investigation so as to find out the *prima facie* element of offences under Sections 376, 417 and 420 of the IPC. Such a permissible procedural recourse has been unfortunately overlooked by the High Court as well.

10. We may hasten to add here that the accused is a police officer. The allegation of undue influence and/or unintended favour towards him by the Investigating Officer cannot be brushed aside lightly. It is the bounden duty of every Court of law that injustice

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wherever visible must be hammered and the voice of a victim of the crime is dispassionately heard. The appellant in her application has stated that: (i) respondent no.2 was already married to Ms. Meena, and was, thus, disqualified to perform the second marriage; (ii) he being a Government officer, his second marriage during the subsistence of the first marriage would have been a misconduct under the Conduct Rules; and (iii) that the first chargesheet itself suggested that the appellant and respondent no.2 had been living together and were in physical relationship. If that is so, the Investigating Agency ought to have further probed as to whether they have been cohabitating pursuant to the so-called marriage performed on 13.09.2012 and/or it was merely a consensual live-in relationship. Similarly, the Investigating Officer does not appear to have taken any pains to visit the hospital/medical clinics to verify whether the appellant underwent abortion twice. We are not sure whether the statements of the persons living in the neighbourhood were recorded or not to find out whether the appellant and respondent no.2 had been living together at the Jayaveran House on Vattavalam Road, Thiruannamalai District, as husband and wife. All these facts will have a material bearing on the determination by the Trial Court as to whether a *prima facie* case under Sections 376, 417 and 420 of IPC is made out or not.

11. That being so, it was a fit case where the learned

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Judicial Magistrate ought to have invoked his power under Section 173(8) of Cr.P.C. and directed the Investigating Officer to further investigate such serious allegations. The denial of further investigation has led to gross injustice to the appellant.

12. Consequently, the appeal is allowed. The impugned orders dated 14.12.2020 and 20.10.2021 are set aside. The application moved by the appellant before the Trial Court is treated as Protest Petition and the same is allowed. As a result thereto, the Investigating Agency is directed to hold further investigation to find out whether or not offences under Sections 376, 417 and 420 of IPC are made out against respondent no.2.

13. Owing to the status of the accused, the State of Pondicherry is directed to constitute a Special Investigation Team to be headed by a directly recruited woman IPS Officer along with two officers in the rank of DYSP and Inspector of Police. If a woman IPS Officer is not available in the State cadre, then any one of the officers in the rank of DYSP or Inspector must necessarily be a woman. The further investigation shall be completed by SIT within three months.

14. The Trial Court shall proceed thereafter in accordance with the law.

15. It is clarified that we have not expressed any opinion on the merits of the charges levelled by the

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appellant against respondent no.2 regarding commission of offences under Sections 376, 417 and 420 of IPC.

16. Ordered accordingly.

.....J.
(SURYA KANT)

.....J.
(K.V. VISWANATHAN)

New Delhi;
February 02, 2024

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ITEM NO.21

COURT NO.4

SECTION II-C

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (Crl.) No(s).11685/2022

(Arising out of impugned final judgment and order dated 20-10-2021 in CRLRC No. 629/2021 passed by the High Court Of Judicature At Madras)

XXX

Petitioner(s)

VERSUS

THE STATE REPRESENTED THR.
THE INSPECTOR OF POLICE & ANR.

Respondent(s)

(IA No.175378/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 02-02-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) Mr. Anish R. Shah, AOR

For Respondent(s) Mr. Aravindh S., AOR
Mr. Abbas, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The Registry is directed to amend the memo of parties. The description of the petitioner be shown as "XXX". This order shall be released with the necessary correction as directed above.
2. Leave granted.
3. The appeal is allowed in terms of the signed order.
4. All pending applications, if any, stand disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(PREETHI T.C.)
COURT MASTER (NSH)

(signed order is placed on the file)