
(2014) 01 MAD CK 0024

In the Madras High Court

Case No : Criminal Original Petition No. 932 of 2014

X

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 139, 154, 155, 164, 2(d)
Penal Code, 1860 (IPC) — Section 326-A, 326-B, 354, 354-A, 354-B

Citation : (2015) 1 CCR 196

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : B. Kumar, Senior Counsel for R. Rajan, Advocates for the Appellant;
M. Mohamed Riyaz, Government Advocate, Advocates for the Respondent

Judgement

S. Nagamuthu, J.—The petitioner is the sole accused in Crime No. 3 of 2013 on the file of the respondent police registered for offences under Sections 417, 420 & 506(i) of IPC. Apprehending arrest at the hands of the respondent police in connection with the said case, he is now before this Court with this petition seeking anticipatory bail. The case of the prosecution in brief is as follows: The de facto complainant claims to be a cinema actress aged 30 years. According to her, the petitioner got himself introduced to her as a financier in cine field. After such introduction, the petitioner used to visit the de facto complainant frequently. During one such visit, he represented to the de facto complainant that he was preparing to shoot a new film by engaging the de facto complainant as heroine. On that pretext, he also paid a sum of Rs. 10,000/- initially as advance to her towards her remuneration. Thereafter, the petitioner frequented his visits to the house of the de facto complainant. Slowly, he started impressing upon the de facto complainant that he would marry her. On that representation, he made sexual overtures towards the de facto complainant. She also yielded for the same and allowed him to have sexual intercourse with her. It is further alleged that from the year 2008 onwards, for a period of four years, they were living under a common roof as husband and wife in "live-in relationship". It is

also stated that during the year 2008, due to the sexual intercourse she had with the petitioner, she conceived. Thereafter, when the de facto complainant insisted for marriage, the petitioner told her that he was incurring huge loss in his business and to recover from the same, he was in need of Rs. 12.00 lakh. Accordingly, during the year 2008-09, he initially received a sum of Rs. 12.00 lakh and subsequently, a sum of Rs. 8.50 lakh from her. In the mean while, she aborted the pregnancy on 18.1.2009. While receiving the above said amount, it is further alleged that the petitioner promised to repay the same with interest, but, he did not do so. Finally, the petitioner executed a document in favour of the de facto complainant thereby promising to repay the amount with interest at the rate of 24% per annum. After some time, he stopped visiting the de facto complainant. From her enquiries, she came to know that the petitioner was already married and he had also sexually exploited several girls. It is also alleged that while having sexual intercourse with the de facto complainant, the petitioner videographed the same and when the de facto complainant questioned the same, the petitioner did not have any reason to state. She has further alleged that the petitioner had sexual intercourse with a number of ladies ranging from young girls to old ladies and cheated them all.

2. The said written information was directly presented to the Commissioner of Police, Chennai City, on 22.11.2013 and the same was forwarded by the Commissioner to the respondent police on 3.12.2013. Accordingly, the case was registered on 3.12.2013 at 4.00 p.m.

3. The learned Counsel for the petitioner would dispute the above allegations. He would submit that on 19.1.2014, the de facto complainant issued a legal notice through her Counsel to the petitioner wherein, she has stated that the petitioner had borrowed a sum of Rs. 15.00 lakh during September, 2008 from the de facto complainant for his business purpose. In the said notice, she has further stated that subsequently she paid a sum of Rs. 8.00 lakh to the petitioner. It is also stated that on 5.4.2010, the petitioner executed a document in favour of the de facto complainant thereby promising to repay the said amount with interest at 24% p.a. In the said notice, in para 3 it is further stated as follows:--

"My client states that you have not made payment despite the same being due for more than two year. My client therefore calls upon you to pay the said amount borrowed from my client."

4. Referring to the said legal notice, the learned Counsel would submit that there is some dispute regarding the money transaction between the petitioner and the de facto complainant and there is no cheating at all. At the most, according to the learned Counsel for the petitioner, these allegations would make out only a civil dispute. Insofar as the allegation of "living in relationship" is concerned, the learned Counsel for the petitioner would submit that there was no such relationship at all.

5. The de facto complainant has engaged Mr. P. Ananda Kumar, the learned

Counsel to intervene in this matter on her behalf. On his oral request, he has been permitted to make his submissions.

6. I have considered the above submissions.

7. From the narration of facts as found in the F.I.R. and as found in the legal notice issued by the de facto complainant, it can be inferred that there is some money dispute between the petitioner and the de facto complainant. The de facto complainant herself has stated in the legal notice that the petitioner had borrowed the amount and he duly executed a document thereby promising to repay the same with interest at 24% p.a. At this juncture, it needs to be noted that an offence of cheating requires basically an element of deception or false representation reflecting mens rea. In the matter of simple money transaction, where the basic element of mens rea is absent, it cannot be said that an offence of cheating has been committed. Therefore, in respect of the above money transaction, prima facie, I am satisfied that the dispute is civil in nature.

8. Now turning to the live-in relationship between the petitioner and the de facto complainant, it is in dispute. Mr. P. Ananda Kumar, the learned Counsel for the intervenor/de facto complainant would submit that the petitioner had given false promise to the de facto complainant to marry her and then sexually exploited her. He would further submit that the de facto complainant became pregnant during the year 2008 and on the assurance given by the petitioner that he would marry her, the same was aborted. The learned Counsel has produced a Xerox copy of the Discharge Summary pertaining to the de facto complainant wherein the Consultant Gynecologist, has stated that the de facto complainant came with a complaint of incomplete abortion on 18.1.2009, for which, she was treated and discharged on 18.1.2009. In the said discharge summary, the name of the petitioner has been mentioned as the spouse, the learned Counsel contended.

9. In my considered opinion, this Court need not go into this disputed question as to whether they had "live-in relationship" or not. Assuming that there was such live-in relationship for four years, the question is whether the same would make out a prima facie case of cheating. It is not a case where an young girl of tender age had been sexually exploited under the false promise of marriage and where the girl had gone to police forthwith. This is a case where the de facto complainant is a fully matured woman of 30 years of age knowing the realities of life. She must be aware of the fact that the society does not approve living in relationship and premarital sex. Though there is no specific legislation to punish the individual who indulges in consensual premarital sex, it is undoubtedly considered as a disorder and anathema to the rich culture the people of this country have inherited and preserved for generations. It is an indiscipline in the eye of the society. The de facto complainant, having known these facts ought to have elected not to permit the petitioner to sexually exploit her. Having conceded for premarital sex, that too for over a long period of four years, it is too late in the day for the petitioner to lament that she had been cheated. Thus, prima facie, I find a case in favour of the petitioner for grant of anticipatory bail.

10. Before concluding this order, I wish to make the following observations:

10.1. As I have already narrated, the written information in this case, making out cognizable offences was made directly to the Commissioner of Police and not to the officer in charge of the police station having jurisdiction over the area where the alleged crime had been committed. The said information was simply forwarded by the Commissioner of Police to the respondent with a delay of about 11 days and, thereafter, this case came to be registered. Now, the question is as to whether the Commissioner of Police was right in his action.

10.2. In this regard, we may state that the power to receive an information in respect of commission of a cognizable offence, to register a case and to investigate the same flows from Chapter XII of the Code of Criminal Procedure. Section 154 of Cr.P.C., which imposes a duty upon the officer in charge of a police station to register a case, reads as follows:

"154. Information in cognizable cases.--(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

"Provided that if the information is given by the woman against whom an offence under Section 326-A, Section 326-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-B, Section 376-C, Section 376-D, Section 376-E or Section 509 of the Indian Penal Code (45 of 186) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that--

(a) in the event that the person against whom an offence under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-B, Section 376-C, Section 376-D, Section 376-E or Section 509 of the Indian Penal Code (45 of 186) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disable, then such information shall be recorded, by a police officer, at the residence of the person seeking to report such offence or at a convenience place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under Clause (a) of Sub-section (5A) of Section 164 as soon as possible.

(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer Subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

10.3. Similarly, an information as to non cognizable case should be dealt with as envisaged in Section 155 of Cr.P.C. which reads as follows:

"155. Information as to non-cognizable cases and investigation of such cases.--

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

10.4. Admittedly, so far as the State of Tamil Nadu is concerned, the "Book" specified in Section 154 of the Cr.P.C. is the book known as "FIR Book" Form No. 73 vide Police Standing Order 551. If an information is thus received by an officer in charge of a police station making out a cognizable offence, it is the statutory duty of the said officer to forthwith register a case by entering the same in the F.I.R. Book.

10.5. In this regard, we may have a cursory look into the recent judgment of a Constitution Bench of the Hon'ble Supreme Court in Lalita Kumari Vs. Govt. of U.P. and Others, . The question referred to the Constitution Bench in Lalita Kumar's case (supra) was as to whether the officer in charge of a police station, who receives an information making out a cognizable offence, could avoid to register a case forthwith by holding a preliminary inquiry. In other words, in simple terms, the question was, whether the officer in charge of a police has jurisdiction to hold preliminary inquiry to verify the veracity of the allegations made in the information and then to register a case, if he is satisfied that

cognizable offence is made out from the allegations made in the same. The Constitution Bench had extensively referred to a number of previous judgments of the Hon''ble Supreme Court taking conflicting views and after having made a scientific analysis of the legal provisions, in para 111 the Court has issued the following directions:

"(111) In view of the aforesaid discussion, we hold:

(i) Registration of F.I.R. is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the F.I.R. must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the F.I.R. if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under--

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it

should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of F.I.R. or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

10.6. The Direction (iv) clearly indicates that the police officers cannot avoid their duty of registering an F.I.R., if the offence is cognizable. The Hon'ble Supreme Court has gone further to direct that action must be taken against the erring officer, who do not register the F.I.R., if information received by him discloses a cognizable offence. Thus, it is crystal clear that it is the statutory duty of the officer in charge of a police station, who receives the information relating to the cognizable offence to forthwith register a case.

10.7. At this juncture, we may note that in Section 154 of the Code of Criminal Procedure, the expression employed is "information". There is a vast difference between the expression "information" as employed in Section 154 of Cr.P.C. and the expression "complaint" employed elsewhere in the Code. The term "complaint" has been defined in Section 2(d) of the Code which does not include an information to police as referred to in Section 154 of the Code. Interestingly, if we look into Section 139 of the Code of Criminal Procedure, 1861, it refers to "every complaint or information" preferred to an officer in charge of a police station. In the subsequent Code of Criminal Procedure, 1872, the term "information" was omitted, but the term "complaint" was retained. The word "complaint" used in these two Codes was omitted in the Code of Criminal Procedure, 1898 and instead the word "information" was used. Similarly, in the Code of Criminal Procedure, 1973, the term "information" has been used in Chapter XII. The Legislature has consciously used the word "information" and omitted the word "complaint" in Section 154 of the Code. Thus, what is laid before an officer in charge of a police station is only an "information" relating to the commission of an offence.

10.8. Section 154 of Cr.P.C. would further go to show that it does not lay down that the information relating to a cognizable offence should be given only to an officer in charge of a police station. What all that the said provision envisages is that if such an information is given to an officer in charge of a police station, the same shall be registered as F.I.R. Section 36 of Cr.P.C. states that the power of an officer in charge of a police station may be exercised by a police officer superior in rank to an officer in charge of a police station. To make it more understandable, let us now, reproduce Section 36 of Cr.P.C. as under:

36. Powers of superior officers of police.--Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout

the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

10.9. A conjoint reading of Sections 154 and 36 of Cr.P.C. would make it ipso facto clear that an information relating to a cognizable offence can also be received by a police officer superior in rank to an officer in charge of a police station, provided, he has got jurisdiction over the said local area. As early as in the year 1961, when the Code of Criminal Procedure, 1898 was in force, a doubt arose as to whether receipt of information relating to a cognizable offence by Additional Inspector General of Police and on his direction, registration of the case subsequently by the Deputy Superintendent of Police was a special procedure unknown to law and whether the accused in the said case had been singled out for unequal treatment in administering the law relating to the institution and investigation of criminal cases in the State. This question was, in detail, examined by a Constitution Bench of the Hon'ble Supreme Court in R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others, . It was argued before the Supreme Court that every information relating to the commission of a cognizable offence should be given only to an officer in charge of a police station. While expressing its disapproval of the said argument, the constitution Bench has held as follows:

"10. We are unable to accept these contentions as correct. First of all, Section 154, Code of Criminal Procedure, does not say that an information of a cognizable offence can only be made to an officer in charge of a police station. That section merely lays down, inter alia, that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. Now, there is another important provision in the Code which is of great relevance in this case and must be read. That provision is contained in Section 551 which is in these terms--

"Section 551. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."

The Additional Inspector General of Police to whom Sethi's complaint was sent was, without doubt, a police officer superior in rank to an officer in charge of a police station. Sardar Hardayal Singh, Deputy

Superintendent of Police, C.I.D., Amritsar, was also an officer superior in rank to an officer in charge of a police station. Both these officers could, therefore, exercise the powers, throughout the local area to which they were appointed, as might be exercised by an officer in charge of a police station within the limits of

his police station.

The question before us is not whether the reason for which the investigation was made over to Sardar Hardayal Singh is correct or not. The question before us is, whether in making over the investigation to Sardar Hardayal Singh a special procedure unknown to law was adopted or the law as to the investigation of cases was administered with an evil eye or unequal hand. If the police officer concerned thought that the case should be investigated by the C.I.D. even though for a reason which does not appeal to us--it cannot be said that the procedure adopted was illegal. We are unable to agree with learned Counsel for the petitioners that any of these two contentions has been made out in the present case. We are satisfied that the Inspector General of Police, C.I.D. had power to deal with Sethi's complaint and had further power to direct investigation of the same by Sardar Hardayal Singh who as a police officer superior in rank to an officer in charge of a police station could exercise powers of an officer in charge of a police station in respect of the same. It cannot, therefore, be said that the procedure adopted was unknown to law."

10.10. From the above judgment of the Constitution Bench of the Hon'ble Supreme Court, no more can there be any doubt that any police officer, superior in rank to the officer in charge of a police station, can (sic) information relating to the commission (sic) cognizable offence provided he has got jurisdiction over the local area. Thus, the Commissioner of Police, Chennai City has undoubtedly power to receive an information relating to the commission of a cognizable offence within the city limits. Similar view has been taken by a Division Bench of the Hon'ble Supreme Court in *State of Bihar and Another v. Lalu Singh* [Special Leave Petition (Crl.) No. 7066 of 2009 dated 29, October, 2013].

10.11. Now, the next question is, on such information, whether the Commissioner of Police is statutorily duty bound to register a case. As we have already seen in *Lalita Kumari's* case (supra) the Constitution Bench has directed that the officer who receives an information relating to the commission of a cognizable offence shall not avoid to register a case. In other words, it is the statutory duty to forthwith register a case and if he fails to register a case, he is liable for penal action. As we have already noticed, of course, the Commissioner of Police, in view of Section 36 of Cr.P.C. [analogous to Section 551 of the Code of Criminal Procedure, 1898] can very well exercise the powers of an officer in charge of a police station. But, if once he exercises the said power of the officer in charge of a police station as envisaged in Section 154 of Cr.P.C., as per the judgment of the Hon'ble Supreme Court in *Lalita Kumari's* case (cited supra), he himself shall register a case and thereafter, he may very well transfer the case for investigation by some other police officer. This is because, the person who receives the information and registers the case may have to speak to the said fact during trial of the case later on. For instance, in the present case, though the information was given to the Commissioner of Police on 22.11.2013, this case was registered only on 3.12.2013. Thus, there is a delay of 11 days. This

delay may be made much of and attempted to be blown out of proportion to doubt the veracity of the FIR.

10.12. As per the judgment of the Hon'ble Supreme Court in *Thulia Kali Vs. The State of Tamil Nadu*, if the delay in preferring the information or registering the case is not explained to the satisfaction of the Court, the same maybe a ground to doubt the veracity of the prosecution case itself. In view of this situation, it is desirable that the superior officers have to impress upon the general public to go with information relating to the commission of a cognizable offence, first to the officer in charge of the police concerned. Now, undoubtedly, there is a general tendency among the people, for every now and then, to rush to a higher police officer like, the Commissioners of Police, the Deputy Inspector Generals of Police or the Superintendent of Police, etc., with information relating to cognizable offences at the first instance without approaching the officer in charge of the police station having jurisdiction over the area where the crime has allegedly been committed. It gives an impression that slowly the general public have developed the feeling that if only information is given to the higher police officer action will be taken promptly. This impression should be changed first, for which, the people should be educated and a sense of confidence should be instilled in the minds of the people that any information relating to the commission of a cognizable offence should be made first to the officer in charge of the police station without any delay and if only, no action is taken on the information or if the officer in charge of the police station declines to receive the information, the aggrieved can very well approach the superior police officer. Entertaining the information relating to commission of cognizable offences by superior police officers like the Commissioner of Police directly, in my considered view, will only erode the trust and confidence of the people in the officers in charge of the police stations. This may not be good for the administration of the police machinery. At times, it also happens, in order to give undue publicity to such cases, the people tend to go with information relating to cognizable offences directly to the higher police officers. Often, we see in the print and electronic media that some VIP informants such as cinema celebrities, with specific information relating to the commission of a cognizable offence, approach directly the superior police officers and after giving such information, meet the print and electronic media and disclose the contents of the information so as to make a big show of it. This may achieve only an undue publicity, but will not serve any useful purpose as disclosure of the information may make the criminals vigilant paving way for them to escape from the clutches of law.

10.13. It is not to say that people should not go with any grievance to the superior police officers. There is a fine distinction between an information relating to the commission of a cognizable offence and the grievance relating to inaction on the part of the officer in charge of a police station. If it is a grievance regarding the absence of any action or failure to take appropriate action, etc., certainly, with such grievance the aggrieved can approach the superior police officers. Such superior police officers, who have got power to supervise their

subordinates could very well issue appropriate directions like supervising investigation, transferring investigation, etc. Such grievance petition should not be confused with an information relating to the commission of a cognizable offence. I only say that information relating to the commission of a cognizable offence should preferably be given, at the first instance, to the officer in charge of the police station having jurisdiction. This will be in tune with the recent judgment of the Hon''ble Supreme Court in Lalita Kumari's case [supra]. If the superior police officers chose to receive informations relating to cognizable offences, then, they have to follow the directions of the Supreme Court in Lalita Kumari's case [supra] and they may have to be cited as a witness in the case later on. Therefore, I am hopeful that the officers in the higher echelons of the hierarchy of the Tamil Nadu Police will educate the public through print and electronic media that information relating to the commission of cognizable offences should at the first instance be given to the officer in charge of the police station concerned in the local area without any delay and if no proper action is taken by such officer, then, the aggrieved may approach the superior police officers. I, therefore, deem it appropriate to direct the Registry to forward a copy of this order to the Home Secretary to Government of Tamil Nadu. The Director General of Police, Tamil Nadu; The Commissioner of Police, Chennai City; The Commissioners of Police of all other cities in Tamil Nadu, the Superintendents of Police of all Districts in Tamil Nadu for necessary action in this regard.

In the result, this criminal original petition is allowed and the petitioner is ordered to be released on bail in the event of arrest or on his appearance before investigating officer or before concerned Court, on his executing a bond for a sum of Rs. 10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the investigating officer or to the officer who intends to arrest or to the satisfaction of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, and on further condition that he shall appear before the respondent police daily at 10.00 a.m. until further orders for the purpose of interrogation.

Note: In order to protect the privacy of the parties herein, it is directed that the Law Journals, press and media shall not disclose the name of the petitioner and the de facto complainant which publishing this order, instead, they shall mention the name of the petitioners as "X" and the de facto complainant as "Y".