

* **HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ **CRIMINAL PETITION No.6872 OF 2015**

% 03-08-2015

Kalki Ramu

....Petitioner

Vs.

\$ The State of Telangana,
rep., by Public Prosecutor and another
Respondents

...

!Counsel for the petitioner : Sri P.S.P.Suresh Kumar

Counsel for the Respondents: Learned Public Prosecutor for
Telangana

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>Head Note:

? Cases referred:

[1] AIR 2001 SC 2637

² AIR 1996 SC 1931

³ (2005)1 SCC 568

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6872 OF 2015

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ORDER:

This Criminal Petition is filed by the petitioner/accused
under Section 482 Cr.P.C seeking to quash the proceedings in

P.R.C.No.8 of 2015 pending before IV Additional Metropolitan Magistrate, Cyberabad. The committal proceedings under Section 209 Cr.P.C. are pending at the post cognizance stage of Section 190 Cr.P.C., based on the police final report under Section 173 Cr.P.C., which is the outcome of crime No.14 of 2015 on the report of the LW.1-father of victim(LW3) for the offence punishable under Sections 363, 506 and 343 I.P.C., the police filed final report, however, the Magistrate taken cognizance undisputedly for the offence punishable under Sections 364A, 506 and 343 I.P.C.

Heard the learned counsel for the petitioner and the learned Public Prosecutor (Telangana) for the State before notice to the 2nd respondent and before admission. Perused the material on record.

The learned counsel for the petitioner drawn attention of the Court to Section 161 Cr.P.C. statement of LW.3-Victim, who is a major undisputedly as if she voluntarily left with the accused and they lived together in a private premises concealing their identity and the police brought her back. The same appears reiterated in her another written statement to the police, which does not have any sanctity more than value to be attached to Section 161 Cr.P.C. statement from the original report of the cognizable offence already registered as F.I.R. under Section 154 Cr.P.C. vide **T.T.Antony v. State of Kerala**^[1].

Even the two statements of her are in favour of the accused to say as if they voluntarily left and there is no offence, the subsequent Section 164 Cr.P.C. statement of said victim before learned Magistrate gives a different version about the complicity of the accused and it is from that material as part of

the investigation material, the final report filed by the police and the learned Magistrate has taken cognizance for the offence punishable under Sections 364A, 506 and 343 I.P.C.

It is at that stage no doubt the petitioner/accused moved the learned Sessions Judge for grant of anticipatory bail apprehending arrest after police issued Section 41-A Cr.P.C. notice having come to the conclusion of not to arrest otherwise, however, in his saying same not complied with the requirements of Section 41 read with 41-A(4) Cr.P.C. No doubt, it requires the permission of Magistrate for non-appearance to Section 41-A notice to arrest, once reasons assigned not to arrest. The learned Sessions Judge as it appears dismissed the anticipatory bail application stating the investigation material shows the offence punishable under Sections 363, 506 and 343 I.P.C. which are bailable offences triable by the Magistrate and there is no any non-bailable offence. In fact the Magistrate has taken cognizance as referred supra under Section 364-A I.P.C. which offence is non-bailable and the case is there from triable by the Court of Sessions, that what it appears as per Section 209 Cr.P.C. to the Magistrate to allot P.R.C.No.8 of 2015, to commit the case to Court of Sessions.

Once such is the case, as per the mandate of Section 209(b) Cr.P.C. subject to bail as per the provisions of the Act if any accused has to be taken into custody and be committed to the Court of Sessions, that while committing remand the accused until such period either till the end of trial or sooner to it as the case may be, as one of the four requirements covered Section 209(a) to (d) Cr.P.C. the Magistrate has to follow once while taking cognizance under Section 190 Cr.P.C. the offence, where it appears the case triable by Court of Sessions, so to

commit, for the learned Sessions Judge in turn to take cognizance under Section 193 Cr.P.C. Once that provision uses shall in Section 209 Cr.P.C. said compliance is mandatory on the part of the Magistrate though in other respects the committal proceedings are almost a post office duty.

The learned Sessions Judge no doubt dismissed the anticipatory bail saying offence under Section 363 I.P.C. is a bailable one leave about others are also bailable. It is a mistake crept in from non-consideration or non-bringing of the factum of the Magistrate taken cognizance for the offence punishable under Section 364-A I.P.C. (not the offence under Section 363 I.P.C. which is a non-bailable offence and further the case is triable exclusively by the Court of Sessions and in such case the accused has to get bail. The accused otherwise should have surrendered and moved for regular bail, which he did not. At that stage from the so called inconsistent statements of the victim three in number referred supra he now seeks to quash the P.R.C. proceedings. In fact it is not a fit case to admit for quashing the P.R.C proceedings as the law is clear that once the material appears to the Magistrate that is triable by Court of Sessions to commit subject to the compliance of clauses (a) to (d) of Section 209 Cr.P.C., it is premature to decide which of the three statements of the victim are true without leading her evidence and appreciation there from of where truth lies.

Having regard to the above, the factual matrix admits entitlement to the concession of bail by accused by disposal of the application for falls short to admit the application for quashing but for giving liberty to the petitioner after committal of the case to the Court of Sessions and on taken cognizance by the learned Sessions Judge to file any application under Section

227 Cr.P.C. if there are no grounds to frame a charge either for the offence under Section 364-A or 363 or 506 or 343 I.P.C. or any other penal provision for the learned Sessions Judge to decide on own merits as laid down in **State of Orissa v. Debendranath Padhi**^[2]. It is needless to say if the learned Sessions Judge finds that there is no offence *prima facie* made out to frame charge of a case triable by Court of Sessions, he can frame charge and remit to the Chief Judicial or Chief Metropolitan Magistrate or the committal Magistrate under Section 228 Cr.P.C., to number as calendar case and try the same.

Accordingly, this Criminal Petition is disposed of giving liberty to the petitioner to surrender before the Magistrate concerned and file an application for regular bail before the learned Sessions Judge, with notice to the Prosecutor and there upon the learned Judge shall grant bail after hearing the learned Additional Public Prosecutor, with necessary conditions on the same day. It is thereafter the learned Magistrate shall commit the case to the Court of Sessions under Section 209 Cr.P.C. and the learned Sessions Judge at the post cognizance stage on hearing charges as contemplated under Sections 226 to 228 if found no charges to be framed can discharge or if found any charges are to be framed so to frame and even if found no case triable by Court of Sessions to remit the matter under Section 228 Cr.P.C. to the Chief Judicial or Chief Metropolitan Magistrate or the committal Magistrate to try as a Calendar Case as per law.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 03-08-2015
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**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL PETITION No.6872 OF 2015

Between:

Kalki Ramu

... Petitioner

and

The State of Telangana, rep., by Public Prosecutor and another

... Respondents

DATE OF JUDGEMENT PRONOUNCED: 03-08-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No

3.	Whether	Their	Ladyship/Lordship	wish
to			Yes/No	
	see the fair copy of the Judgment?			Yes/No

[\[1\]](#) AIR 2001 SC 2637

[\[2\]](#) (2005)1 SCC 568