

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.3976 of 2015

ORDER :

This Criminal Petition is filed by the Petitioners/Accused under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.2228 of 2014 on the file of the Court of I Additional Chief Metropolitan Magistrate, Visakhapatnam City.

2) The petitioner is the sole accused and the 2nd respondent is the defacto-complainant. Heard the learned counsel for the petitioner before admission and before issuing notice to the 2nd respondent and the learned Public Prosecutor representing State of the case taken cognizance for the offence punishable under Section 354, 448 and 509 I.P.C that was taken cognizance by the learned Magistrate from the police final report, under Section 190 Cr.P.C since impugned. Perused the material on record.

3) The core of the contention of the learned counsel for the petitioner/accused is that Section 154(1) Cr.P.C. amended with effect from 03.02.2013 by incorporating a proviso which mandates the police officer where the victim in the offences punishable under Sections 354(A) to (D) or 375 or 376 or 376 (A) to (D) or Section 326(A) and (B) or Section 509 I.P.C, if she comes to the police station to give report by oral statement, such statement shall be recorded either by a female police officer or other officer. In this case

no doubt, the statement is recorded by the male police officer according to the case of the petitioner. Further more under Section 161(3) proviso (1) of the Cr.P.C amended, with effect from 03.02.2013, in such a case referred supra the recording of the statement of such victim in the course of investigation is also by a female police officer. Here, it is also the contention that it was recorded by the investigating officer, a male police officer. The submission there from is that once it is mandated by use of the word 'shall' on the part of the police officer by virtue of the amended provisions of the crime occurred subsequent to the amendment Act came into force, the non-compliance is fatal to the case of the prosecution and the Magistrate ought not to have taken cognizance against the accused and thereby the proceedings are liable to be quashed.

4) Whereas, it is also the submission by the learned Public Prosecutor representing the State that the proceedings no way vitiates the taking of cognizance as the provisions are meant for the benefit of the victim and not to take any advantage by accused, when the victim herself has no grievance muchless to complain any little prejudice even to any of the rights of the accused there from.

5) A perusal of the provisions with reference to the object in incorporating the same is crystal clear that these are meant to protect the right of privacy as part of Article 21 of the Constitution of India of the victim and not even to protect the right of the privacy of the accused under that

qualified fundamental right. When such is the case when the very victim not complained of; the accused has no right to complain, muchless to take any advantage therefrom to perpetrate his wrong if any, muchless to complain any prejudice to him for non-compliance of the procedure by the provision is of the rights of the victim to say in the victim's point of view is mandatory and if all for her to complain, who did not when the protection.

6) Accordingly, for no merits even to admit the petition under Section 482 Cr.P.C on the ground urged supra the petition is disposed of giving liberty to the petitioners to approach the learned Magistrate if there are any other grounds to seek for discharge under Section 239 Cr.P.C to decide on own merits in the course of hearing under Sections 239 read with 240 Cr.P.C only from the prosecution material vide ***State of Orissa V. Debendranath Padhi***^[1]. Needless to say any further remedy is also left open. If the petitioner files any application under Section 205 Cr.P.C to dispense with his personal attendance and to represent through special Vakalat holder from his waiving his right of presence in recording the evidence and in such an event, the learned Magistrate shall hear, consider and allow the same with necessary conditions including to appear as and when required for any necessity of personal appearance.

7) With the above observations, the criminal petition is

disposed of.

8) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.08th June, 2015

N.B: L.R copy to be marked – Yes.
(b/o)KSH

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