

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition No.1971 of 2015

%07.04.2015

Between:

Reyya Mahesh

and another. Petitioners

AND

Pedabilli Vijaya

and another. Respondents

! Counsel for Petitioners : Smt. T.V.Sridevi

^ Counsel for Respondent No.2 : Addl. Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.1971 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioners/A1 and A2 seek to quash the proceedings in Cr.No.89 of 2014 of Salur Rural PS, Vizianagaram District.

2) On the report given by *defacto* complainant, the police of Salur Rural PS registered FIR No.89 of 2014 against the accused for the offences under Sections 417, 376 and 109 IPC. A1 is the son of A2. Accused and *defacto* complainant belong to Reyyivanivalasa in Salur Mandal. The allegations are that A1 went behind the *defacto* complainant on the guise of loving her and had repeated sexual

intercourse with her on the false promise of marrying her and ultimately *defacto* complainant became pregnant and knowing this news when the parents of *defacto* complainant raised dispute before the elders, A1 denied his responsibility and A2 who is the father of A1, refused to heed the advice of elders and refused to perform the marriage between A1 and *defacto* complainant on the ground that they belong to different castes. The investigation is reported to be pending.

3) Denying the allegations, learned counsel for petitioners/A1 and A2 sought for quashment on the submission that a false case was filed to implicate the accused and even if the FIR allegations are accepted to be true, still the offence under Section 376 IPC will not attract against A1. Nextly, sofaras A2 is concerned, learned counsel argued absolutely no case is made out against A2 because he is not responsible for the alleged false promise made by A1 to the complainant and therefore, his abetting any of the offences does not arise merely because he refused to perform the marriage between A1 and *defacto* complainant. He thus prayed to quash the proceedings.

4) Per contra, learned Additional Public Prosecutor argued that there is overwhelming evidence to the effect that A1 made overtures under the guise of love and with the false promise of marrying *defacto* complainant obtained her consent, which is not a consent in the eye of law and made her pregnant and therefore, the offences under Sections 417 and 376 IPC are very much maintainable against A1 is concerned. Since A2 supported A1 and refused to perform the marriage between A1 and *defacto* complainant, he is also liable for abetment of the offences committed by A1. He thus prayed to dismiss the petition.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

6 a) **POINT:** The FIR and statements of witnesses available in the CD file produced by learned Additional Public Prosecutor would show

that accused and *defacto* complainant belong to same village they know each other and since one year prior to complaint, A1 used to go after her proclaiming that he was loving her and would marry her and believing his words, she too loved him and participated in sexual intercourse at different times and ultimately she became pregnant and when she revealed this fact to A1 and requested him to marry her, he refused on the ground that his parents were not willing to perform their marriage as they belong to different castes. When the parents of *defacto* complainant raised dispute before the village elders on 27.07.2014, A1 denied his association with *defacto* complainant and A2 also curtly told that he would not perform the marriage of A1 and *defacto* complainant. The statements of *defacto* complainant, her parents and also other village people reveal these facts. The investigation is reported to be pending.

b) If the prosecution allegations are uncontroverted, they would show that A1 obtained consent by making a false promise of marrying *defacto* complainant. As such, there is a strong *prima facie* material against A1 for the offences under Sections 417, 376 IPC and therefore, the question of quashing the proceedings against him does not arise.

c) Coming to A2, he is charged for the offence under Section 109 IPC for abetting his son. The offence of '*abetment*' is defined under Section 107 IPC as follows:

***“107. Abetment of a thing.*—A person abets the doing of a thing, who**

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(Firstly) — Instigates any person to do that thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

***Explanation 1.*—A person who, by willful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose,**

voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—*Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act”*

The main accusation against A2 is that he refused to perform the marriage between A1 and *defacto* complainant when elders convened a Panchayat. Except that, it is not the case of prosecution that A2 in any manner instigated or intentionally aided A1 to move with the complainant and to have sexual intercourse with her. In the statements of the witnesses, we do not find that the parents of A1 knew that A1 was moving with *defacto* complainant on the guise of love and he was sexually advancing with her. As such, it cannot be said that A2 had either instigated or intentionally aided A1 or conspired with some others to see that his son had sexual intercourse with the *defacto* complainant on the false promise of marriage. So, merely because A2 refused to perform their marriage, it cannot be attributed that he had abetted the offences of A1 having sexual intercourse with *defacto* complainant under the false promise of marrying her. It should be noted that even according to FIR, A1 was 24 years old by the date of FIR and hence, he is a major. So, in the matter of marriage of A1, A2 cannot legally prevail. Therefore, his mere refusal to perform their marriage will not attract the offence of abetment of the offences under Sections 417, 376 IPC. Therefore, in the considered view of this Court, continuation of the proceedings against A2 will amount to abuse of process of law and hence liable to be quashed.

7) In the result, this Criminal Petition is partly allowed and proceedings in Cr.No.89 of 2014 on the file of Salur Rural PS,

Vizianagaram District are quashed so far as A2—Reyya Somayya is concerned. However, the investigation must be continued to its logical end so far as A1—Reyya Mahesh is concerned.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 07.04.2015

Note: L.R. Copy to be marked: Yes / No

Murthy