

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.19131 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue Writ of Mandamus to declare the action of respondent No.3 in not conducting proper investigation and filing false charge sheet as illegal arbitrary unconstitutional and abuse of law and violation principals of natural justice and to quash the charge sheet in S.C.No.239 of 2015 pending before I Addl. Senior Civil Judge, R.R. District and to direct the 3rd respondent to reinvestigate the above matter by deleting Section 376 IPC under the supervision of respondent No.2 by considering petitioner evidence and to stay all further proceedings pending disposal of the present writ petition.”

Heard Sri C.D.S.B. Venkata Rao, learned counsel for the petitioner and learned Government Pleader for Home for respondents, apart from perusing the material available before this Court.

Learned Government Pleader has placed on record the written instructions, dated 03-07-2015 furnished by the Sub-Inspector of Police, Ibrahimpatnam Police Station.

According to the said written instructions, on the statement of the 4th respondent herein, Ibrahimpatnam Police Station registered Crime No.288 of 2014 against the petitioner herein for the alleged offences under Sections 420, 376 and 417 IPC and Criminal Amendment Act, 2013 on 03-08-2014 and during the course of investigation, the Investigating Officer examined the 4th respondent and other witnesses and recorded their detailed

statements. It is also stated in the said instructions that the victim/4th respondent herein was also referred to the Government Maternity Hospital, Sultan Bazaar, Hyderabad for examination. It is also stated that for the purpose of investigation, the Investigating Officer obtained bonafide certificate of the victim girl issued by Kamala Memorial Upper Primary School, Ibrahimpatnam, wherein the date of birth of the complainant is mentioned as 01-02-1996. It is also stated that *prima facie* case is made out against the accused – petitioner herein that he had committed all the offences mentioned in the F.I.R. and he was arrested on

06-08-2014 and remanded to judicial custody. It is further stated that the investigation was completed and after completion of investigation, the investigating agency filed appropriate charge sheet under Section 173 of Cr.P.C. before the court of IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam and the same is taken on file vide P.R.C.No.45 of 2014 and committed to Sessions vide S.C.No.239 of 2015 on the file of the I Addl. Senior Civil Judge, Ranga Reddy District and at present the petitioner is facing trial in the said Sessions Case. It is also stated that the relationship between the complainant and the petitioner/ accused started when the complainant was a minor and even if the victim gives her consent still it amounts to an offence under Section 376 I.P.C. and the trial has already began.

It is further stated in the written instructions that on receipt of the charge sheet on the file of the Sessions Court, in order to escape from the criminal liability, the petitioner filed the present writ petition with false and baseless allegations. It is also stated

that it is always open to the petitioner to putforth his contentions, if any, before the trial court and prove his innocence not only under Section 376 IPC but also under other Sections of law i.e., Sections 420 and 417 IPC and Criminal Amendment Act, 2013.

The sum and substance of the case of the petitioner herein is that police did not properly investigate into and did not conduct proper enquiry, as such, reinvestigation in the crime is necessary. Since there is effective alternative remedy available under the provisions of Code of Criminal Procedure it is always open for the petitioner to avail the said remedy before the Court below but not by way of filing writ petition under Article 226 of Constitution of India.

In view of the above said legal position, the writ petition is dismissed, leaving it open to the petitioner to pursue his remedies before the court below, in accordance with law. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

A.V. SESA SAI, J

August 03, 2015

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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