

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.2775 of 2015

ORDER:

In this petition filed under Sec.482 Cr.P.C, the petitioners/A2 and A3 seek to quash the proceedings in S.C.No.233 of 2014 on the file of Assistant Sessions Judge, Narsapuram, West Godavari District.

2) On the report given by *defacto* complainant, the police of Elamanchili Ps registered a case in Cr.No.28 of 2013 and after investigation laid charge sheet for the offences under Section 376 r/w 511, 109 and 506 IPC against A1 to A3. Since A1 is a juvenile, a separate charge sheet was filed against him in Juvenile Court. A1 is the son of A2 and A3 and they are residents of Vipparthivaripeta, Chinchinada Village, Elamanchili Mandal, West Godavari District.

3) The prosecution case is that *defacto* complainant is a resident of Vipparthivaripet and she studied upto Intermediate. A2 works as Pastor. A1 on the pretext of loving the complainant used to move after her, but the complainant discarded him. When she went to Church, there also A1 used to move behind her. Even though she informed this fact to A2 and A3, they did not take any action. While so, on the night of 17.02.2013 when the complainant and her father were sleeping in separate rooms in their house, A1 went into her room at about 12.00 in the mid night and woke up her and tried to commit rape on her. She protested and raised hue and cry. On hearing the same her father came there. Seeing him A1 fled away. On the next day, when the complainant and her father reported the incident to A2 and A3, they abused them in filthy language and threatened to kill them, if they reveal about the said incident to any body.

4) Denying the charges, learned counsel for petitioners/A2 and A3 vehemently argued even if the entire charge sheet allegations are uncontroverted, still no offence can be made against petitioners/A2 and A3. Except the allegation that A2 and A3 abused the *defacto*

complainant and her father, it is not the case of complainant that they have abetted A1 to make an attempt of rape on the *defacto* complainant. He submitted that continuation of proceedings against the petitioners/A2 and A3 will amount to abuse of process of law and thus prayed to quash the proceedings. This Court finds force in the above argument.

5) A perusal of FIR, 161 Cr.P.C. statements and charge sheet would reveal that except the allegation of petitioners/A2 and A3 abusing the complainant and her father, there was no allegation to the effect that they in any way abetted A1 to make an attempt to commit rape on the complainant. Hence, in the considered view of this Court, the charge under Section 376 r/w 511 and 109 IPC is not maintainable. However, if the allegations are not controverted, charge under Section 506 IPC alone will be maintainable against them.

6) In the result, this Criminal Petition is partly allowed and proceedings in S.C.No.233 of 2014 on the file Assistant Sessions Judge, Narasapuram, West Godavari District are quashed against the petitioners/A2 and A3 for the offence under Section 376 r/w 511 and 109 IPC. However, the proceedings against them are maintainable for the offence under Section 506 IPC.

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

U. DURGA PRASAD RAO, J

Date: 17.04.2015

Murthy