

HYDERABAD FOR THE STATE OF TELENGANA AND THE STATE OF ANDHRA PRADESH THURSDAY THIS THE THIRTIETH DAY OF APRILTWO THOUSAND AND FIFTEEN PRESENT THE HON'BLE MR JUSTICE M.S.RAMACHANDRA RAO

Crl.A.M.P.No.666 of 2015 in Crl.A.No.760 of 2014 & CRIMINAL APPEAL No.760 of 2014 Between: Adireddy Sangeeth Kumar APPELLANT AND The State of Andhra Pradesh, Rep.by its Public Prosecutor, High Court at HyderabadRESPONDENT The Court made the following: THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO Crl.A.M.P.No.666 of 2015 in Crl.A.No.760 of 2014 & CRIMINAL APPEAL No.760 of 2014 COMMON JUDGMENT: The Appeal is filed challenging the judgment dated 08.07.2014 in Sessions Case No.19 of 2014 of the Sessions Judge, Mahila Court, Visakhapatnam, convicting the appellant/accused for the offence under Section 354(D) IPC (which has been inserted through the Criminal Law (Amendment) Act, 2013 (13 of 2013) w.e.f.03.02.2013) and 506 IPC. 2. Crl.A.M.P.No.666 of 2015 is filed under Section 389(1) r/w.Sec.482 Cr.P.C to enlarge the petitioner/appellant on bail on the ground that earlier on 04.02.2015 this Court had dismissed Crl.A.M.P.No.1131/2014 seeking bail. 3. Counsel for the petitioner/appellant would contend that the appellant had undergone substantial portion of sentence in the prison; ever since his remand he has been in bail; he had not applied for bail; and having regard to the said circumstances, the petitioner/appellant be enlarged on bail. 4. With the consent of the counsel for the appellant and the learned Additional Public Prosecutor, the appeal itself has been heard today. The case of the prosecution in brief is that; (i) the accused is a Sound Engineering student at Chennai and used to come to Visakhapatnam town; that he used to tease and mentally harass the complainant one Chukka Susmitha and her mother Chukka Satyavathi and also made life threats to the de facto complainant. It is alleged that the complainant was studying Engineering Course in Vignan College at Duvvada, that the accused used to follow her and disturb her; and when she made a complaint to the Principal, the Principal initiated departmental action against the accused and debarred him; since then, the accused abused her in indecent and unparliamentary words and was harassing her; and when the matter was reported to Gajuwaka Police, the accused admitted his guilt and executed a letter to excuse him, but he did not change his attitude. ii) The complainant was studying MBA second year in Geetham University at Visakhapatnam and residing with her mother in D.No.7-18-19/2 of MMTC colony, near Padmaja Hospital, Old Gajuwaka; that for 5 or 6 months before filing of the complaint, the accused harassed the complainant mentally by sending various messages, crossing near to her house, speaking over telephone in abusive and indecent language; that he also threatened the complainant that he fell in her love with her and if she denied it, he will kill her and her mother. The accused is alleged to have sent letters on 20.05.2013 and 21.05.2013 through registered post, stating that he will not leave the complainant, that he will not allow her to live peacefully and he would make her family unpopular; on 05.07.2013 he is alleged to have sent another letter also. iii) That on 17.07.2013 at 17.00 hours when the complainant was alone in her house, it is alleged that the accused criminally trespassed into her room, behaved in indecent manner, placed his hands on her chest and threatened that none will save her from his act. He is alleged to have threatened to kill the complainant and her family by pouring acid. 6. On hearing the cries of the complainant, neighbours rushed to the place. By that time the accused went away threatening and insulting the complainant. 7. The complainant gave a complaint to the police requesting protection from the accused and basing on said complaint, PW 3 registered a case in Cr.No.360/2013 under Sections 354-B, 354-D, 326-B, 448 and 506 IPC. 8. He examined the de facto complainant, her mother and other three witnesses as LWs 1 to 5. 9. The III Additional Chief Metropolitan Magistrate, Gajuwaka, Visakhapatnam took cognisance of the case against the accused under the above provisions of law, and later committed the same to the Metropolitan Sessions Judge, Visakhapatnam. It was later numbered as S.C.No.19/2014 and was forwarded it to the Sessions Judge, Mahila Court, Visakhapatnam. 10. The said Court framed charges under Sections 354(B), 354(D), 326(B) and 506 IPC against the accused. 11. The charges were read over and explained to the accused in Telugu, for which, he pleaded not guilty and claim to be tried. 12. The prosecution examined PW 1-de facto complainant, PW 2-her mother and PW 3-the Investigating Officer and marked Exs.P1 to P5. 13. After the evidence on behalf of prosecution was closed, the accused was examined under Section 313 Cr.P.C and the incriminating material in the evidence of the prosecution witnesses was put to the accused, but he denied the same. 14. By judgment dated 08.07.2014, the Court below convicted the accused under Sections 354(D) and 506 IPC, but acquitted him of the offences under Sections 354(B) and 326(B) IPC. 15. Challenging the same, this appeal is filed. 16. The only contention advanced by the counsel for the appellant is that Section 154 Cr.P.C had been amended by Act 13/2013, which came into effect from 03.02.2013; and the First Proviso introduced by the said amendment provided that if the information is given by a woman against whom an offence under Section 326-B, 354-B, 354-D IPC are alleged to have been committed or attempted, then such information shall be recorded by a woman police officer or any woman officer. He contends that since this provision has not been adhered to and the information was recorded by PW 3 who is a male police officer and not a woman police officer, the appellant is entitled for acquittal. He further contended that even the statement under section 161 Cr.P.C is to be recorded by a woman police officer or any woman officer by virtue of the same amendment. 17. The learned Additional Public Prosecutor, on the other hand, refuted the said contention and submitted that no prejudice is caused to appellant on account of receiving of information by PW 3, a male police officer, that no failure of justice has occurred and on that ground the appellant is not entitled for acquittal. He also contended that the provisions of Sections 460, 461 and 465 Cr.P.C would show that unless such failure of justice has been occasioned, the sentence imposed on the appellant cannot be reversed, merely because there is an error, omission or an irregularity in the complaint, summons, warrant etc. He further pointed out that no objection of this nature has been raised in the Court below and therefore, the said objection is liable to be waived. He further contended that the evidence on record clearly establishes the guilt of the accused beyond all reasonable doubt, and therefore, the appeal be dismissed. 18. I have noted the submissions of both sides. 19. Admittedly, the incidents in question, on the basis of which the accused has been prosecuted, occurred from December 2012 onwards and ultimately culminated in the incident, which occurred allegedly on 17.07.2013. There is no doubt that the complaint alleged to have given by the de facto complainant (PW 1) was registered by PW 3, a male police officer. 20. Section 154(1) Cr.P.C which was amended by the Criminal Law (Amendment) Act, 2013 (13 of 2013) w.e.f.03.02.2013 states as follows: "Section 154: (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf: Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer: Provided further that— (a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be; (b) the recording of such information shall be videographed; (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible." 21. No doubt, the first proviso to Section 154 Cr.P.C indicates that if the information is given by a woman against whom for an offence punishable under sections 326(B), 354(B) and 354(D) is alleged to have been committed or attempted, then such information shall be recorded by a woman police officer or any woman officer. The said proviso to Section 154 Cr.P.C was introduced to make the police more gender sensitive and also with an intention to ensure that woman complainants would be treated more respectfully and sympathetically by woman police officers or woman officers. It is nobody's case that male police officers in all cases would not do so. So merely because PW 3, a male police officer, had received the complaint given by PW 1, it cannot be said that there is any prejudice caused to the accused. It cannot also be said that there is any failure of justice occasioned by PW 3 receiving the complaint from PW 1. 22. Section 465 Cr.P.C states: "Section 465: Finding or sentence when reversible by reason of error, omission irregularity. HYPERLINK "http://indiankanoon.org/doc/1977607/" (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a

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