

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.63 OF 2013

JUDGMENT:

The accused persons 1 to 4 of C.C.No.242 of 2012 on the file of the III Addl.Judicial Magistrate of First Class, East Godavari District at Kakinada, where the learned Magistrate has taken cognizance for the offences under Sections 417 and 420 of I.P.C., on the protest averments of the defacto-complainant by recorded sworn statements of the defacto-complainant and two more witnesses, by impugning the same filed the quash petition.

2. The 1st respondent-defacto-complainant served failed to attend taken as heard. Heard the learned counsel for the accused persons-petitioners to the quash petition and also the 2nd respondent-State represented by the learned Public Prosecutor and perused the material on record.

3. The factual matrix is that among the 4 accused, A.3 is spinster and unmarried daughter of A.1 and A.2. She is a private employee. The A.1 to A.3 vis-à-vis the defacto complainant were originally residents of Yerrakonda of East Godavari district. The defacto-complainant from that native place appears shifted to temple street, Kakinada and on taking rent some premises in the Aditya Homes apartments and doing some business of tent house. The L.Ws. 2 and 3 of the private complaint whose sworn statements were recorded as P.Ws. 2 and 3 claimed as staying nearby to the said premises. The occurrence as per the private complaint was dated 24.09.2009 from 10.00 A.M. onwards in saying till 10.00 P.M. within the limits of I town police Station, Kakinada. The factual background shows that the defacto-complainant lured the A.3 who conceived through him and along with A.4 mediator A.1 to A.3 went and questioned and the defacto-complainant who promised them that he is going to marry and also to undergo treatment and give birth to child and paid Rs.20,000/- and also issued three cheques in question for Rs.2,20,000/- in all. It is the said version of the accused persons in lodging the complaint against the defacto-complainant herein by A.1-father of the victim in Cr.No.130/2009 under Sections 417 and 420 of IPC of Dowleswaram Police Station, and the police, while under investigation, collected the samples and sent for D.N.A. examination and found that the child in the womb of the A.3, victim in the hands of the defacto-

complainant, is conceived by A.1. The defacto-complainant-accused of Cr.No.130 of 2009, from the police final investigation was charged in C.C.No.488 of 2010 on the file of VII Additional Judl. Magistrate of First Class, Rajahmundry, for the offences under Section 417 and 410 IPC, it is the said final report the learned Magistrate taken cognizance and it appears at the post-cognizance stage, the Court felt under Section 376 of I.P.C. that attracts, not necessary to discuss further but for to say the defacto complainant herein as sole accused therein for the offences supra of Cr.No.130 of 2009 vis-à-vis in C.C.No.488 of 2010, impugning the said DNA report against him sought for quash of the same by filing W.P.No.22131 of 2001 and the same was ended in dismissal before admission by order by this Court another Bench dated 17.08.2011. It is so he is facing accusation. The grievance of the defacto-complainant as accused of C.C.No.488 of 2010 (Cr.No.130 of 2009 of Dowleswaram Police Station), on the file of VII Addl. Judicial Magistrate of First Class, Rajahmundry, East Godavari, is that on 24.09.2009 the accused persons 1 to 4 came to his shop immediately after he opened his shop at about 11.00 A.M., and forced him and looted by went inside the tent house from the almirah Rs.30,000/- and also from his shop premises chest of Rs.20,000/- and also made him to sign on three cheques and it is the accused persons 1 to 4 committed offences under Section 417 and 420 IPC. It is the said crime 189 of 2009 registered by police which is outcome of in fact, a private complaint of the defacto-complainant dated 29.09.2009 for the offences under Sections 346,409,312,342,420,506 and 34 of IPC.

4. The private complaint averments referred to police for investigation in registration of the crime supra, from the order of the learned Magistrate under Section 156(3) of the Cr.P.C. are that the accused persons 1 to 4 are A.3 is daughter of A.1 and A.2 and A.1 is RTC driver of Rajahmundry depot and they used to quarrel with the people of surroundings and are men of evil acts, A.3 became pregnant and it is false story weaved as if the complainant is responsible and they presented a complaint against the complainant in that regard for the alleged pregnancy he is as if responsible and he is innocent and while so on 24.09.2009 at about 11.00 A.M., A.1 and his supporters with evil design with A.2 to A.4, including among the two supporters, 9 anti-social elements, all of a sudden entered the complainant shop premises forcibly and by pretending that the complainant is responsible for A.3's 7 months pregnancy and to cheat, blackmail and demanded illegal settlement instantaneously in that regard though complainant never interested for no way responsible, the persons along with A.1 to A.4 with criminal background wrongfully

confined the complainant and also snatched away the mobile phone as he made a call to the I town police station, Kakinada against them at about 4.00 P.M., on that day through 08842379033 and a lady at the police station received the information, not responded saying unavailability of men and taking advantage of the accused started misbehaving with him and assaulted him and obtained three blank white papers with his signatures and three Axis bank post-dated crossed cheques, two cheques for one lakh each and other for Rs.20,000/- mentioning dates 24.10.2009, 30.10.2009 and 02.11.2009, cheques bearing Nos. 410195 to 410197, by obtaining his signatures and also collected cash of Rs.30,000/- and Rs.20,000/- hence, to take action for the offences supra.

5. From the very complaint, it is important to note that the so called episode started at 11.00 A.M., and went up to 10.00 P.M., or so and he allegedly made a phone call to I town police at 4.00 P.M., it is highly unbelievable from the very story of such incident taken place for that regards by confining but for any agreeable statement. Leave it as it is, having allegedly made a phone call at 4.00 P.M., there is nothing to show he immediately presented the complaint, however, with the private complaint he made as enclosure the complaint dated 24.09.2009. The police after registering the crime from the learned Magistrate referred supra without application of judicial mind, from the investigation conducted filed the final report as a false claim. The final referred report clearly speaks that having lured and cheated the A.3 who is the victim in his hands, as counterblast to it, he weaved the story and even after settlement through elderly persons on the alleged date to get over from the criminal liability of crime pending against him and further observed that A.1 is RTC driver on duty as per the record at the Rajahmundry depot showing he attended to duty at 6.00 A.M., and performed duty from Rajahmundry to Visakhapatnam single stop and returned back and handed over the duty chart at 4P.M. on the same day and it clearly establishes that alleged occurrence by his(A.1) participation from 11.00 A.M., onwards at Kakinada is also absurd to believe and substantiates as a false story he weaved out to get over from Cr.No.130 of 2009 supra.

6. It is after the police final report from the notice given to him, he filed protest application and cause examined besides himself two more witnesses claimed to be neighbours, one is a watchman and the other is nearby to the shop of A.1. The learned Magistrate in fact, taken cognizance only from the protest application and three sworn statements including defacto-complainant supra. In fact, the learned

Magistrate ought to have been considered the earlier crime from the private complaint of the defacto-complainant vide crime No.189 of 2009 and the police final report with part-II C.D. in this regard by examination of several witnesses. Cognizance taken by the learned Magistrate is by non-application of judicial mind but for simply following of sworn statement and protest application averments. In fact, in the factual background supra, the continuation of proceedings by taken cognizance by the learned Magistrate against the accused persons 1 to 4 of whom A.3 daughter of A.1 and A.2 is the victim in the hands of the complainant herein, is nothing but abuse of process of law that cannot be allowed to continue to subserve the ends of justice by invoking Section 482 of Cr.P.C.

7. Having regard to the above, the Criminal Petition is allowed by quashing the proceedings in C.C.No.242 of 2012 on the file of the III Addl. Judicial Magistrate of First Class, East Godavari District at Kakinada. The bail bonds of the accused if any shall stand cancelled. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 12-11-2015

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