

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.485 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C, by the petitioner/accused in connection with Crime No.139 of 2016 for the offences punishable under Sections 417, 376, 313 of Indian Penal Code (for short 'IPC') and under Section 3 (2) (V) and (Va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015 (for short 'SC/ST Act') of Amalapuram Town Police Station, East Godavari District, apprehending his arrest in connection with the above crime.

The case of the prosecution is that the statement of *defacto-complainant*-V.Durga Devi, was recorded by the police, while she was undergoing treatment in Area Hospital, Amalapuram, which discloses that the petitioner on the pretext of love had sexual intercourse with her, while she was prosecuting her medical Lab Technician course and she conceived due to sexual intercourse. The petitioner got aborted the pregnancy of *defacto complainant* as she belongs to a different caste i.e., Scheduled caste and he tried to get rid of her by paying money. Thereupon, vexed with the attitude of the petitioner, the *defacto complainant* consumed ten sleeping pills to commit suicide. But she vomited. Thereupon, her mother Satyavathi, shifted her to the hospital in an auto. Thus, the petitioner allegedly committed the said offences.

The main contention of the petitioner is that the sexual act is a consensual sex but not against her consent. Therefore, it would not fall within the definition of rape under Section 375 of IPC and the petitioner is not liable for the punishment for the offence under

Section 376 of IPC. Similarly there was no intention on the part of the petitioner at the time of having sexual intercourse with the *defacto complainant* initially, thereby did not fall within Section 417 of IPC. It is further contended that the provisions of SC/ST Act have no application to the present case.

Learned Additional Public Prosecutor contended that investigation is not completed and that there is every likelihood of tampering with evidence and interference with the investigation, in the event petitioner is granted pre-arrest bail.

In the present facts of the case, petitioner had sexual intercourse with the *defacto complainant*. As a result, she was conceived and got aborted. Section 313 of IPC deals with punishment for causing miscarriage without woman's consent. Section 312 of IPC defines 'Causing miscarriage' and according to it, whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Therefore, the abortion against the consent of *defacto complainant* is only with a view to get rid of the *defacto complainant* who belongs to scheduled caste and there is prima-facie evidence against the petitioner, to attract the offence punishable under Section 313 of IPC. Though it is consensual sex as contended by learned counsel for the petitioner, when such an offence is

committed against a woman knowing that she belongs to a scheduled caste, such person is liable for punishment under section 3 (2) (V) and (Va) of SC/ST Act. Thus, the alleged offences committed by the petitioner would fall within Section 313 of IPC and thereby petitioner is disentitled to invoke the jurisdiction of this Court under Section 438 Cr.P.C, in view of Section 18 of SC/ST Act, as amended, and on this ground alone, the petition is liable to be dismissed, as the *defacto complainant* belongs to scheduled caste and the petitioner belongs to caste other than SC/ST, he is not entitled to pre-arrest bail.

In view of Section 438 Cr.P.C., and in view of the provisions contained in Section 18 of the SC/ST Act, the petition is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in this Petition shall stand dismissed.

M.SATYANARAYANA MURTHY,J

1st February, 2017
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Dated :01.02.2017

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