

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2360 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the proceedings in J.C.C. No.83 of 2016, on the file of the IV Additional Judicial Magistrate of First Class (Juvenile Justice), Warangal, Telangana State.

2. Heard Sri G. Vijayapal Reddy, learned counsel for the petitioner and the learned Assistant Public Prosecutor for the State of Telangana.

3. When originally the complaint was lodged, *de facto* complainant - Pillalamarri Divya, then aged 17 years, has levelled allegations constituting the offences punishable under Sections 354-D, 506, 323 read with 34 IPC and Sections 11 (i), 11 (iv) read with 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act 2012') against the petitioner herein and his mother, who was tried in separate Sessions Case No.24 of 2016 by the Special Judge for trial of cases under Protection of Children from Sexual Offences Act - cum - I Additional Sessions Judge, Warangal. But, she was tried for the offence punishable under Section 506 IPC and Section 16 read with 17 of the POCSO Act 2012. Since the petitioner was juvenile, his case was taken up by the Juvenile Justice Board,

which is designated as IV Additional Judicial Magistrate of First Class (Juvenile Justice), Warangal.

4. The learned counsel would submit that the *de facto* complainant has completely resiled from the statement she made before the police under Section 161 (3) of the Code and also resiled from the complaint lodged by her giving a different version which is recorded by the learned Sessions Judge in the judgment rendered on 16.08.2016 tried against the mother of the petitioner herein. Likewise, even the other material witnesses examined as PWs.2 to 6, who are no other than the mother of the victim, brother of the victim and an eye-witness, circumstantial witness and another brother of the victim, have completely turned hostile and the statements they made before the police under Section 161 (3) of the Code were exhibited as Exs.P3 to P7. Thus, there was nothing for consideration before the learned Sessions Judge and the learned Sessions Judge even dispensing with the examination of accused under Section 313 of the Code, recorded a finding that the prosecution failed to prove any of the offences levelled against the mother of the petitioner beyond all reasonable doubt and, consequently, acquitted her.

5. The learned counsel, therefore, would submit that even if the witnesses, who are common, are examined in the present case i.e., J.C.C. No.83 of 2016, no improvement can be made and, therefore, it would be abuse of process of law in case the petitioner herein is tried, and in support of his submission, he has also placed reliance in

Jasvinder Singh v. State of Punjab and another¹ rendered by a learned Single Judge of High Court of Punjab and Haryana, in almost alike situation occurring herein, wherein it was opined that allowing the trial of continuity will unnecessarily waste the time of Court, especially the result is also likely to be the same as in the case of co-accused, and it would be a futile exercise to continue the proceedings against the petitioner therein when the other co-accused stood acquitted on the basis of same set of allegations.

6. Turning to the fact-situation herein, even if the *de facto* complainant and other witnesses are examined, there would not be any likelihood of their supporting the prosecution case and in case they do so, it would result in they being prosecuted for the offence of perjury even. In such an event, certainly, conducting trial in J.C.C. No.83 of 2016 is nothing but the abuse of process of law and, therefore, the petition is to be allowed.

The present petition is, accordingly, allowed quashing the proceedings in J.C.C. No.83 of 2016 on the file of the IV Additional Judicial Magistrate of First Class (Juvenile Justice), Warangal, Telangana State. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

April 03, 2017
Mgr

¹. 2012 (2) Crimes (HC) 129