

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THE SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVENTEEN

P R E S E N T

HONOURABLE SRI JUSTICE
M . SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 426 OF 2017

Between:

Mandru Sunil Kumar

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Petitioner /Accused

V/s.

The State of Andhra Pradesh
Represented by the Public Prosecutor
High Court of Judicature for the State of
Telangana & Andhra Pradesh,
Hyderabad & Anr.

...

Respondents/Respondents

Counsel for the Petitioner :

Sri M. Adam

Counsel for the Respondents:

Public Prosecutor for R-1
Sri Chandrasekhar Kapakurti for R-2

The court made the following:

[ORDER follows]

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY**CRIMINAL REVISION CASE NO. 426 OF 2017****ORDER :**

This Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., questioning the order dated 06/12/2016 passed in CrI.MP.No. 119 of 2016 in C.C.No. 1411 of 2014 on the file of the Court of I-Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Tanuku, West Godavari district, dismissing the application filed under Section 239 Cr.P.C. seeking to discharge the petitioner/accused from the charges under Section 417 and 420 of I.P.C.

2. The defacto complainant Talluri Kamala Priyadarshini, lodged a complaint with the Station House Officer, Tanuku, alleging that when she was studying tenth class, while the petitioner was staying at their house prosecuting his polytechnic diploma in Engineering, he promised to marry her and had sexual inter course in the absence of her parents and later when she requested to marry him, he did not keep up his promise, therefore, she lodged a complaint after more than ten years.

On the basis of the above complaint, the Police registered a case in Crime No.117 of 2014 for the offences punishable under section 417, 420 read with section 34 of I.P.C. and filed charge sheet after completion of investigation before the Judicial Magistrate of First Class, Tanuku and the case was taken on file for the offences punishable under section 417 and 420 of I.P.C.

3. After appearance of the petitioner/accused, petition under section 239 Cr.P.C. for the discharge of the petitioner/accused denying the alleged sexual inter course between the petitioner and defacto complainant. While contending that she made all false allegations with the police without disclosing the details of such sexual inter course and that the present facts of the case would not attract the offences punishable under Section 417 and 420 of I.P.C. Without prejudice to his contention, he submitted that the defacto complainant is a consenting party and she was more than 18 years and she knows well about the consequences of sexual inter course with a male person and requested

the Magistrate to discharge him while exercising the powers under Section 239 Cr.P.C.

4. The respondent filed counter denying the material allegations made by the petitioner and submitted that there is ample evidence to prove the cheating by the petitioner and there is prima facie material against the petitioner to proceed with the matter.

5. On hearing argument of both sides, the trial court found that there is prima facie material against the petitioner for the offences punishable under section 417 and 420 of I.P.C., and dismissed the petition filed by the petitioner under section 239 of Cr.P.C.

6. Aggrieved by the order dated 06/12/2016 passed in Crl.MP.No. 119 of 2016 in C.C.No. 1411 of 2014 on the file of the Court of I-Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Tanuku, West Godavari district, the present criminal revision case is filed mainly on the ground that she is the consenting party for the sexual intercourse and it would not attract the offences punishable under section 417 and 420 of I.P.C. and that the petitioner never promised her to

marry and at best it would be breach of promise and would not attract the offence punishable under section 420 of I.P.C. and prayed to allow this revision and discharge the petitioner by allowing this CrI.MP.No. 119 of 2016 on the file of Judicial Magistrate of First Class, Tanuku, West Godavari district.

7. The present Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C. The jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power when the Court found that there is manifest error in the order or findings recorded by the court below or without material.

8. During hearing the learned counsel for the petitioner has drawn the attention of this Court to the statement recorded by the police during the course of investigation. Based on the contents she is a consenting party, therefore, it would not attract the offence punishable under section 417 and 420 of I.P.C. She did not disclose the date of offence but lodged the complaint after more than 14 years and thereby the prosecution is groundless and requested to discharge the petitioner.

9. The contents of the complaint lodged with the police including the charge sheet filed before the trial Court and the material produced along with final report along with 173 Cr.P.C., can alone be taken into consideration while deciding the petition under section 239 of Cr.P.C., not the defence set up by the petitioner. The petitioner's contention is only that sexual intercourse was suddenly took place. Whether it is suddenly or not is a question of fact which can be gone into at an appropriate stage and that is not a ground to discharge the petitioner for the offence punishable under section 417 and 420 of I.P.C. The statements recorded by the police though not substantive piece of evidence. The incident of sexual intercourse took place in the year 2000 when the defacto complainant was studying tenth class and by that time she was less than 15 years of age and the consent is not a free consent under section 375 I.P.C. and in view of later amendment under Section 114-A the Indian Evidence Act, any person had any sexual inter course with a woman less than 18 years, the presumption has to be drawn that sexual inter course is without the consent of the proscutrix for rape.

According to Section 114-A of Evidence Act, presumption as to absence of consent in certain prosecutions for rape. In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. Fortunately in this case the charge sheet was not filed against the petitioner for the offence under section 376 I.P.C. but only for the offence punishable under section 417 and 420 of I.P.C., as the petitioner allegedly had sexual intercourse with the defacto complainant promising to marry her. If the petitioner had any intention to deceive the defacto complainant at the time of commission of offence certainly it would attract the offence punishable under section 420 I.P.C. One of the grounds urged by the petitioner is abnormal delay. The delay itself is not a ground for the offence punishable for more than seven years and the

limitations cannot be considered at this stage while deciding the petition under section 239 of Cr.P.C. Therefore, the delay is not a ground, which is not fatal to the case of prosecution. Further the disputed questions of fact cannot be gone into in this revision and the trial Court is required to verify the material along with charge sheet filed under section 173 Cr.P.C. Hence, there is strong prima facie case against the petitioner, the Court may discharge for the offence but here the statements of LWs. 1 to 10 recorded by the Police during the investigation under section 161 Cr.P.C. would prima facie disclose material against this petitioner to proceed against him further frame charges. Hence, I find no ground to interfere with the findings recorded by the court below while exercising the powers under section 397 and 401 of Cr.P.C.

10. In the result, the *Criminal Revision Case* fails and is accordingly *dismissed* at the stage of admission.

11. As a sequel, *miscellaneous petitions* if any, pending in this Criminal Revision Case shall stand closed.

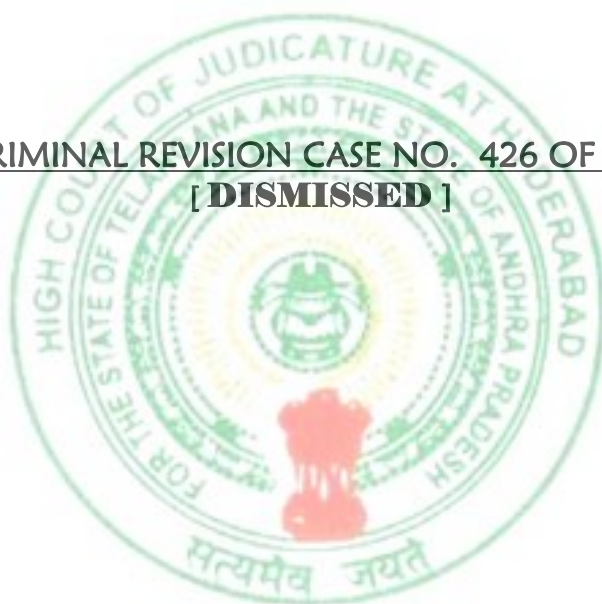
JUSTICE M. SATYANARAYANA MURTHY..

06/09/2017
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HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 426 OF 2017
[DISMISSED]



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