

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2397 of 2017

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed questioning the propriety and legality of the order, dated 12-07-2017 passed in CrI.M.P.No.302 of 2015 in S.C.No.212 of 2014 by the Sessions Judge, Mahila Court, Vijayawada, dismissing the application filed under Section 227 of Cr.P.C., to discharge the petitioners/A-1 and A-2 in S.C.No.212 of 2014 on the file of the Sessions Judge, Mahila Court, Vijayawada.

The basis for the present petition is that the affidavit filed by the defacto complainant Peetha Kalyani, D/o.Peetha Rambabu in CrI.M.P.No.586 of 2012 in Crime No.312 of 2008 in a petition filed under Section 438 of Cr.P.C., for grant of pre-arrest bail in the above crime, wherein it is contended that the petitioners are innocents for the alleged offences and Peetha Rambabu gave a report that on 07-07-2008 at 9.30 a.m., his daughter Peetha Kalyani went to Gangur, to attend her employment as Computer Operator in the godown of Hindusthan Lever Limited, Gangur and she did not return to house. Basing on the report, a case in Crime No.312 of 2008 was registered for the offence punishable under Sections 376, 366, 343 and 506 read with 34 of IPC. On 26-04-2012,

Peetha Kalyani gave a report that she studied up to B.A., that she was doing job at Gangur, that she used to impart tuition to the children of K. Rama Mohana Rao, on his request, that one day A2 called her into her house and when she entered into the house, she closed the doors and locked outside and went away, then A1 who was present in the house administered cool drink, she consumed it and went into semi conscious, then A1 snapped her nude photos with his cell phone and committed rape on her without her consent, later he used to black mail her with the help of said photos, that on 07-07-2008 at about 9.30 a.m. when she came out of the house to go to her office, then A1 forcibly got her into his car and taken her to Hyderabad and kept in a house for 20 days, later shifted to Nellore and kept there for about one year in a rented house, thereafter with the help of one Hafeez she came to Vijayawada and came to know that her father presented a report in Patamata P.S. on 08-07-2008. It is further contended that on 11-05-2012 Peetha Kalyani appeared before the Court and gave an affidavit stating that due to the disputes between herself and her parents, she left her parents and doing job at Nellore, that on 26-04-2012 she came to Vijayawada for the purpose of marriage alliance to her sister, that her father manhandled her with the support of his friends Srinu and Srinivasa Rao, threatened her and obtained

her signatures on white papers and lodged a report with Patamata Police.

The trial Court upon hearing both petitioner and Public Prosecutor dismissed the petition filed under Section 227 of Cr.P.C., refusing to discharge the petitioners for the offence punishable under Sections 376, 366, 343 and 506 read with 34 of IPC.

Aggrieved by the order of the Court below the present revision is filed on various grounds mainly on the ground that the defacto complainant herself gave a sworn affidavit before the Court below, the Court ought to have discharged the petitioners for the offence punishable under Sections 376, 366, 343 and 506 read with 34 of IPC but the Court below on erroneous appreciation of material dismissed the petition.

Learned counsel for the petitioners, Ms.S. Pranathi, would contend that when the defacto complainant herself made a sworn statement before the Court below by way of affidavit the incident has to be disbelieved and the petitioners are entitled for discharge for the offence punishable under Sections 376, 366, 343 and 506 read with 34 of IPC. The Court below on erroneous appreciation of the facts with reference to law under Sections 227 and 239 of Cr.P.C., committed a serious error, which warrants interference of this

Court exercising powers conferred under Sections 397 and 401 of Cr.P.C.

The power of this Court under Sections 397 and 401 of Cr.P.C., is limited and this Court can exercise such power only when the Court finds manifest perversity or apparent error on the face of the order recorded by the Court below without any material.

Similarly, Section 227 of Cr.P.C., deals with discharge of accused in a Sessions Case and if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing of the evidence if needed. The word “groundless” would mean the absence of reasonable ground to expect a conviction.

“Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 227 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in **“P.Vijayan v. State of Kerala¹”**

During hearing, learned counsel for the petitioners mostly relied on the affidavit of Peetha Kalyani – the defacto complainant filed before the Sessions Court in an application filed for grant of pre-arrest bail under Section 438 of Cr.P.C., i.e, CrI.M.P.No.586 of 2012. In the affidavit she categorically

¹ AIR 2010 SC 663

stated under what circumstances the said complaint was lodged and the affidavit is not a material collected and filed under Section 173 of Cr.P.C., and at best such an affidavit was voluntary or not is a question has to be decided by the Court only during trial but not at this stage. At the stage of framing charges the Court is required to go into the material produced under Section 173 of Cr.P.C., by Police after completion of investigation and the defence of the accused cannot be looked into at the stage of framing charges, therefore, at best the Magistrate or Sessions Court is competent to verify the material produced along with the report under Section 173 of Cr.P.C., and not any other material. Therefore, refusing to accept the affidavit while passing an order under Section 227 of Cr.P.C., is not an error since the Court below is required to peruse and verify the material produced under Section 173 of Cr.P.C., not otherwise. Therefore, I find that the trial Court committed no error in not accepting affidavit filed in CrI.M.P.No.586 of 2012 by the defacto complainant at the stage of framing charges. This Court cannot interfere with such an order in view of limited scope of enquiry under Section 227 of Cr.P.C. Therefore, non-consideration of affidavit filed in anticipatory bail application petition is not an error apparent on the face of record or manifest perversity in the order passed by the

Court warranting interference of this Court and the revision is deserves to be dismissed.

In the result, the Criminal Revision Case is dismissed, at the admission stage.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 04, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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