

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2838 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 Sessions Case No.129 of 2016 on the file of the I Additional District Sessions Judge at Rajamahendravaram, East Godavari District.

2. The petitioner, who is arraigned as accused No.3 in the aforesaid Sessions Case, along with other accused alleged to have committed the offences punishable under Sections 363 and 376 (1) read with 109 IPC and Section 16 read with 17 of the Protection of Children from Sexual Offences Act, 2012.

3. Heard Sri T.V. Jaggi Reddy, learned counsel for the petitioner and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel for the petitioner would submit that there is absolutely nothing on record to show the complicity of petitioner in the commission of offences alleged against him.

5. The learned Assistant Public Prosecutor would strongly resist the request on the ground that a petition of this nature at the

stage when Sessions Case is pending is not maintainable at all as the law is well-settled on this aspect of the case.

6. Irrespective of the submissions made by the learned counsel for the petitioner, it is to be stated that on a careful examination of the statements of the witnesses recorded under Section 161 of the Code, they would clearly indicate that even at this stage there are *prima facie* allegations against the petitioner and it is unnecessary to refer to the relevant portions of the statements, more particularly, when the Sessions Case itself is pending for taking up trial. The defence now sought to be projected can be confronted to the witnesses when they are examined in Court eliciting omissions or contradictions.

7. The learned counsel for the petitioner also relied on the decision of the Hon'ble Supreme Court in **Satish Mehra v. State (NCT of Delhi) and another¹**, more particularly, the observations contained in paragraph No.21 thus:

“21. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, *prima facie*, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the

¹. (2012) 13 SCC 614

accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the appellant-accused G.K. Bhat and R.K. Arora.”

The Hon’ble Supreme Court has also cautioned the Courts including High Court that the extra-ordinary power available to the High Court needs to be exercised carefully and sparingly and cannot be used for quashing legitimate prosecution.

8. In view of the foregoing discussion, there is no merit in the petition and, accordingly, the present Criminal Petition is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the petition stand closed.

April 13, 2017.
Mgr

A. SHANKAR NARAYANA, J