

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.66 of 2017

ORDER :

The 1st Accused (for short 'A.1') of C.C.No.17 of 2016 on the file of the XIII Additional Chief Metropolitan Magistrate, Hyderabad, maintained the present revision aggrieved by the order dated 19.12.2016 in CrI.R.P.No.217 of 2016 of the learned IV Additional Metropolitan Sessions Judge, Hyderabad, allowing the revision in directing him to undergo potency test for Erectile Dysfunction (for short 'E.D.') to be conducted in Osmania General Hospital, Hyderabad, on requisition of the Investigating Agency, by setting aside the dismissal order of the learned Magistrate, dated 03.10.2016 in CrI.M.P.No.5488 of 2016.

2. The contentions in the grounds of revision *vis-a-vis* the oral submissions in the course of hearing by the learned counsel for A.1 - revision petitioner are that the impugned reversal order of the lower Revision Court-cum-Sessions Judge are contrary to law, that too while sitting in revision within the limited scope for even there is nothing to interfere with the dismissal order of the learned Magistrate, a well considered one, that too from the allegations read from FIR against the potency of petitioner – A.1, made by the defacto-complainant, the police investigated the case and filed charge sheet, with no requirement of such a test thereat and thereafter for no reason or just cause much less to intrude into the personal liberty and to compel petitioner – A.1 against his wish and thereby sought for dismissal of the lower Revision Court order by restoring the dismissal order of the learned Magistrate.

3. Whereas, it is the contention of the learned counsel for defacto-complainant and the learned Public Prosecutor that the order of the lower Revision Court is well within its scope contemplated by law and the same is necessary for the effective adjudication of the criminal *lis* and there is nothing to interfere therewith and it cannot be stated as intruding into the privacy or in effecting of Fundamental Right, which is not even when absolute, but for qualified, that too subject to due process of law to obey to the orders of the Court in submitting to the requirement of the potency test and hence to dismiss the revision.

4. Heard both sides and perused the material on record.

5. Now, in deciding the revision *lis* on the correctness of the impugned orders of either of the lower Courts, the factual background necessary to mention, in nutshell, is that the petitioner is A.1, among 5 accused, of C.C.No.17 of 2016, which is the outcome of the crime registered for the offences punishable under Sections 498-A, 406, 420 IPC and Sections 4 and 6 of Dowry Prohibition Act, from the report of the defacto-complainant and the police, having investigated the case, filed the final report in the form of charge sheet, that was taken cognizance for the offences against the accused persons by the learned Magistrate.

6. The application of the prosecution at the post-cognizance stage of said crime for the offences supra against the accused supra from the police final report in allotting the Calendar Case in C.C.No.17 of 2016; in saying there is necessity to send A.1 – Sri K. Srujan Kumar for medical examination to determine the potency, in

saying Sri Gnaneswar Sangapu, s/o. late Narayana Swamy, submitted a report to the police on 22.09.2015 on behalf of his daughter – Smt. Avanthi Sangapu, stating that the marriage of Smt. Avanthi Sangapu with Sri K. Srujan Kumar was performed on 20.08.2014 and at the time of marriage on his demand and of his parents, 600 grams gold ornaments, 3,000 grams silver articles, besides household articles worth Rs.1,00,000/- were given by spending about Rs.25,00,000/- for the marriage and she joined her husband and thereafter she was subjected to physical and mental torture by her husband and in-laws, including for additional dowry, and the marriage was not even consummated for he is an impotent and unfit for marital life, which fact the accused suppressed and cheated the complainant and his daughter, who became a victim, and therefrom a Crime No.596/2015 was registered and in the course of investigation, a notice to A.1 under Section 41(a) of Cr.P.C. was sent, for which A.1 did not respond, but for his parents – A.2 and A.3, and from the completion of investigation, charge sheet filed against A.1. to A.3, that was taken cognizance for the offences supra, by allotting C.C.No.17 of 2016 and A.2 and A.3 were summoned and A.1 was issued a Non-bailable Warrant, for which even he did not turn-up knowingly, from which the potency test of him though, required to be conducted, could not be conducted pending investigation, and a letter was addressed to the Regional Passport Officer, Hyderabad, to impound his Passport, thereby a show cause notice was issued by the Regional Passport Officer and therefrom A.1 appeared before the Court. The investigation clearly reveals, including from the statement of the victim, who is the wife of A.1, of he is an impotent / E.D. Erectile

Disfunction since before the marriage and having suppressed the fact, the accused cause perform the marriage by lured the victim – Avanthi and also harassed her by ruining her mental bliss and it is a fit case to decide whether A.1 is fit for marital life or not and as he is not ready to go for medical examination, the potency test is required in directing him to appear before the Osmania General Hospital for the same.

7. The same is opposed by A.1 in his counter dated 19.09.2016 by denying the averments and by imputing as a false case and by disputing the allegation of marriage not consummated or he is unfit for marital life or he suppressed any such fact or he cheated his wife or father-in-law the complainant, and with a contention that he has not received any notice under Section 41(a) of Cr.P.C. from the police to respond and the contra averments are untrue and baseless, made only to malign him with character assassination against him and his family and the alleged cruelty or harassment from him and his parents is also false, that the mediator Mr. Murali and also the caste elders, after the marriage in July, 2015 between A.1 and his wife, informed his parents-inlaws that he is not fit for marital life and the father of A.1 immediately called A.1 to India to discuss the issue before the elders and in the first week of August, 2015, A.1 arrived from USA and at the instance of his father, he underwent necessary tests in Apollo Hospital, Jubilee Hills, Hyderabad, and it was certified and opined by the Doctors of he is normal and the same is even to the knowledge of the defacto-complainant and his family members, including his wife, and they intentionally and deliberately made wild allegations without any basis against him as if not a potent. He come down to India to

recall NBWs on knowing the same and the NBWs were cancelled on 16.06.2016 and thereafter to prevent him from leaving the country, one way or the other, frivolous petitions are being filed and the police of Women's Police Station, C.C.S., D.D., Hyderabad, forcibly took away his Passport to prevent him from leaving the country and the Court cause returned to him. The requisition to undergo medical test is untenable and the prosecution earlier filed similar application that was dismissed on 29.08.2016 in Crl.M.P.No.3852 of 2016 and inspite of it, once again filed the present petition covered by the impugned orders, which no way lies, nor the purpose can be said to be within the purview of part of further investigation, having already filed a final report in the form of charge sheet, without reserving the right of further investigation and that too, without the leave of the Court of further investigation, the second application on that ground no way lies.

8. The defacto-complainant addressed to the Commissioner of Police, Hyderabad, through email ID, where there is no whisper about his impotency, but for allegation of additional dowry and asked to prevent A.1 from leaving the country and the statement of his wife during police investigation with this allegation cannot be given credence and same has no any evidentiary value, but for to contradict under Section 145 of the Indian Evidence Act. The provisions of Section 53 and 53(a) of Cr.P.C., under which the petition filed, have no application. The sending of A.1 to the potency test for the alleged offences is unknown for not even a rape case, to invoke. Non-consumation of marriage by itself does not amount to impotency, otherwise for Medical Science clarifies

several reasons and thereby the prayer asking him to submit to the potency test is not tenable in the eye of law and hence to dismiss.

9. It is pursuant to which, by the impugned order dated 03.10.2016, the learned XIII Additional Chief Metropolitan Magistrate, Hyderabad, dismissed the application with an observation that the Madras High Court in Crl.RC.No.174 of 2010, dated 14.09.2012 between J. THILAGALAKSHMI Vs. STATE, REPRESENTED BY ITS INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, AMBATTUR, CHENNAI, AND D. SELVAKUMARAN, observed that, from the performance of marriage on 15.12.2006 with the allegation of in the nuptial ceremony, there was no intercourse that could be done by the 2nd respondent-husband and thereby the marriage was not consummated owing to his impotency and in the crime registered under Sections 498-A and 506(2) of IPC r/w. Section 4 of Dowry Prohibition Act and from the matrimonial dispute pending for divorce on the ground of impotency of the husband sought by the wife, the police filed final report by charging the accused, that was taken cognizance in C.C.No.24 of 2008, when CMP.No.5382 of 2009 filed before the Magistrate, Poonamallee, to direct him and his wife to undergo medical examination to know her virginity and of his potency, when allowed by the Magistrate, the High Court set aside the same with an observation, to establish the said facts, the prosecution has to adduce oral and documentary evidence and subjecting the petitioner-wife to undergo virgin test has no nexus either to prove or disprove the prosecution case, so also to determine the potency of the 2nd respondent by subjecting him to medical examination though, it may be useful to him to disprove the case of his wife in

the matrimonial dispute and the direction to undergo such a virgin test is illegal and not sustainable for no nexus with the case projected by prosecution therein. It is pursuant to which, the learned Magistrate dismissed the application by also saying, A.1 filed some medical certificates showing that he has already taken the test on 13.07.2016 at Apollo Hospital, Hyderabad, conducted by Dr. K. Subrahmanyam.

10. The same when impugned by the prosecution in revision before the learned Sessions Judge, the same was allowed by the impugned order by reproducing the provisions of Section 53 and 53-A Cr.P.C., and with an observation that the trial Magistrate already granted permission under Section 173(8) Cr.P.C. for further investigation in Crl.M.P.No.5623 of 2016 sought by the police for ascertaining the status of potency of A.1 in Government Hospital and, having done so, the dismissal order of the application seeking him to submit to the potency test is unsustainable and that too, he already underwent, according to him, such a test before Dr. K. Subrahmanyam of Apollo Hospital, which was prior to the registration of crime from the report of the defacto-complainant, who is the father of the victim, and having then voluntarily undergone, when now the investigating agency moved the petition covered by the impugned order, he is refusing to undergo to ascertain the truth, that too when for the offence of cheating under Section 420 IPC, crime registered and final report filed, saying he and his parents suppressed his impotency and cheated the complainant and his daughter – victim, if he is found to be a potent for nothing to refuse, that too in Government Hospital and virgin test, if any, to be conducted on the female is different from the

status of his potency test, which the investigating agency is incumbent to see as part of investigation of the accusation and thereby dismissal of the application by the learned Magistrate is unsustainable in setting aside the same and in allowing the revision.

11. It is impugning the same with the contentions referred supra, the revision is maintained. Heard the submissions of both sides in the course of hearing referred above, which no way require repetition herein.

12. Similar issue came up for consideration and decided by this Court vide judgment dated 17.02.2017 in Crl.R.C.No.2346 of 2016. Therefore, following the judgment dated 17.02.2017 in Crl.R.C.No.2346 of 2016, the present Criminal Revision Case is also deserves to be dismissed in terms of the said judgment.

13. Accordingly, the order dated 19.12.2016 in Crl.R.P.No.217 of 2016 of the learned Sessions Judge in allowing the application for E.D. medical examination (Potency test), by setting aside the dismissal order dated 03.10.2016 in Crl.M.P.No.5488 of 2016 in C.C.No.17 of 2016 of the learned Magistrate, is upheld by dismissing the revision for no grounds to interfere, for this Court while sitting in revision against it.

14. As a sequel, miscellaneous petitions pending, if any, in this revision shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

20.02.2017
Msr

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