

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.950 OF 2017

ORDER:

Heard the learned counsel for the petitioner/accused and also the public prosecutor representing the State before admission and perused the depositions of P.Ws.1 and 2 and the statement of L.W.3=P.W.2 and the report of P.W.1/ de facto complainant and also the impugned order of the lower court dated 24.01.2017 in CrI.M.P.No.5704 of 2016 in the pending Criminal Case No.1303 of 2015.

2. The impugned order is, by invoking Section 216 Cr.P.C., alteration of the charge by including the offence under Section 354 IPC, said to have been committed by the accused/father of P.W.2, the so-called victim. P.W.1- wife of the accused and de facto complainant, in her report did not state the manner of any indecent behavior resulting in outraging the modesty of the younger daughter of the accused and de facto complainant. What she stated is despite she was saying after crossing certain age he cannot use his hands on the daughters, he was not hearing and he misbehaved on the younger daughter. It was not stated, what is the misbehavior and when it was done, even either in the FIR or even in the evidence of P.W.1. There is nothing in the chief-examination, but for to say, she went to church near her house in June 2012 on one day and after returned to home, she came to

know through her second daughter L.W.3=P.W.2 that accused misbehaved with her. That is the only averment and the FIR is dated 06.06.2012, the date of incident not even mentioned in P.W.1 chief-examination. In the cross-examination, there is a suggestion that accused never harassed her and never misbehaved with the daughters and it is a false complaint given and subsequent to that there was a compromise between P.W.1 and the accused - the couple, in December 2012 in relation to the D.V.C.No.173 of 2012, covered by Ex.D1 memorandum of understanding. That is what P.W.1 deposed, it no way attracts any of the ingredients of Section 354 I.P.C. Coming to P.W.2, what she stated in the chief-examination is that while she was studying, her father locked all the doors of the house and when the elder sister in another bed room, accused came to her and removed her nighty upwards and misbehaved with her by fell on her. She raised cries, meanwhile, her mother knocking the doors came there and she opened the lock and informed the entire episode to her mother. It is not even the FIR of de facto complainant came to know of the occurrence. Even the said chief-examination of P.W.2, whether got any basis in the statement of her. During investigation she did not describe all these facts, what she stated is her father put his hand on her and behaved indecently and spoken in vulgar language. That occurrence is entirely different from what is described in the chief-examination and that material omission which

tantamounts to contradiction brought in her cross-examination and she deposed that what she stated in the chief-examination of the alleged incident, she did not state before the police during investigation. Once such is the case, there is no basis for the lower court to add the charge under Section 354 of I.P.C. The law is fairly settled from the Constitution Bench expression of the Apex Court in ***Hardeep Singh vs. State of Punjab and Orthers***¹, to include the accused as additional accused or to any charge from the evidence, it must be established as something more than *prima facie* accusation required of a charge, in the absence of which it cannot be done.

3. Following the above legal position and for the reasoned discussion supra, the impugned order of the lower court under Section 216 Cr.P.C., by incorporating additional charge under section 354 of I.P.C., is set aside by allowing the revision.

4. Accordingly, this criminal revision case is allowed. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO,J

10.04.2017
SS

¹ (2014) 3 SCC 92