

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.16501 OF 2016

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.162 of 2016 on the file of Additional Chief Metropolitan Magistrate, Nampally, Hyderabad for the offences punishable under Sections 417, 420 & 506 IPC.

The brief facts of the case as per the charge sheet filed in C.C.No.162 of 2016 are that, in the year 2012, the petitioner and the second respondent got acquaintance with each other while they were preparing for the Civil Services Examination at Hyderabad. It appears, the petitioner followed the second respondent on the pretext of marrying her and moved closely with her. It is stated that on 31.12.2012 the petitioner sexually molested the second respondent in a theatre. On 01.01.2013 the petitioner lured the second respondent into sex, even though resisted by her. After passage of time, the petitioner started humiliating the second respondent. When questioned, the petitioner threatened the second respondent with dire consequences of uploading the sexual video into the internet. It is stated in the charge sheet that several attempts were made by the second respondent to convince the petitioner, mother & brother to perform their marriage and not to ruin her life. But, the petitioner denied any relationship with the second respondent and ignored her. Hence, the second respondent/defacto complainant lodged a complaint with the Jawahar Nagar Police Station requesting to take necessary action

against the petitioner for spoiling her life and cheating her by participating in sex with her while promising to marry her.

On receipt of the complaint, Crime No.226 of 2015 was registered at Chikkadpally Police Station for the offences punishable under Sections 376, 417, 420 and 506 IPC. During the course of investigation Section 376 has been deleted. Subsequently the case was transferred to Musheerabad Police Station on 01.06.2015 for further investigation and re-registered as Crime No.133 of 2016 for the offences punishable under Sections 417, 420 and 506 IPC.

The main allegation made in the complaint is that the petitioner promised to marry the second respondent and had a sexual affair with her while promising to marry her. But, the petitioner went back and refused to marry the second respondent after enjoying sexual pleasure from her. Thus, the petitioner allegedly committed an offence punishable under Sections 417 & 420. It is also contended that the petitioner threatened her with dire consequences in case she insisted him to marry, thus constituting an offence punishable under Section 506 IPC.

The present petition is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.162 of 2016 mainly on two grounds. The first is that there is an abnormal delay in lodging a complaint and the second is that the allegations made in the charge sheet and the material available on record produced before the Court would not constitute offences punishable under Sections 417, 420 & 506 IPC. Further, it is contended that lodging complaint and filing charge sheet after completion of investigation

is nothing but abuse of process of the Court and to wreak vengeance against the petitioner who got selected as an I.R.S officer in the year 2013. On the other hand, the second respondent also got married and she was blessed with a child by the date of filing the present petition. All these circumstances would directly indicate that the complaint was lodged to harass the petitioner and prayed to quash the same.

During hearing, learned counsel for the petitioner Sri Metta Chandra Sekhar Rao contended that the allegations made in the charge sheet would not attract offences punishable under Sections 417, 420 & 506 I.P.C and drawn attention of this Court to the judgment of the Apex Court reported in **Deepak Gulati v. State of Haryana**¹ and judgment of this Court in **Sahel Rabiani v. Mohammed Salman Murtaza and another**².

On the strength of the law declared by the Apex Court and this Court in the judgments referred supra, it is contended that lodging a complaint with abnormal delay is nothing but abuse of process of the Court, which falls within guideline no.5 of **State of Haryana v. Bhajan Lal**³ and by applying the principles enshrined in **Bhajan Lal** case, learned counsel requested to quash the proceedings.

Notice was ordered by this Court on 02.12.2016. Even though the notice was served, neither the second respondent nor her Advocate bothered to appear.

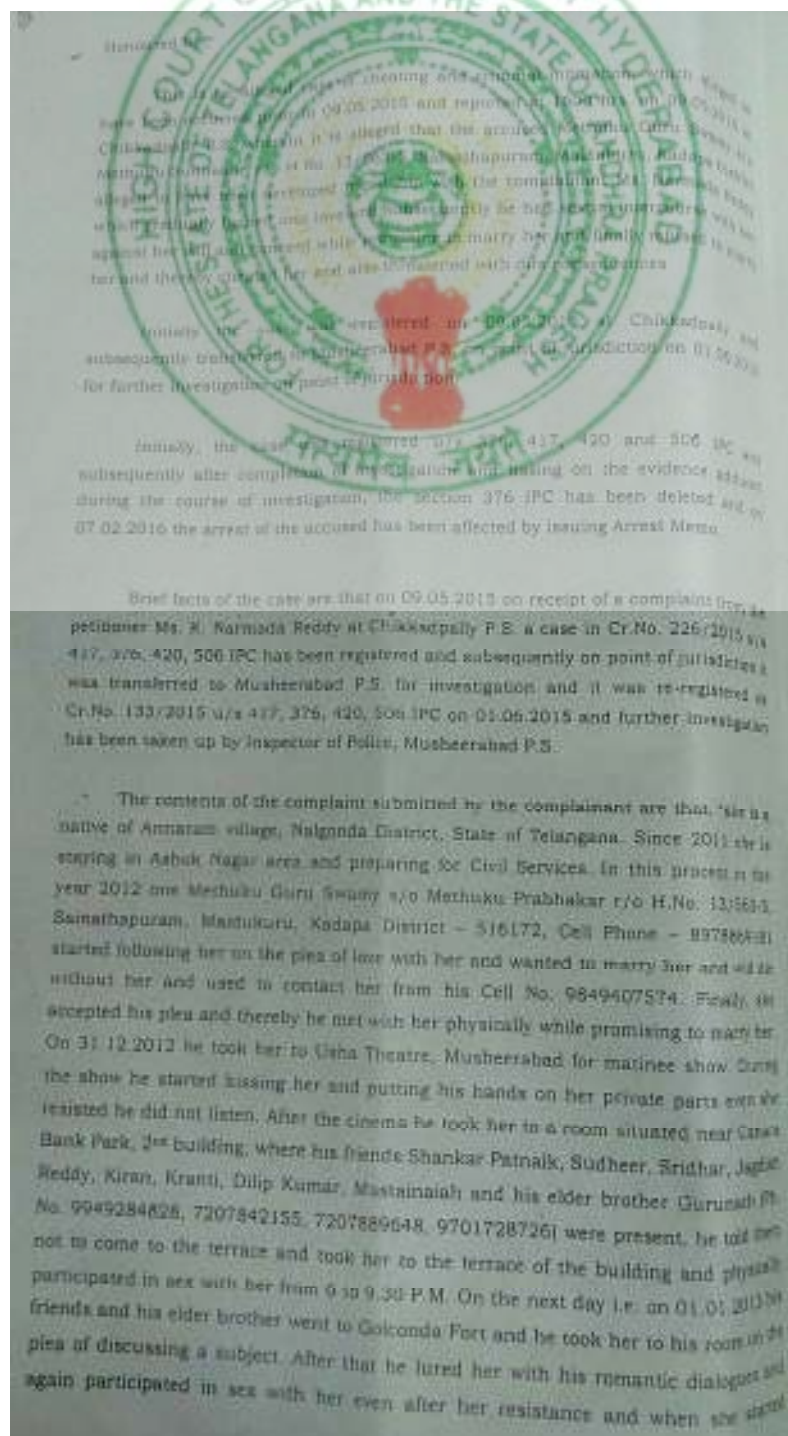
Learned Public Prosecutor representing the State of Telangana contended that inducing the second respondent to

¹ (2013) 7 Supreme Court Cases 675

² 2014 (2) ALD (Crl) 649

³ 1992 Supp. (1) SCC 335

In view of the specific allegations raised by the second respondent, it is relevant to have a glance at the contents in *toto* of the charge sheet, which form a part of the judgment and they read as follows:



saying he promised to marry her. On the next day he came to her and expressed his doubt that she may carry pregnancy and advised her to use contraceptive pills as he may face problem if she carry any pregnancy. On that she became angry and refused to use contraceptive pills. He started abusing her in filthy language and threatened with dire consequences as "I aya mundu viraka pota virula ila bagavaru padu chestanu - andaraku videolu choopistunnu". Before accepting his proposal she told him about her past and family background in detail. On that he threatened to humiliate her publicly by propagating her family background. She suspected that he might have taken the video while they were participating in sex, as he threatened to upload the videos in Internet. She pleaded him not to ruin her life. On that he necked out her from her room and after that he completely started avoiding her and threatened to get her implicate in a false case and went to Chikkadpally P.S. But, her complaint was not accepted. In the month of March, 2013 he contacted her on her Mobile No. 8985039429 from his Mobile No. 7893004071 asking her to come to Sudha Hotel, Chikkadpally for negotiating with her. His elder brother also came with him and his elder brother asked her about her Group-III interview and then requested her to wait for some and promised her to get her marriage performed with his brother and he went away. After few days Guru Swamy along with his elder brother Gurunath and friends came to R.C. Reddy Institute and humiliated her by saying bad words about her character. In the month of April, 2013 she went to Chikkadpally P.S. and requested the Inspector to call Guru Swamy and counsel him as she do not want to spoil his future and the Inspector did the same thing. She was being humiliated at the hands of Guru Swamy and she requested Guru Swamy and his elder brother by sending message on their email addresses guruswamy.methuku@gmail.com and mathuku.guruswamy@gmail.com and mathuku.gurunath@gmail.com on number of times requesting them not to spoil her life. In the month of February, 2014 she wrote number of letters to the mother of Guru Swamy requesting her not to spoil her life. But she has not received any reliable reply from them. On 05.03.2014 his elder brother marriage was solemnized and she decided to attend his marriage and after the marriage she decided to negotiate about her marriage. But, one Rajeshwar (Ph. No. 9948664297) informed her not to attend the marriage and promised her that he will negotiate about her marriage after the completion of his elder brother's marriage. On 08.03.2015 his sister-in-law contacted her and informed her that she doesn't know about their issue and promised her that she will negotiate the matter with her in-laws. After that she has sent mails on number of times on her e-mail ID solaina.muthyamgar@gmail.com requesting her to consider her request. But, no reply has been received. She went to Page Academy to negotiate with his elder brother. But, he refused to meet with her. In the month of July, 2014 she met with Guru Swamy and questioned as to why he spoiled her life by using her physically and why he is humiliating her and requested him to marry her. On that he replied that he got service and her father will not give any dowry if he marries her and if he marries another girl he will get 2-3 Crores towards Dowry as he got service and he threatened her that he can do anything to her and her family members if he wish to. He abused her in filthy language and abetted her to commit suicide if she love him and prove herself as a true lover. His mother also abused her in filthy language from Cell Phone No. 9849174085) and threatened to implicate her in false case and also threatened to create nuisance by visiting their

The allegations in the charge sheet are clear that the petitioner allegedly promised to marry the second respondent and had a sexual intercourse with her. But, the complaint is totally silent as to whether the petitioner had any intention on the date of inducing the second respondent to come forward for sexual intercourse voluntarily. In the absence of any such allegation in the charge sheet and the material, the offences committed by the petitioner punishable under Sections 417 & 420 I.P.C, cannot be accepted. At best, refusing to marry the second respondent after the petitioner was selected into I.R.S service would amount to breach of promise but not an offence punishable under Sections 417 or 420 IPC.

In **Deepak Gulati** case, the Supreme Court held as follows:

“Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

In the present facts of the case, the petitioner and the second respondent while preparing for civil services examination, developed contact with each other. The second respondent in the complaint as well as in the charge sheet also disclosed that the petitioner agreed to marry her. Unfortunately, the second respondent could not get selected in the Civil Services Examinations, whereas, the petitioner got selected as I.R.S officer.

Later, the petitioner refused to marry the second respondent. But, the complaint and the charge sheet are silent as to the intention of the petitioner as on the date of making such promise and having sexual intercourse with her. In the absence of such allegation and the material in support of it, based on the allegation of having sexual intercourse is not sufficient to convict the accused for serious offence punishable under Section 417 of IPC. At best, it amounts to breach of promise.

A similar question was decided by the Apex Court in **Uday v. State of Karnataka**⁴, **Deelip Singh v. State of Bihar**⁵, **Yedla Srinivasa Rao v. State of A.P.**⁶ and **Pradeep Kumar v. State of Bihar**⁷.

In all the above cases, the Apex Court came to the conclusion that in the event that the accused's promise is not false and has not been made with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. Thus, the same would only hold that where the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned.

In **Pradeep Kumar case** the Apex Court held as follows:

“We are of opinion that the expression “under a misconception of fact” is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. In Section 3 of the Evidence Act

⁴ (2003) 4 SCC 46

⁵ (2005) 1 SCC 88

⁶ (2006) 11 SCC 615

⁷ (2007) 7 SCC 413

Illustration (d) states that a person has a certain intention is treated as a fact. So, here the fact about which the second and third prosecution witnesses were made to entertain a misconception was the fact that the second accused intended to get the girl married..... “thus ... if the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person”. ... Although in cases of contracts a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of Section 90 IPC is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence.”

In the present facts, there is nothing to show that the petitioner made any promise with an intention not to marry the second respondent. The statement of P.W.1 recorded during investigation is also silent as to the intention of the petitioner at the initial stage to marry the second respondent and the charge sheet is also silent on that aspect. In the absence of such an allegation that the petitioner had sought sexual pleasure from the second respondent without disclosing intention not to marry her, then, it would fall within the ambit of Section 417.

In **Sahel Rabiani** case, this Court while deciding a petition under Section 482 Cr.P.C for quashment of crime for the offences punishable under Section 376, held that when the petitioner did not disclose that under the false promise to marry her, the petitioner developed illicit physical contacts with her and developed living in relationship for one and half year and had sexual intercourse. This Court held that such sexual intercourse is not against her will and such act would not be punishable under Section 376 and quashed the proceedings.

Sections 417 and 420 prescribed the punishment for cheating and ‘Cheating’ is defined under Section 415 IPC and it reads as follows:

“415. Cheating:- Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"”.

But here, there is no allegation at the initial stage that when the petitioner had developed sexual intimacy with the second complainant, he had no intention of marrying her. In the absence of such concealment of fact and developing physical contact with the second respondent by the petitioner would not fall within the definition of term ‘Cheating’ under Section 415, thereby, the allegations made in the charge sheet would not constitute a *prima facie* offence punishable under Section 417 I.P.C.

Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual

intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was malafide, and that he had clandestine motives.

In view of the law declared by the Apex Court, the alleged act at best, would fall within the act of breach of promise, but not within the act of cheating or fraud. Even to attract the offence punishable under Section 420, there is nothing that the petitioner committed fraudulently to do a particular act or omission. In the absence of those allegations, the petitioner cannot be proceeded for the above offences.

The other act allegedly committed by the petitioner is 'Criminal Intimidation' as defined under Section 503 IPC. To constitute an offence under Section 503 IPC, the prosecution has to satisfy the following ingredients and under Section 506 IPC, the punishment for Criminal Intimidation is defined as follows:

“506. Punishment for criminal intimidation:- Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

if threat be to cause death or grievous hurt, etc.-- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which, may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

The charge sheet is bereft of any allegations to constitute a *prima facie* offence punishable under Section 506 IPC. In the absence of any allegation, either in the charge sheet or in the statements recorded by the police during investigation under Section 161(3), there exists no ground to proceed against the petitioner for the said offences. Having considered the facts and circumstances and the law declared by the Apex Court, it is clear that there is no material against the petitioner to constitute an offence referred supra.

Initially, the police registered the crime against the petitioners for the offences punishable under Sections 376, 417 & 420 IPC, but after investigation, the police deleted Section 376, as sexual intercourse is not against her will and when she herself participated voluntarily in sexual intercourse, allegedly on the promise made by the petitioner to marry her, it itself indicates that the petitioner had no intention initially to develop the illicit contact and not to marry her. On the other hand, when the petitioner and second respondent voluntarily participated in sexual intercourse, that would not fall within the definition of inducement or fraudulent, thereby to attract the offence punishable under Section 420. There must be an act of cheating and fraudulent inducement. In the absence of any inducement, it would not attract fraudulent inducement and the present facts on hand would not attract the offence punishable under Section 420 IPC.

The other ground urged is that there is abnormal delay in lodging the complaint. According to the allegations made in the charge sheet, the alleged incident took place on 31.12.2012 and 01.01.2013 and both the petitioner and second respondent had

sexual relationship with each other. Even there is no explanation for such delay of more than two years in lodging the complaint. If, the second respondent is really subjected to such sexual harassment, by the petitioner who made such alleged false or fraudulent promise, she would not have kept quiet for all these years. On the other hand, it is brought to the notice of this Court that the second respondent got married and blessed with a child. In view of the unexplained delay in lodging the complaint, though not a ground, but this is one of the consideration to quash the proceedings as no reasonable delay is expected to keep the matter pending for such a long time, even after the petitioner got selected as an I.R.S officer and as per guideline no.5 of **Bhajan Lal** case, where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Hence, this is also another ground to quash the proceedings, since the ground is unreasonable.

In the result, the criminal petition is allowed by quashing the proceedings in C.C.No.162 of 2016 on the file of Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

Consequently, miscellaneous petitions, if any, pending in this Petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Dated: 06.01.2017

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