

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1344 of 2009

ORDER:

1 This Criminal Revision Case is filed under Section 397 and 401 Cr.P.C. challenging the order dated 29.06.2009 passed in CrI.M.P.No.7035 of 2008 in C.C.No.199 of 2008 on the file of the Court of the Additional Junior Civil Judge, Chilakaluripet wherein and whereby the petition filed under Section 216 Cr.P.C. was allowed.

2 The learned counsel for the petitioners strenuously submitted that the trial Court, without considering the scope of Section 354 IPC, allowed the petition on erroneous grounds. He further submitted that even if the chief examination of P.W.1 is taken to be true and correct, no prima facie case is made out against the petitioners for the offence punishable under Section 354 IPC and that aspect was not considered by the trial Court in right perspective, therefore, this is a fit case to allow the Criminal Revision Case. He further submitted that if the impugned order is allowed to stand, certainly, it would amount to miscarriage of justice.

3 *Per contra*, the learned Additional Public Prosecutor submitted that the trial Court has rightly considered various aspects and allowed the petition. He further submitted that there are no grounds much less valid grounds to interfere with the order of the court below as the scope of Section 397 Cr.P.C is very limited.

4 Now the point that arises for determination in this Criminal Revision Case is whether there is any illegality or irregularity in the order of the court below?

5 A perusal of the record reveals that basing on the complaint lodged by one T. Kejiya, the Station House Officer, Chilakaluripet registered a case in Cr.No.72 of 2008 against the petitioners for the offences punishable under Sections 341, 323, 448, 509 and 506 r/w 34 of IPC. After completion of investigation, the investigating officer laid charge sheet against the petitioners for the offences referred above. The learned Additional Junior Civil Judge, Chilakaluripet, after satisfying himself with the material placed before him, has taken cognizance of the offence under Sections 341, 323, 448, 509 and 506 r/w 34 of IPC and numbered the charge sheet as C.C.No.199 of 2008. After framing of charges, P.W.1 was examined in chief. At that juncture, the prosecution filed CrI.M.P.No.7035 of 2008 under Section 216 Cr.P.C. The petitioners herein filed counter opposing the petition, contending inter alia, that Section 354 IPC is not applicable to the facts of the case on hand. The trial Court after affording reasonable opportunity to both parties, allowed the petition. Hence the present Revision Case.

6 In order to appreciate the rival contentions, it is not out of place to extract Section 354 IPC, which reads thus:

354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

7 A perusal of the above section at a glance demonstrates that in order to convict a person under Section 354 IPC, establishment of intention of the accused to outrage the modesty of a woman is a condition precedent. To put it in another way, in order to frame the

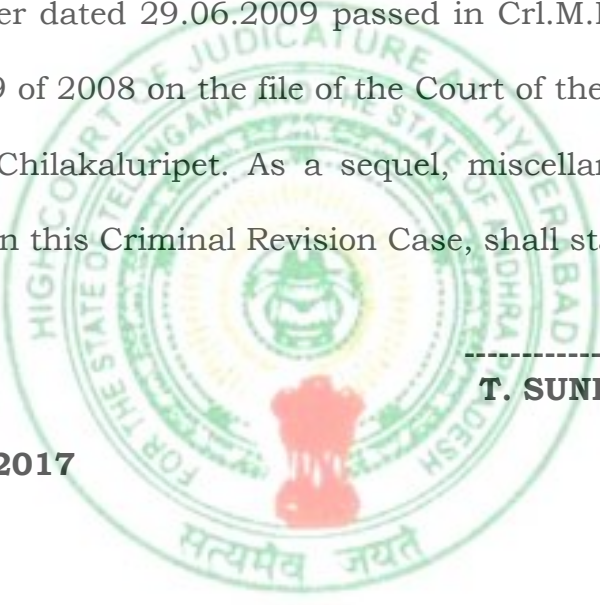
charge under Section 354 IPC, there must be prima facie material to establish that the accused made an attempt to outrage the modesty of the victim.

8 This court carefully scanned the chief examination of P.W.1 in order to ascertain whether the same prima facie satisfies the ingredients of Section 354 IPC. There is no whisper in the testimony of P.W.1 that the petitioners beat her or caught hold of her tuft with an intention to outrage her modesty, leave apart which accused caught hold of her tuft. In chief examination, P.W.1 in unequivocal terms deposed that there is a dispute between her and the accused with regard to laying of cots on the road. It is a matter of common knowledge that in villages, villagers use the road for the purpose of laying cots during night time, more particularly in summer season. In order to add Section 354 IPC, the Court ought to have given a specific finding that the testimony of P.W.1 satisfied the ingredients of Section 354 IPC. The trial Court has not considered the testimony of P.W.1 within the parameters of Section 354 IPC. As observed earlier, the testimony of P.W.1 will not fall within the ambit of Section 354 IPC so as to add that section. Apart from that the FIR was registered on 29.03.2008. If really the petitioners made an attempt to outrage the modesty of P.W.1, what prevented her to mention the same in the complaint? The court shall not lose sight of this aspect also. The trial Court added Section 354 IPC in a routine manner without scrutinising the testimony of P.W.1 and the scope of Section 354 IPC. As rightly pointed out by the learned counsel for the petitioner, if the impugned order is allowed to stand, it would certainly amounts to

miscarriage of justice as the petitioners will be forced to face the rigour of trial for the offence punishable under Section 354 of IPC without there being any prima facie material on record.

9 Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to set aside the under impugned in exercise of jurisdiction under Section 397 Cr.P.C.

10 In the result, the Criminal Revision Case is allowed, setting aside the order dated 29.06.2009 passed in CrI.M.P.No.7035 of 2008 in C.C.No.199 of 2008 on the file of the Court of the Additional Junior Civil Judge, Chilakaluripet. As a sequel, miscellaneous petitions, if any pending in this Criminal Revision Case, shall stand closed.



T. SUNIL CHOWDARY, J.

Date: 31.08.2017
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