

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1604 of 2011

ORDER:

This Criminal Revision Case is filed by the sole accused, under Sections 397 and 401 Cr.P.C., challenging the order dated 18.7.2011 in CrI.M.P.No.34 of 2011 in Sessions Case No.98 of 2011 on the file of the Court of Assistant Sessions Judge at Karimnagar, wherein and whereby the petition filed under Section 227 of Cr.P.C., was dismissed.

2. Sri R.Venkata Rao, learned Counsel representing Sri C.Sharan Reddy, learned counsel for the petitioner submitted that even if the allegations made in the complaint are *ex facie* taken to be true and correct, no *prima facie* case is made out against the petitioner to frame the charge for the offence punishable under Section 376 of IPC. He further submitted that Section 376 of IPC and Section 493 of IPC cannot go together, which aspect was not considered by the trial Court. He further submitted that if the order of the trial Court is allowed to stand, certainly it would amount to compelling an innocent person to face the rigour of trial. *Per contra*, learned Additional Public Prosecutor representing the State submitted that the material produced by the Prosecuting Agency before the trial Court *ex facie* constitute the offences alleged to have been committed by the petitioner. He further submitted that the trial Court considered the scope of Section 227 of Cr.P.C., and rightly dismissed the petition.

3. The facts leading to filing of the present revision are as follows:
The petitioner is facing trial in Sessions Case No.98 of 2011 on the

file of the Court of Assistant Sessions Judge, Karimnagar, for the offences punishable under Sections 493, 376 and 420 of IPC. The case of the prosecution is that the petitioner committed rape on the *de facto* complainant when she was studying 9th class at A.P. Social Welfare High School, Subhash Nagar, Karimnagar, as a result, she conceived and gave birth to a female child. She lodged a complaint to the Station House Officer, II Town Police Station, Karimnagar, who in turn registered Crime No.214 of 1993 for the offence under Section 376 of IPC. Ultimately, the petitioner faced trial in Sessions Case No.302 of 1996 on the file of the Court of II Additional Sessions Judge, Karimnagar. After full-fledged trial, the petitioner was found not guilty for the offence under Section 376 of IPC and accordingly acquitted of the said charge. Thereafter, the petitioner and the *de facto* complainant lived together for a period of seventeen (17) years. It is alleged that the petitioner necked out the *de facto* complainant from the house on the ground that he has to perform the marriage of his daughter. Basing on the complaint lodged by the *de facto* complainant, the Station House Officer, II Town Police Station, Karimnagar, registered a case in Crime No.155 of 2010 under Sections 493, 376 and 420 of IPC. After completion of investigation, the charge sheet was filed against the petitioner for the above sections, which was numbered as Sessions Case No.98 of 2011 on the file of the Court of Assistant Sessions Judge, Karimnagar. During the pendency of the case, the petitioner filed CrI.M.P.No.34 of 2011 before the trial Court to discharge him for the offences under Sections 493, 376 and 420 of IPC, and the same was dismissed by the impugned order. Hence, the present revision.

4. Before advertng to the facts of the case, it is apt to refer the case law on the point:

Union of India v. Prafulla Kumar Samal¹ wherein the Hon'ble apex Court at para No.10, held as under:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Dilwar Balu Kurane v. State of Maharashtra² wherein the Hon'ble apex Court at para No.12, held as under:

12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should

¹ (1979) 3 SCC 4

² (2002) 2 SCC 135

not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See **Union of India v. Prafulla Kumar Samal**, 1979 CriLJ 154] .

5. Let me consider the facts of the case on hand in the light of the above legal principles. The case of the prosecution is that the petitioner committed rape on the *de facto* complainant when she was studying 9th class. A perusal of the record reveals that the petitioner faced trial in Sessions Case No.302 of 1996. The trial Court, after full-fledged trial, arrived at a conclusion that the petitioner was found not guilty for the offence under Section 376 of IPC and acquitted the petitioner. It is not the case of the *de facto* complainant that the said finding was set aside or even challenged. For the self-same incident, again the Station House Officer registered the case under Section 376 of IPC. A person cannot be compelled to face the rigour of trial twice for the same act. Merely because the *de facto* complainant and her mother turned hostile in Sessions Case No.302 of 1996 basing on the promise made by the petitioner, which subsequently proved false, that itself is not a valid ground to register the case against the petitioner for the offence under Section 376 of IPC. Had the trial Court considered the judgment in S.C. No.302 of 1996, while framing the charge, it might have discharged the petitioner for the offence under Section 376 of IPC.

6. Taking into consideration the above facts and circumstances, this Court is of considered view that the petitioner cannot be compelled to face the trial under Section 376 of IPC, which is not maintainable in view of the judgment in Sessions Case No.302 of 1996.

7. As per the prosecution version, after acquittal in Sessions Case No.302 of 1996, the petitioner and the *de facto* complainant lived together for a period of seventeen (17) years under the same roof as wife and husband. It is not possible for the *de facto* complainant to stay in the house of the petitioner for such a long time, without his consent. The possibility of cohabitation between them *prima facie* cannot be ruled out. Whether the petitioner made false promise or not requires full-fledged trial. A perusal of the record *prima facie* reveals that the petitioner enjoyed the *de facto* complainant sexually as if he is her husband. Admittedly, they were in domestic relationship for a long time. The material placed before the Court is *prima facie* sufficient to frame charges against the petitioner for the offences under Sections 493 and 420 of IPC. The order of the trial Court framing the charges for the offences under Sections 493 and 420 of IPC is sustainable and cannot be interfered with.

8. In the result, the criminal revision case is partly allowed, setting aside the order of the trial Court to the extent of charge for the offence under Section 376 of IPC and the petitioner is discharged for the offence under Section 376 of IPC. The order of the trial Court framing the charges for the offences under Sections 493 and 420 of IPC is confirmed. Accordingly, the order dated 18.7.2011 in CrI.M.P.No.34 of 2011 is modified. Miscellaneous petitions, if any pending in this revision, shall stand closed.

T.SUNIL CHOWDARY, J

Dated: 12.10.2017

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