

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.3024 of 2017

JUDGMENT:

The present Criminal Revision Case is preferred questioning the order dated 13.10.2017, in Criminal M.P. No.260 of 2017 in SC.ST.CC.No.33 of 2016 passed by the Special Judge for Trial of Cases under SCs & STs (PoA) Act-cum-VI Additional Sessions Judge, Kurnool, whereby and whereunder the request to discharge the petitioners/accused Nos.2 and 4 respectively, for the offences punishable under Section 420 read with Section 34 of I.P.C. and Section 3 (1) (r) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, was refused dismissing the application filed under Section 227 of the Criminal Procedure Code, 1973 (for short, 'Cr.P.C.').

2. The present Criminal Revision Case is filed under Sections 397 and 401 of the Cr.P.C.

3. Heard Sri Virupaksha Dattatreya Gouda, learned counsel for the petitioners/accused Nos.2 and 4; and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

4. The main submissions of the learned counsel for the petitioners have been that the offence punishable under Section 420 of I.P.C. does not attract as there are no allegations making out a case for the said offence either in the First Information Report or in the

Charge-sheet or in the Statements recorded under Section 161 of Cr.P.C. It is also his submission that the offence punishable under Section 3 (1) (r) of SCs & STs (PoA) Amendment Act, 2015, is not made out for the reason that the alleged offence did not take place within the public view.

5. A few facts are relevant to appreciate the submissions made by the learned counsel:

The *de facto* complainant - Sagali Jyoshna Priyadarshini, resident of Nagireddy Revenue Colony, Kurnool Town, and belonging to S.C. (Madiga). She has completed MBBS course in Kurnool Medical College in 2008. During prosecution of MBBS course, she fell in love with accused No.1- Miriyala Rakesh, who belonged to Non-Scheduled Caste of 2006 MBBS batch, studied in Kurnool Medical College. She developed physical contact since the 1st accused expressed his intention to marry her. Thereafter, when he sought consent of his mother, who is the accused No.2, she agreed and thereafter, at the time of performing accused No.1's sister's marriage, his mother-accused No.2 herein, turned around and refused to take her as daughter-in-law. While the things stood thus, on 22.2.2016, the 1st accused asked her to go over to Kalwakurthy for marriage alliance and when she went there, all the four accused persons abused her by touching her caste, and due to fear she fell unconscious. The accused No.1 and accused No.3, who is the grandfather of accused No.1, brought her to Kurnool Town in a Car on 22.2.2016 at 2.00 a.m.,

dropped her at her residence and again abused her by touching her caste in public place within public view. Further they refused to perform marriage with her. The *de facto* complainant on the ground of cheating and also insulting her by taking the caste, lodged a complaint against accused Nos.1 to 4 alleged to have committed the aforesaid offences.

6. The learned counsel for the petitioner placed reliance in **P. Bhaskar Raju v. The State of Telangana and others**¹ for the proposition that irrespective of the place of offence being a public place or private place, it must be within the public view i.e., member/members of the public present and witnessed the incident to constitute an offence under Section 3 (1) (x) of SC & ST Act. The complaint allegations therein would show that the offence took place in the house of the petitioner/accused, and the complaint is silent about the public view or the presence of public and witnessed the incident thereby it was held continuation of investigation amounts to abuse of process of law.

7. The learned counsel has also placed reliance in **Gara Yesobu and others v. State of Andhra Pradesh and others**². It was a case where charge was bald and does not state who among the 66 persons named as accused uttered the offending words or which of the accused said what words and/or their overt acts and, therefore, it was

¹ 2015 (2) ALD (CrI.) 150 (A.P.)

² 2005 (1) RCR (Criminal) 1000

held that *prima facie*, prosecution for an offence under Section 3 (1) (x) of the Act is an abuse of process of law.

8. The learned VI-Additional Sessions Judge, Kurnool, dismissed the petition observing that though the actual words alleged to have uttered by A-2 and A-4 are not finding place in Section 161 Cr.P.C. statements, but there is allegation that the petitioners have abused the *de facto* complainant in the name of her caste. He has also referred to the ruling in **State of Karnataka v. L. Muniswamy**³, relied on by the learned counsel for the petitioners/A2 and A4, wherein the Hon'ble Apex Court discussing the scope and ambit of Section 227 of Cr.P.C. and the decisions in **Union of India v. Prafulla Kumar Samal**⁴, **Dilware Balu Kurane v. State of Maharashtra**⁵ and **Gara Yesobu** (2 supra), and then referred to the fact-situation that the *de facto* complainant in her Section 161 Cr.P.C. statement made that the family members of accused No.1 having not allowed the accused No.1 to come outside to talk to her, made her stand in front of their house and the petitioners/A-2 and A-4 have stated that they would not allow her into the house as she belongs to 'Madiga' caste, and they even will not give their house for residence for 'Madiga' people and abused her in the name of her caste. Further, holding that there is *prima facie* case against the petitioners for the offence punishable under Section 420 read with Section 34 of I.P.C.

³ AIR 1977 SC 123

⁴ AIR 1978 CJ (SC) 388

⁵ 2002 (1) Supreme 55

as well as Section 3 (1) (r) of SCs & STs (PoA) Act, when there is specific mention that the petitioners/A-2 and A-4 did not allow the *de facto* complainant into their house taking the name of the caste of the *de facto* complainant dismissed the application.

9. Nothing more is required at this stage to hold that there is *prima facie* material making out a case against the petitioners for the aforesaid offences. The intention from the beginning or from the inceptive stage can only be inferred based on the evidence that would be let in by the prosecution.

10. Therefore, at this stage, it would be premature to give a definite finding and set aside the order under challenge passed by the learned Special Judge for Trial of Cases under SCs & STs (PoA) Act-cum-VI Additional Sessions Judge, Kurnool, in CrI.M.P. No.260 of 2017 in SC.ST.CC.No.33 of 2016, dated 13.10.2017, and to discharge the petitioners.

11. Hence, the present Criminal Revision Case is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

December 12, 2017.

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