

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2995 OF 2017

JUDGMENT:

The accused viz., Girada Venkataramana, in S.C. No.111 of 2015 on the file of Assistant Sessions Judge, Rajam, is the revision petitioner herein. Aggrieved by the refusal to discharge, by dismissing his application in Criminal M.P. No.36 of 2016 by the learned Assistant Sessions Judge, Rajam, by order dated 26.09.2017, the present Criminal Revision Case is preferred under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code').

2. The revision petitioner filed the aforesaid discharge petition in Criminal M.P. No.36 of 2016 under Section 227 of the Code requesting to discharge him without framing the charge under Section 376 of the Indian Penal Code, 1860 (for short 'IPC').

3. His main submission has been that as could be seen from the complaint averments, the victim - *de facto* complainant alleged to have given consent and when consent is present, no offence punishable under Section 376 of IPC can be made out. Precisely, on this ground, the discharge was sought for.

4. The learned Assistant Sessions Judge, having referred to the averments mentioned in the discharge petition and the counter filed by the State formulated the point for consideration, 'whether the accused

is liable to be discharged for the charge under section 376 of IPC?', and then referred to the purport of Section 376 of IPC and then dealt with the fact-situation occurring in the present case, referred to the ruling in **Surapathi Laxmana Rao v. State of Andhra Pradesh** [2004 (1) ALT 251 (AP)] relied on by the revision petitioner and then examined the statement recorded under Section 161 of the Code, and having found that the prosecution could make out a case for the offence punishable under Section 376 of IPC, refused to accede to the request and dismissed the application.

5. A few facts, which are necessary for disposal of the present revision, are adverted to.

(a) One Gadi Krishnaveni belonging to Repaka village, Ponduru Mandal, married one Suribabu of Repaka village in Ponduru Mandal in the year 2003 and blessed with a son on 09.07.2006 and named him Devi Varaprasad. To her misfortune, her husband died on 24.06.2012 and she has been staying with her mother-in-law in the same village bringing up her son by doing tailoring profession. The revision petitioner, who is a native of Latchayyapeta village in Burja Mandal, serving as a soldier in Indian Army, had, somehow, secured the mobile numbers i.e., '7799076667' and '9642838795' belonging to the *de facto* complainant and got acquainted with her by making phone calls from his mobile numbers '7696593209' and '8106167488' and '8437252215', gave his identity initially and used

to express that he was fond of her and he would marry her. Though, she felt inconvenient for quite some period, later she informed her parents and her mother-in-law, and as she was feeling loneliness, and the continuous pleadings made by the revision petitioner to obey his proposals, she agreed and then he started resorting to use of erotic words over phone.

(b) While the things stood thus, on 25.01.2013, the revision petitioner came down to Srikakulam and requested the *de facto* complainant to come over to Srikakulam and when they met at RTC Complex, Srikakulam, he took her to Room No.14 of Vinus Hotel, Srikakulam, and there, had sexual intercourse and later also continued the same, and thereafter, he changed his SIM number having quenched his lust and stopped conversing with her and even wantonly avoiding to quit his contacts with her. Thus, the things went on and ultimately stating that his parents would die if he marries her, bluntly refused to marry her and left the village and that compelled her to lodge a complaint.

6. Heard Sri B.M. Patro, learned counsel for the revision petitioner, and perused the material on record.

7. The learned counsel for the revision petitioner places reliance in **Kukkala Siva Krishna alias Siva v. Chodem Kalyani**¹

¹ 2015 (1) ALD (Crl.) 543

and **Penki Srinivasa Rao v. State of Andhra Pradesh**² rendered by a learned Single Judge of this Court.

8. In both the cases, First Information Reports (FIR) were quashed so far as the offence punishable under Section 376 of IPC is concerned. But, in **Kukkala Siva Krishna alias Siva**¹, the *de facto* complainant and the accused entered into compromise and made a request to compound the case. Even in **Penki Srinivasa Rao**², the narration of facts would reveal that there was again compromise between the *de facto* complainant and the accused, and as the offence punishable under Section 376 of IPC being non-compoundable, quash petition was filed and the petition was partially allowed quashing the offence punishable under Section 376 of IPC.

9. The learned Additional Public Prosecutor, per contra, strongly resists the request contending that consent is no ground when it is tainted with deception.

10. It would be superfluous if the fact-situation is referred again. Nothing more is required to arrive at the conclusion that it is not a fit case to set aside the dismissal order passed by the learned Assistant sessions Judge refusing the request to discharge the revision petitioner. Both the rulings relied on by the learned counsel for the revision petitioner altogether stand on a different footing. In both the cases, there was compromise entered into between the parties. In the

² 2015 (1) ALD (Crl.) 946

case at hand, such is not the situation occurring. The learned counsel for the revision petitioner, somehow, did not bring it to the notice of this Court while referring to the rulings as to the compromise effected between the parties in both the cases. It is obvious that when consent is obtained by deception, as the one occurring herein, stands as a concrete example, it is to be held that the submissions of the learned counsel are not worthy of acceptance. There is no merit in the present revision case.

11. Therefore, the Criminal Revision Case is dismissed, at the admission stage itself, confirming the order under challenge.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision stand dismissed.

A. SHANKAR NARAYANA, J

November 27, 2017.
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