

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.8595 of 2017

ORDER:

In this petition filed under Section 482 Cr.P.C. the petitioners/A2, A4 and A5 urge to quash the proceedings against them in S.C.No.298 of 2017 on the file of IV Additional Assistant Sessions Judge, Guntur taken cognizance for the offences against A1 under Sections 306, 120B IPC and against A2 to A6 under Sections 120B and 212 IPC.

2) Prosecution case briefly is that the deceased—Bala Sandhya Rani was studying II Year PG in DGO at Guntur Medical College, Guntur. A1 is the Professor in Department of Gynaecology and Obstetrics and the deceased was doing PG under A1. It is the allegation of prosecution that A1 used to harass, intimidate and insult the deceased every now and then for every small issue before the co-students, staff and patients for no fault of deceased. She bore the torture for some period and later informed to her husband and parents, who, once took the deceased to the private clinic of A1 and her husband A3 and requested her not to harass their daughter. On that A1 got enraged and insulted deceased in front of her relations. Later, A1 increased her humiliation against the deceased which she could not tolerate. Ultimately the deceased committed suicide by injecting heavy dose of sedatives in the pent house where she was staying for rent and left suicide note stating that

A1's humiliation was the cause for her death. On the report lodged by LW1—the husband of the deceased on 24.10.2016, the police of Nagarapalem PS registered a case in Cr.No.342 of 2016 under Section 306 IPC initially against A1 and investigated into.

3) A3 is the husband and A4 is the son of A1. A3 is the General Surgeon in GGH, Guntur and A4 is studying I Year PG in General Medicine at Mahatma Gandhi Medical College, Pondicherry. A6 is the Viyyanka of A1 being the father of her son-in-law. A2 and A5 are known persons of A1. The allegation against A2 to A6 is that they harboured A1 to prevent the police ranks to arrest her. Hence, the Investigating Officer (IO) charge sheeted them for the offences under Sections 120B and 212 IPC.

4) Heard.

5) Vehemently opposing the criminal proceedings against petitioners/A2, A4 and A5, learned counsel for petitioners would argue that except a bald statement in the last paragraph of the charge sheet to the effect that A2 to A6 have conspired with A1 to conceal her so as to prevent the police ranks from arresting her until she obtains anticipatory bail and therefore they are liable for the offences under Sections 120B and 212 IPC, the IO has not mentioned the actual role allegedly played by the petitioners/A2, A4 and A5 i.e. the method and manner in which they tried to conceal A1 from being apprehended by the police, the place where

they harboured her and how the police could trace and arrest A1 and the witnesses in whose presence they have detected the place of concealment of A1 etc. facts. Learned counsel vehemently argued that except stating that petitioners have confessed their guilt, the IO has not produced any independent evidence to establish the charges levelled against petitioners/A2, A4 and A5. He relied upon the decision of the Apex Court in *Sanjiv Kumar v. State of H.P.*¹

6) Per contra, while opposing the petition, learned Additional Public Prosecutor argued that petitioners/A4, A2 and A5 who are the son, and close associates of A1's family, tried to harbour A1 from legal punishment and therefore they are guilty of offences under Sections 120B and 212 IPC and this aspect can be established during trial and as the matter is coming up for trial, the petition may be dismissed.

7) The point for determination is:

“Whether there are merits in the petition to allow?”

8) **POINT**: The gravamen of the accusation against the petitioners/A2, A4 and A5 is that they have harboured A1 to prevent the police ranks to arrest her and thus committed the offences under Sections 120B and 212 IPC. Though conspiracy is

¹ (1999) 2 SCC 288

attributed against them the said offence is not with reference to Section 306 IPC alleged against A1, but the conspiracy is only with reference to Section 212 IPC i.e. they conspired and concealed A1 from being arrested by the police. In that view, the main charge against them is under Section 212 IPC.

The ingredients of Section 212 are

- i) *commission of an offence.*
- ii) *harbouring or concealing the person known or believed as offender.*
- iii) *such concealment must be with the intention of screening him from legal punishment.*

Thus, in order to convict a person under Section 212 IPC, it must be established that the offender knew the person whom he concealed has committed certain offence and with that knowledge, he harboured him with the intention of screening him from legal punishment. In *Sanjiv Kumar*'s case (1 supra), the Apex Court held thus:

“Para-21: It may be stated that to attract the provisions of Section 212 IPC , it is necessary to establish commission of an offence; harbouring or concealing the person known or believed to be the offender; and such concealment must be with the intention of screening him from legal punishment...”

In the light of above decision of Apex Court, it is to be seen whether there is a *prima facie* material to sustain the charge against petitioners or not.

9) I have carefully gone through FIR, charge sheet and the statements of witnesses. The FIR was lodged by the husband of the deceased on 24.10.2016 wherein, while narrating that his wife committed suicide, he alleged that due to the mental torture caused by A1, his wife committed suicide. Naturally, he did not mention anything against other accused as by that time the alleged act of conspiracy to conceal the A1 from legal punishment did not occur.

10) On perusal, in the major part of charge sheet the circumstances which led the deceased to commit suicide were narrated. Towards end, it was mentioned that on 13.11.2016, LW40 interrogated A2 in the presence of LWs.30 and 31 wherein he confessed to have concealed A1 to prevent the police ranks to arrest her. As such, LW40 added A2 in the array of accused for the offence under Section 212 IPC. Then, on 15.11.2016, LW 40 interrogated A1, A3 to A6 in the presence of LWs.32 and 33. While A1 confessed her offence, A2 to A6 confessed to have concealed A1 to prevent the police ranks to arrest her. Thus, LW40 arrested A1 under Section 306 IPC, A3 under Section 120B IPC and A4 to A6 under Section 212 IPC and seized cell phones from A3 and Kotak Mahindra Bank Credit Card No.4147671600790939 of A5 from his possession under the cover of Mahazar attested by LWs.32 and 33.

Thus, a scrutiny of charge sheet reveals, the IO arrayed A2, A4 and A5 mainly on the strength of their alleged confessions and nothing more.

11) Then, I perused 161 Cr.P.C. statements of witnesses. LW1 is the husband of the deceased and he is the complainant; LW2 is the father, LW3 is the mother and LWs.4 and 5 are brothers and LW6 is the senior paternal uncle of the deceased. Their statements do not reveal anything about the role played by petitioners/A2, A4 and A5 and the method and manner they allegedly concealed A1.

a) LWs.7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 are the batchmates of the deceased and they spoke about the alleged harassment of A1 but did not say anything about other accused.

b) One Jallipalli Santhi is the owner of the pent house where the deceased was residing and one Tanneru Sri Lakshmi is the tenant in the ground portion of J.Santhi. These two witnesses in their statements stated about the deceased staying in the pent house for rent and their knowing about her and her husband and the incidents that took place on the date of incident etc. facts. They too did not state anything about the complicity of A2, A4 and A5.

c) Thus, statements of the witnesses available on record do not reveal any incriminating material against petitioners/A2, A4 and A5. Therefore, it is clear that the accusation against them hinges only on their alleged confessions before the mediators in the

presence of IO. The confessional statement dated 13.11.2016 is that of A2—Tella Haribabu made before the mediators—Uppathalli Sambasiva Rao and Ch.V.Sitharamaiah in the presence of SDPO. We will find the signatures of mediators and SDPO on the mediators' report, whereas the statement of A2 was separately recorded by SDPO. Similarly, the confessional statements dated 15.11.2016 of A1, A3 to A6 were recorded in the presence of mediators i.e. VROs., Guntur by the SDPO. Therefore, except the so-called confessional statements recorded by the SDPO in the presence of mediators, there is no independent material to connect A2, A4 and A5 to the offence. As rightly argued by learned counsel for petitioners, the IO has not placed on record the method and manner in which the petitioners concealed A1 from being arrested by the police and the place of such concealment.

12) The admissibility of confessional statements made by an accused before a Police Officer or to some other persons while in the custody of police has been dealt with by Sections 25 and 26 of Indian Evidence Act.

Section 25 says that no confession made to a Police Officer shall be proved as against a person accused of any offence. This Section raises an embargo as regards proof of confession before a Police Officer. It must be noted that by the time a person makes a confession before a Police Officer, he need not be in police custody nor he be an accused. Still his confession will not be admissible at

the trial because at the time of proving the confession, he becomes an accused (vide *State of U.P vs. Deoman Upadyaya*²).

Section 26 lays down that no confession made by any person whilst he is in the custody of a Police Officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person. The object of Section 26 is to prevent the abuse of powers by the police and secure confession by unlawful method. This Section reminds that confession must always be voluntary (vide *Ramlal Lohar v. State of Assam*³).

13) Thus, on a conspectus of material on record, this Court is of the considered view that there is no *prima facie* material to connect the petitioners/A2, A4 and A5 to the offence and hence directing them to stand for trial would amount to sheer abuse of process of law.

14) In the result, this Criminal Petition is allowed and the proceedings in S.C.No.298 of 2017 on the file of IV Additional Assistant Sessions Judge, Guntur are quashed sofaras petitioners/A2, A4 and A5 are concerned.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 20.06.2018

Murthy

² AIR 1960 SC 1125

³ 1981 Cr.L.J.1734