

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Crl.R.C. No.439 of 2018

ORDER:

The challenge in this Crl.R.C at the instance of the petitioner/accused is the order dated 23.01.2018 in Crl.M.P.No.670 of 2014 in C.C.No.1 of 2014 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad, whereby and whereunder the learned Judge dismissed the petition filed by the petitioner under Section 239 Cr.P.C for discharging him for the offences under Sections 354 and 323 IPC.

2) Heard Sri Mirza Nisar Ahmed Baig Nizami, learned counsel for petitioner and learned Additional Public Prosecutor for the State (Telangana).

3 a) The first and foremost ground on which the learned counsel for petitioner seeks for discharge is, there is any amount of inconsistency and divergence between the version of the *defacto* complainant and LW.2 with regard to the accused who allegedly involved in the offence. While the *defacto* complainant would name Syed Ainullah Hussaini @ Mehadi as the accused, LW.2, who filed O.S.No.1101 of 2013 on the file of IX Junior Civil Judge, City Civil Court, Hyderabad against one Syed Mohd. Waliullah Hussaini seeking perpetual injunction decree, in his affidavit while describing the offence, named the defendant i.e, Syed Waliullah Hussaini as the accused. Since there is any amount of discrepancy in the very name of the accused, stated by the *defacto* complainant and LW.2,

the Trial Court ought to have considered this aspect and discharged the accused. Learned counsel relied upon the decision in *Union of India vs. Prafulla Kumar Samal and another*¹, to submit what are the aspects that have to be considered for framing of charges.

b) The next contention of learned counsel for petitioner is that there are disputes between the family of the *defacto* complainant and accused and in fact the accused herein has lodged police report with P.S Mangalhat in respect of assault made on him by the brothers of the *defacto* complainant which was registered as Crime No.116/2013 by the police under Section 307 r/w 34 IPC on 24.04.2013 at 22:30 hours. Whereas the *defacto* complainant's report was registered by the police as Crime No.115/2013 on the same day at the same time for the offences under Sections 354 and 323 IPC. Learned counsel would point out that the FIR in Crime No.116/2013 and the civil suit in O.S.No.1101/2013 and the earlier other disputes would clearly manifest that there were no good terms between the parties and thereby, the *defacto* complainant and her people have foisted a false case against the accused in Crime No.115/2013. The Trial Court ought to have considered this aspect and allowed the discharge application. He relied upon the decision in *Harshendra Kumar D vs. Rebatillata Koley etc*², to submit that the Court while considering the discharge application should take into account the facts narrated in relevant documents produced by the accused.

¹ (1979) 3 SCC 4

² AIR 2011 Supreme Court 1090

c) Learned counsel would finally submit that the Trial Court took into consideration only the version of the complainant as well as the statements of the witnesses i.e, LWs.2 to 5 to come to a hasty conclusion that a *prima facie* case was made against the accused and erroneously dismissed the petition. He thus prayed to allow the Crl.R.C.

4 a) Per contra, learned Additional Public Prosecutor would submit that there is no difference between the name of the accused mentioned by the *defacto* complainant and subsequently in the civil suit by her father. Even if such a difference is allegedly there, since the suit was filed long after the incident and that too by a third party i.e, the father of the complainant and not by the complainant herself, the difference if any in the name of the accused found in the subsequently laid civil suit cannot be taken into consideration to hold that the prosecution case is a myth and a fabricated one.

b) Secondly, he would argue that merely because a counter complaint was lodged by the accused against the family members of the *defacto* complainant and civil suit is pending between the parties, that alone cannot be a ground to jump into a conclusion that the complaint lodged by the *defacto* complainant is a false one. He would strenuously argue that the truth or otherwise of both the complaints can be determined only when the matters are put to trial. He thus prayed to dismiss the Crl.R.C.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in the Crl.R.C to allow?”

6) **POINT:** The brief facts in Crime No.115 of 2013 are that on the night of 24.04.2013 at about 10:30pm when the *defacto* complainant came out of her house for nature's call and when she reached the nearby bathroom, the accused by name Mehadi came to her and caught hold her neck and pulled her dress (chunni) with an intention of outraging her modesty and also beat her on her neck and stomach with hands. Immediately she shouted and her brother saved her from the clutches of accused. Upon her complaint, Crime No.115/2013 was registered and after investigation charge sheet was filed by the police for the offences under Sections 354 and 323 IPC. The case was taken cognizance and registered as C.C.No.1 of 2014. The petitioner/accused filed CrI.M.P.No.670 of 2014 seeking to discharge him for the offences alleged. The Trial Court upon hearing both the petitioner as well as the Public Prosecutor, observed that the statements of LW.1 i.e, Smt. Shabana Begum, the victim and also the statements of other witnesses i.e, LWs.2 to 5 would *prima facie* manifest the commission of the offence and hence there were sufficient grounds for framing the charges and to proceed with the case and accordingly, dismissed the petition.

7) I have gone through the FIR, charge sheet and statements of the aforesaid witnesses. As observed by the Trial Court, they *prima facie* manifest the commission of the offence.

8) The principle for framing of the charge is to the effect that the Court has to consider the materials placed by the prosecution and considering their presumptive truth, if they manifest the commission of an offence, it

has to frame the charge. On the other hand, if the materials placed by the prosecution even if accepted to be true, do not *per se* disclose the commission of any offence, the Court has to discharge the accused without the necessity of facing the ordeal of the trial. Coming to the present case, when the material placed by the prosecution is perused, it no doubt reveals a *prima facie* material against the accused.

9) Then the submission of learned counsel for petitioner is that in the suit—O.S.No.1101 of 2013 filed by Shaik Siraj (LW2), he mentioned the name of the defendant as Syed Mohd. Waliullah Hussaini. A perusal would show, in Para 5 of the affidavit in I.A.No.364 of 2013 in O.S.No.1101 of 2013 the plaintiff (LW.2) narrated about the incident that took place on the night of 24.04.2013 and stated as if the defendant committed the offence and Crime No.115 of 2013 was registered. Thus, no doubt in the affidavit the name of the accused is mentioned as Syed Waliullah Hussaini. Coming to the FIR No.115/2013, in complaint the name of the accused is mentioned as Mehadi. Whereas in 161 Cr.P.C statement of complainant which was recorded by the police on 25.04.2013, the name of the accused is mentioned as Syed Ainullah Hussaini @ Mehadi. Thus, there is an apparent difference between the name of the accused mentioned in the FIR and 161 Cr.P.C statement of the complainant on one hand and name of the accused mentioned in the affidavit of LW.2/plaintiff on the other. The question is whether by this count it can be concluded that the prosecution case is a myth and concocted one and no *prima facie* is made out from the record. In my considered view, that cannot be the consideration. As argued by the

learned Addl. Public Prosecutor, the suit—O.S.No.1101 of 2013 was filed about two months after the incident of offence and in the said suit apparently a different name is mentioned. It should be noted that the suit was not filed by complainant by giving two different names and on the other hand the suit was filed by her father wherein apparently a different name is mentioned. It is at this stage not known why and how a different name is mentioned in his affidavit. Ofcourse, it is the argument of learned Addl. Public Prosecutor that there is no difference at all in the names mentioned by the *defacto* complainant and her father in the affidavit. Therefore, in the light of these facts, the apparent discrepancy if any in the name of the accused as mentioned by the LW.2 can only be taken advantage by the accused and put to LW.2 during trial but that document cannot now be taken for consideration to conclude there is no *prima facie* case at all or that the prosecution case is false in its entirety.

10) Next, to consider the documents, they must be uncontroverted ones. Here the counter complaint lodged by the accused and the suit filed by LW.2, in my view, can't be taken as uncontroverted documents to disbelieve the *prima facie* credibility of complainant's version. Those documents have to be considered when the matter comes up for trial and not at this stage. Running the risk of repetition, the counter complaint given by the accused herein is concerned, merely because a counter complaint is given by the accused, that cannot be taken into consideration to hold that the complaint given by the *defacto* complainant in Crime No.115/2013 is an untruthful one. The veracity and truth of both the complaints can be considered only when the respective matters are put to

trial. Therefore, the cited decisions will not help cause of the petitioner in this Criminal Revision Case.

11) As the matter stands, as already noted supra, the FIR and the statement of LW1 as well as the statements of the other witnesses manifest a *prima facie* case to frame the charges. Therefore, I find no illegality or perversity in the order of the Trial Court.

12) Finally it is argued that even if the prosecution case is accepted to be true, the charge under Section 354 IPC does not sustain because mere pulling of the chunni will not amount to outrage of the modesty of the *defacto* complainant. This Court at this stage do not want to comment on this aspect because the Trial Court having taken into consideration the associated facts embarked upon framing the charge. At this stage, the only discussion that can be made is whether or not there is a *prima facie* case to hold that an offence has been committed.

13) In view of the above discussion, I find no merits in the Criminal Revision Case and accordingly, the same is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 26.02.2018

Note: Issue C.C by tomorrow.

(b/o)
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