

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE No.821 of 2018

ORDER :

This Criminal Revision Case is arising out of the order dated 12.02.2018 in CrI.MP.No.218 of 2018 passed by the learned Metropolitan Sessions Judge, Hyderabad, allowing the petition filed by the 1st respondent - State of Telangana, through S.I. of Police, Women Police Station (WPS), DD, Hyderabad, permitting to refer the petitioner/A.1 to Erragadda Hospital, Hyderabad, for psychiatric opinion.

The wife of the petitioner, who was impleaded as respondent No.3 in this revision vide order dated 11.09.2018, has lodged a complaint on 21.06.2016 against the petitioner and others and the same has been registered as Crime No.388 of 2016 of Women Police Station, DD, Hyderabad, for the offences punishable under Sections 498-A, 406, 420 and 506 of IPC and Sections 4 and 6 of the Dowry Prohibition Act. Basing on the allegations in the said complaint, the State of Telangana, through WPS, DD, Hyderabad, has filed an application in CrI.MP.No.4020 of 2016 in Crime No.388 of 2016 on the file of XIII Additional Chief Metropolitan Magistrate, Mahila Court, Hyderabad, seeking to send the petitioner for potency test. Accordingly, vide order dated 06.10.2016, the learned XIII Additional Chief Metropolitan

Magistrate, Mahila Court, Hyderabad, has permitted the Investigating Officer to take steps to send the petitioner to Osmania General Hospital (OGH), Hyderabad, for Medical Check up/Potency Test and the petitioner was also directed to attend the OGH for Medical Check up/Potency Test on the date fixed by the Investigating Officer. Aggrieved by the said order dated 06.10.2016, the petitioner has filed Crl.R.P.No.221 of 2017 in Crl.A.(SR).No.4456 of 2017 on the file of the Metropolitan Sessions Judge, Hyderabad. On consideration of the arguments of both sides and the material on record, the learned Sessions Judge, vide order dated 19.09.2017, has dismissed the revision petition and the Investigating Officer was directed not to insist the petitioner to appear before Erragadda Mental Hospital and to submit the report collected from the Osmania General Hospital, Hyderabad, with regard to the examination of the petitioner and file it before the Court. Taking cue from the observations made in the said order dated 19.09.2017 in Crl.R.P.No.221 of 2017, that the Investigating Officer cannot insist the accused to appear before Erragadda Mental Hospital without permission of the Court, the State of Telangana, through S.I. of Police, WPS, DD, Hyderabad, has filed Crl.MP.No.218 of 2018 on the file of the learned Metropolitan Sessions Judge, Hyderabad, seeking to accord permission to refer the accused to Erragadda Hospital for Psychiatric opinion. Considering the material on record, vide impugned order dated 12.02.2018 in

CrI.MP.No.218 of 2018, the learned Sessions Judge has allowed the petition permitting to refer the accused to Erragadda Hospital, Hyderabad, for Psychiatric opinion. Aggrieved by the same, the petitioner has filed the present revision case.

Heard learned counsel for the petitioner/A.1 and the learned counsel for impleaded respondent No.3. Perused the order under revision.

Learned counsel for the petitioner submits that the petitioner has already undergone for Potency Test and the report is awaited. It is further submitted that the petitioner was referred to Erragadda Hospital, which is meant for Psychiatric patients, and the petitioner need not undergo any examination at Erragadda Hospital with regard to his mental status. It is also submitted that the petitioner is working as a Chartered Accountant and it is only to harass him, at the instance of respondent No.3, the police have filed the above petition seeking permission to refer the petitioner to Erragadda Hospital for psychiatric opinion, which is no way relevant for the offence punishable under Sections 498-A, 406, 420 and 506 of IPC. It is further submitted that the Medical Board, OGH, cannot make such a request for evaluation of the mental health of the petitioner without there being any request from anybody and, therefore, the investigation itself is not on proper lines.

On the other hand, learned counsel for respondent No.3 submits that as the petitioner has committed an offence under Section 420 IPC by not disclosing that he was incompetent and married respondent No.3 and to prove those aspects, the Investigating Agency has sought for Potency Test of the petitioner. Accordingly, when the petitioner has attended before the Medical Board for Potency Test, while conducting the Potency Test, the Medical Board thought that the petitioner is required to be mentally evaluated and, therefore, the Investigating Agency has filed a petition before the learned Metropolitan Sessions Judge, Hyderabad, and obtained permission for sending the petitioner for Psychiatric opinion to Erragadda Mental Hospital.

As a matter of fact, the Medical Board of OGH was requested to conduct Potency Test. It is neither the case of the petitioner nor the case of respondent No.3 that there was any problem with regard to the mental condition of the petitioner. However, the Medical Board of OGH strangely came to a conclusion that the petitioner is required to be evaluated mentally. The contention of the learned counsel for the petitioner is that the petitioner is not willing to undergo for psychological evaluation as he is not suffering from any psychiatric problem and, therefore, the petitioner cannot be compelled to go to Erragadda Mental Hospital, Hyderabad, for Psychiatric opinion.

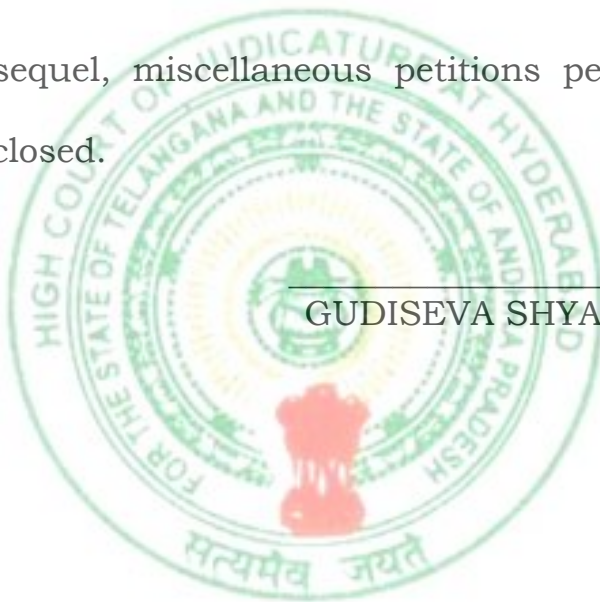
The impugned order passed by the learned Sessions Judge is not based on any material evidence and it is not even a speaking order and, therefore, the same is liable to be set aside.

For the foregoing reasons, the Criminal Revision Case is allowed setting aside the impugned order dated 12.02.2018 in Crl.MP.No.218 of 2018 passed by the learned Metropolitan Sessions Judge, Hyderabad.

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

13.11.2018
Msr

GUDISEVA SHYAM PRASAD, J



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