

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.7066 of 2018

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/A.1 seeks to quash the proceedings against him in Crime No.57 of 2018 of E.Bayyaram Police Station, Bhadradri Kothagudem District, registered for the offences under Section 376 r/w 511 IPC, Sections 8 and 17 of POCSO Act and Section 3(i)(iii) and 3(2)(v) of SC / ST (POA) Act, 2013.

2) The prosecution case is that on 21.05.2018 at about 18:30 hours, the 2nd respondent/*defacto* complainant gave report to the police stating that about 7 or 8 days ago, her neighbour i.e, A.2 took her to Manuguru stating that she had some work in the Bank and after attending the bank work, they went to Matinee show and then A.2 purchased some vegetables and fruits. Thereafter, A.2 called the petitioner stating that it was very late and so the petitioner came at about 7pm and picked them up on his motor cycle and they were proceeding to Chegarshala towards Edulla Bayyaram and on the way, A.2 changed from middle to back seat on the motor cycle stating she was getting vomiting and after reaching the outskirts of Janampeta village, the petitioner took them to Eucalyptus Garden opposite to S.T Colony of Bhupathiraopeta and stopped the motor cycle at a distance of 200 mtrs, where big tress and bushes are situated. Then they got down from the motor cycle and the petitioner caught hold the hands of the victim girl (LW.1) and kissed her cheeks, for which she was shocked and questioned the attitude of the petitioner and requested to leave her but the petitioner

tried to commit rape upon her forcibly and A.2 also supported the same. Thereafter LW.1 managed to escape from the clutches of A.1 and A.2 into eucalyptus plantation. During the scuffle, chunni of LW.1 fell in the scene of offence and her bangles were also broken. Though A.1 searched for her with the help of cell phone torch but could not trace her and left the place. On the next day, A.2 handed over the chunni of the LW.1 to her mother i.e, LW.2 and out of fear, LW.1 did not inform the said incident to her parents till the evening of 20.05.2018. It is only when A.1 used to look at her angrily whenever he visited the house of A.2, LW.1 informed the entire episode to her parents and then they gave report to police. Basing on the said report, S.I of Police registered a case and took up investigation.

- 3) The investigation is reported to be pending.
- 4) Heard Sri C. Damodar Reddy, learned counsel for petitioner and learned Additional Public Prosecutor for the State (Telangana).
- 5) Denying the allegations, learned counsel for petitioner argued that the petitioner is innocent and he belongs to congress party and he was falsely implicated by the members of TRS party. He further argued that there was no fair and proper investigation in this matter and that the guidelines framed by the Apex Court in the decision reported in ***Dr. Subash Kashinath Mahajan v. State of Maharashtra and another***¹ were not followed. He further submitted that continuation of investigation would

¹ 2018 (1) ALD (Cri.) 629 (SC)

amount to abuse of process of the Court. He thus prayed to allow the petition.

6) Per contra, learned Additional Public Prosecutor argued that the DSP has conducted investigation and recorded the statements of the witnesses, which clearly established the guilt of the accused and there is no violation of the law and procedure in this matter and therefore, the petition may be dismissed.

7) The point for determination is:

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

8) **POINT**: A perusal of the FIR and the 161 Cr.P.C statements of the victim and LWs.2 to 11 recorded by the DSP, Manuguru, depict a strong *prima facie* case against the petitioner/accused. In ***Dr. Subhash Kashinath Mahajan¹***, Hon’ble Apex Court has given the following guidelines:

“Para 85. Our conclusions are as follows:

i) Proceedings in the present case are clear abuse of process of court and are quashed.

ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D Suthar (supra) and Dr. N.T. Desai (supra) and clarify the judgments of this Court in Balothia (supra) and Manju Devi (supra);

iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of

the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.”

In the instant case, the investigation is conducted by the DSP and he recorded the statements of the witnesses. Thus, so far no procedural deviation as alleged is found out. Sofaras the arrest of the petitioner is concerned, the Investigating Officer shall strictly follow the guideline No.(iii) in case he proposes to arrest the accused.

9) With the above observation, this Criminal Petition is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 10.07.2018

scs