

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO. 1977 OF 2018

ORDER:

1. Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent State.
2. The present Criminal Revision Case is filed challenging the orders passed in C.C.No.283 of 2016 dated 16.7.2018 on the file of the Court of II. Additional Judicial First Class Magistrate, Mancherial, converting the above said CC into P.R.C.No.6 of 2018.
3. The facts in brief are that LW1, Reshma, daughter of LW3, on 29.1.2016 at 13.00 hours reported to the Police stating that petitioner No.1 deceived her in the name of love. He promised to marry her and sexually exploited her and when she and her family members asked petitioner No.1 to marry her, he denied to marry her. On 8.1.2016, the petitioners went to the house of LW1 at Hamaliwada, Mancherial, abused LWs1 and 2 in filthy language and threatened them with dire consequences and also said that they would see her end. Basing on the said complaint, a crime was registered vide FIR.No.36 of 2016 for the offence under Sections 417, 420, 504 and 506 IPC. After registration of the crime, investigation was completed and a charge sheet was filed against the petitioners for the above

said offence. Learned Magistrate, after taking cognizance of the offence, numbered the case as CC.No.283 of 2016. Subsequently, the trial was commenced and prosecution examined PWs.1 to 11 and marked Exs.P1 to P12. On 2.6.2018, examination under Section 313 Cr.P.C. was completed. The matter was heard and posted to 16.7.2018 for judgment. At the time of pronouncement of judgment, learned Magistrate passed orders on 16.7.2018, converting CC.No.283 of 2016 into P.R.C. 6 of 2018 by exercising the powers under Section 323 Cr.P.C, and committed the case to the Court of Sessions since the alleged offence complained against accused No.1 attracts Section 375 IPC which is punishable under Section 376 IPC. Questioning the said orders, the present Criminal Revision Case is filed.

4. Learned counsel for the petitioner contended that the order passed under Section 323 Cr.P.C. converting the offence from Sections 417, 420, 507 and 506 IPC into Section 375 IPC against the petitioner No.1, is illegal and improper. The Magistrate erred in placing reliance on oral as well as medical evidence i.e., Exs.P3 and P4 in opining that since the consent of a woman/complainant is obtained under misconception of a fact, such consent cannot be said to be a free consent. The evidence of PWs 2 to 4 is not consistent with regard to the

alleged promise and co-habitation of petitioner No.1 and PW1. He also contended that it is not a case of breach of promise but it is a co-habitation as per the contents of the complaint. The evidence of PW1 is not corroborated with the evidence of PWs.2 to 4 with regard to the physical relationship but it is stated that PW1 was in love with petitioner No.1.

5. Per contra, learned Public Prosecutor appearing for the respondent State submitted that the Court below has got every power under Section 323 Cr.P.C. that even after commencement of trial, if the Magistrate finds that the case should be committed, he shall commit it to the appropriate Court under the provisions of Criminal Procedure Code. He also submitted that the facts of the case, particularly, the contents of the complaint as well as the evidence of PW1, prima facie establish the offence under Section 375 IPC. Therefore, there is no irregularity or illegality in the order passed by the learned Magistrate in committing the matter to the Court of Sessions.

6. Having heard both the counsel and from the perusal of the material on record, the admitted facts are that the petitioner Nos. 1 to 4 are charged for the offence under Sections 417, 420 , 504 and 506 IPC. The basic allegation against petitioner No.1 is that he is a friend of PW1's brother and he frequently visited their house and developed

acquaintance with PW1. Later, it turned into a love affair between them and petitioner No.1 promised PW1 to marry her and sexually exploited her in the absence of her parents. When PW1 asked petitioner No.1 to marry her, he informed that he would marry her after his elder brother's marriage is performed. However, petitioner No.1 got engaged with another woman. In those circumstances, a complaint was lodged.

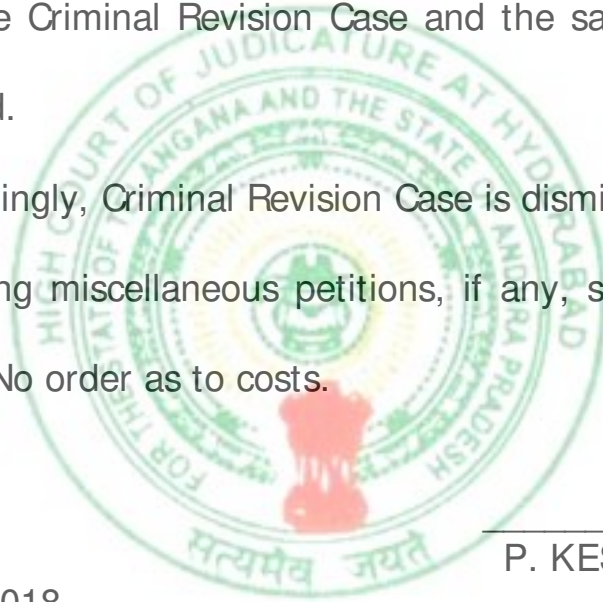
7. From the above, *prima facie*, it appears that the consent obtained from PW1 is under a misconception of inducing PW1 to give her consent on the promise of marrying her. In these circumstances, it cannot be said that it is a free consent. Further, the said offence appears to be committed after coming into force of the Criminal Amendment Act, 2013 with effect from 3.2.2013. After the amendment, there is a radical change in the definition of rape. Explanation 2 under Section 375 IPC contemplates consent as, "an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity."

8. Therefore, looking at the facts available in the case on hand, vis-a-vis the definition of rape after the Criminal Amendment Act, 2013, unless it is an unequivocal voluntary agreement by the woman, communicating willingness, it cannot be said that it is a free consent.

9. In the above circumstances, without going into the merits of the case, this Court finds no irregularity or illegality in the orders passed by the learned Magistrate. As such, there are no merits in the Criminal Revision Case and the same is liable to be dismissed.

10. Accordingly, Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



P. KESHAVA RAO,J

Date: 26.7.2018

KPM