

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

I.A. Nos.2 AND 3 OF 2018
IN/AND
CRIMINAL PETITION No.7991 OF 2018

COMMON ORDER:

The main Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), is filed by the petitioners - accused Nos.1 to 3 viz., Pathewar Santhosh, Pathewar Sanjay and Pathewar Sandheep, to quash the proceedings against them in Crime/FIR No.264 of 2018, dated 09.06.2018, on the file of Alwal Police Station, Cyberabad, Telangana State, registered for the offences punishable under Sections 376 and 313 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3 (1) (r) (s) and 3 (2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short 'Act, 2015').

2. The petitioners herein are accused Nos.1 to 3, and respondent No.2 is the *de facto* complainant in the aforesaid Crime. All the accused allegedly entered into compromise with the *de facto* complainant and filed petitions in I.A. Nos.2 of 2018 and 3 of 2018 under Section 320 (2) and 320 (6) of the Code to grant leave to compound the offences and record the compromise.

3. Both the parties are appeared in person before this Court and they are identified by their respective counsel, and on enquiry, they stated that they entered into compromise and that the compromise is

voluntary and requested to permit them to compound the aforesaid offences.

4. When this Court took an objection about the compounding of offence punishable under Section 376 IPC allegedly committed by petitioner No.1 - accused No.1 against respondent No.2, learned counsel for the petitioners contended that the allegations in the complaint lodged with the police do not disclose the commission of any offence, much less the offence punishable under Section 376 IPC, and requested to quash the proceedings.

5. As seen from the allegations made in the complaint lodged with the police which are the basis for setting the criminal law into motion, the offence allegedly committed by petitioner No.1 is serious and grave in nature i.e., Sections 376 and 318 IPC, besides other offences punishable under Special Enactment of the Act, 2015, along with other accused. But, the offences punishable under the Act, 2015 can be quashed by exercising power under Section 482 of the Code as they entered into compromise. But, the offence punishable under Section 376 IPC cannot be compounded in view of the gravity and seriousness of the offence.

6. The learned counsel for the petitioners contended that none of the allegations constitute an offence punishable under Section 376 IPC, but at this stage, it is difficult to accept the said contention since investigation is at foetus stage, except registration of crime, no further

investigation is taken up by the Investigating Agency. FIR is only information about commission of cognizable offence to the police to set the criminal law into motion and it needs not contain minute details. Therefore, in the absence of material, at this stage, to establish the substantive offence of Section 376 IPC, the Court cannot permit them to compound the offence as it is a serious offence against society at large.

7. Even otherwise, when investigation is at foetus stage, this Court cannot exercise power under Section 482 of the Code to stifle the legitimate prosecution when the facts are incomplete and hazy before the Court in view of the law declared by the Hon'ble Supreme Court in **Kurukshetra University v. State of Haryana**¹ and **State of Orissa v. Saroj Kumar Sahoo**². If the principles laid down in the aforesaid two decisions are applied, the present Criminal Petition cannot be allowed against accused No.1 for the reason that investigation is not yet commenced and, consequently, the request of petitioner No.1 - accused No.1 to compound the offences punishable under Section 376 and 313 IPC is hereby rejected, while compounding the offences punishable under Sections 3 (1) (r) (s) and 3 (2) (va) of the Act, 2015 between accused Nos.2 and 3 and the *de facto* complainant.

8. With the above observation, I.A. Nos.2 and 3 of 2018 and the present Criminal Petition are allowed in part.

¹. (1977) 4 SCC 451

² (2005)13 SCC 540 : 2006(2) ALT (Crl.) 16

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition, stand closed.

M. SATYANARAYANA MURTHY, J

September 18, 2018

Mgr

