

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.2233 of 2011

ORDER :

This petition under Section 482 of Cr.P.C. is filed by A3 to A6 seeking to quash the proceedings in CrI.M.P.No. vide DDR No.209 of 2009 in P.R.C.No.30 of 2010 in F.I.R. No.50 of 2008 on the file of Additional Judicial First Class Magistrate, Yelamanchili.

2. The contention of the petitioners-A3 to A6 is that false allegations are made against them in the complaint and that they are no way connected with the alleged offence. The learned Magistrate without following the procedure as contemplated under law, arrayed the petitioners herein as accused without notice to the Public Prosecutor and proceeded with the case under DDR No.209 of 2009 and allowed the applications straight away by issuing warrants without considering the charge sheet filed by the police on 31.10.2008 and arrived to conclusion that A1 and A2 are the only persons responsible for the offence under Sections 497 and 498 read with Section 109 of I.P.C. The averments made in the CrI.M.P. vide DDR No.209 of 2009 does not disclose any cognizance as to how the petitioners were arrayed as accused and the same is not reflected in the complaint lodged to the police on 18.8.2008 vide Crime No.50 of 2008 and therefore, the allegations are nothing but malice and basing on political pressure. The Court below proceeded with the matter and had passed the orders mechanically without taking into consideration

the facts as well as the legal proposition and hence, the impugned proceedings are liable to be set aside.

3. The counsel for the complainant/2nd respondent contended that A1 and A2 have close acquaintance with A3 to A6/petitioners herein. While so, on 7.7.2008, A1 and A2 along with unknown persons came to the house of the complainant and forcibly entered into the house and when she raised cries, A1 and A2 closed her mouth and bet her and remaining two others caught hold her hands and legs and confined her. A1 and A2 stolen the gold ornaments weighing about 27 tulas and cash of Rs.1,50,000/- from the box. They all forcibly brought her from the house and shifted her into a car bearing No.AP 31 A 0541 and abducted her. A1 raped the complainant by beating her in spite of her resistance in the absence of other two persons. After the mother of the complainant gave a report, on 16.7.2008 they brought the complainant in a car by covering her with a bed sheet and made her to sit on the ground portion of the car. At 10.00 AM one Demudu received a phone call that the S.I. is not in town and he went out of station. Then, they have decided to go to the police station after return of the S.I. Accordingly, while returning back, petitioners herein, who are waiting on the road, took the complainant by the side of the tank and threatened her to kill and directed her to state that she herself left the house being unable to bear the torture caused by her mother and husband. Accordingly, she gave the statement.

4. Additional Public Prosecutor contended that specific overt acts are attributed to petitioners.

5. POINT :

Now, the point that arises for determination is :

“Whether there is prima facie material to prosecute petitioners”

6. A perusal of the charge-sheet goes to suggest that on 10.7.2008 at 15.00 hours Chodipalli Gowramma, mother of Bhagyalaxmi, the victim, presented a report at Rambilli Police Station that her daughter Bhagyalaxmi was married to maternal uncle Krishna about four years back. Since 10 days, Bhagyalaxmi was at the house of mother of Gowramma at Vadanarasapuram village to serve her. Bhagyalaxmi is found missing from the night of 7.7.2008. Her new dresses, some gold ornaments and cash of Rs.1,50,000/- was found missing from the box. Her enquiries revealed that A1-Nagaraju is also found missing. Basing on the said report, a case in crime No.37 of 2008 under Woman missing was registered and investigated into. During the course of investigation in crime No.37 of 2008 on 19.7.2008 the victim Bhagyalaxmi and Nagaraju-A1 came to the police station at 10.00 hours in the presence of village elders and the said victim Bhagyalaxmi disclosed to the Sub-Inspector of Police that she is in love with Nagaraju-A1 even prior to her marriage. Her husband Krishna is a sadist and he used to harass her. As there is no happy life with her husband, she requested A1 to elope and according to her will, they both eloped from Vadanarasapuram village and went to Vijayawada by a car and from there they went to Chirala by bus and stayed in the lodge. Thereafter, they went

to Nagarjuna Sagar and stayed there in the house of cousin of A1 for three days. Then, on coming to know about the complaint given by Gowramma, mother of the complainant, and due to pressure of village elders, they returned from Nagarjuna Sagar and came to Anakapalli on 15.8.2008 in the evening and stayed in a lodge at Anakapalli. On 17.8.2008 they left Anakapalli and while coming to Rambilli Police Station, they came to know that SI was not present. Therefore, they went to Visakhapatnam and stayed in a friend's house of A1 on 17th and 18th of August, 2008 and came to Rambilli Police Station. Crime No.37 of 2008 was numbered as PRC No.30 of 2010 and the same is pending.

Again, on 18.8.2008 at 12 noon complainant Bhagyalaxmi came to the Police Station and presented a report that about two months back on the eve of Village goddess festival at her grand mother's village of Vadanarasapuram, when she wore gold ornaments, A1 Nagaraju tried to have chit chat with her, but she refused and went to her house. Later, they came to Rambilli. Subsequently, she went to Vadanarasapuram village to serve her grand mother as she was suffering from illness. On 7.7.2008 she admitted her grand mother at Rambilli Hospital, kept her aunt as support to her grand mother and she came back to the house of her grand mother. On 7.7.2008 at 7.30 PM Nagaraju and her villager Dhanaraju, who are A1 and A2, and two others forcibly entered into the house while she was preparing food and tried to abduct her. When she raised cries, A1 and A2 closed her mouth, bet her and remaining two others caught hold her hands and legs. A1 and A2 stolen away the gold ornaments

of about 27 tulas and cash of Rs.1,50,000/- from the box. They forcibly shifted her into the car which was kept there. When she struggled to escape, A1 put one kerchief on her nose and she fell unconscious. They took her to an unknown place, confined her for about 10 days. A1 subjected her to cruelty and forcibly enjoyed her. Later, while they were bringing her to Police Station, Nagaraju demanded her to disclose in his favour and threatened if she does not speak in his favour, he will kill her, her mother and her husband. Due to that fear, she failed to disclose the fact to the police. She came to know later that her grand mother presented a report to the Police about her missing. Nagaraju brought her to the Police Station. Nagaraju and the remaining persons stolen away their gold and cash and abducted her. Basing on the complaint, a case in crime No.50 of 2008 under Sections 366, 342, 376, 380 read with Section 34 I.P.C. of Rambilli Police Station was registered.

7. A perusal of the charge-sheet *prima facie* clearly made out that when she went to attend festival, A1-Nagaraju followed her and tried to chitchat, which she refused and went to her house. Later, she came to Vadanarasapuram village to serve her grand mother who is suffering from illness. On the night of 7.7.2008 at about 7.30 PM Nagaraju, her villager Dhanaraju forcibly entered into the house while she was preparing food and tried to abduct her. When she tried to raise cries, Nagaraju and Dhanaraju closed her mouth, bet her and the remaining two others caught hold her hands and legs and confined her. They stolen away gold ornaments and cash of Rs.1,50,000/-.

The investigation clearly shows that Nagaraju by taking her to different places enjoyed her, even though she resisted. The Doctor who examined her opined that there are no signs of forcible sexual intercourse and no injury is found on her genital parts, may be because of delay (two months) in approaching the hospital. In the criminal case injuries on the body of a lady who subjected to forcible sexual intercourse are not material. Nagaraju and his friends who assisted for abducting and committing rape, are shown as accused.

8. In the protest petition there is a specific allegation that there is political rivalry between the complainant and A3 from the previous ZPTC elections of Rambilli Mandal. A3 contested as ZPTC against the wife of one Raghubabu Rao and he lost the election. In the said election complainant supported the candidature of the wife of Raghubabu, who won the election. Since then A3 bore grudge against the family of complainant. It is further alleged that A1 and A2 with the assistance of others committed theft of 27 tulas of gold ornaments and cash of Rs.1,50,000/- from the box. A1 and A2 and two other persons have forcibly brought the complainant out of the house and taken her up to the road situated in the eastern side and by the side of a road, there was a white colour car bearing No.AP 31 A 0541. A1, A2 and two other persons have tried to forcibly throw the complainant into the car. When the complainant tried to escape with legs and hands, A1 closed the nose of the complainant with hand kerchief and she lost her consciousness. She regained consciousness after three days and she understood through the

conversations between A1, A2 and two others that she was brought three days prior to that day. In the absence of the above persons, A1 used to commit rape against the complainant by beating her in spite of her resistance.

Three days prior to 19.7.2008 i.e., on 16.7.2008 at about 7 AM Demudu, A2 and another person have brought the complainant in a car by covering her with a bed sheet and made her to sit on the ground portion of the car. At about 10.00 AM they reached to the way of Santapalem. In the meanwhile, the above said Demudu received a phone call stating that S.I. is not in town and he went out of station. Accordingly, while returning back, the above said three persons have stopped the car in Santapalem route. There A3 to A6, who are petitioners herein, are waiting on the road and all of them took the complainant by the side of tank and threatened her to kill and directed her to state that she herself left the house being unable to bear the torture caused by her mother and husband and that A1 and herself are in love from the last 7 years. The complainant agreed to the demand of A3 to A6 with a hope that she will be taken to her village. After that the complainant was taken to the room where she was earlier kept. After three days i.e., on 19.7.2008 the accused have brought the complainant in a car up to Atchuthapuram by hiding her by covering with a bed sheet. Later, the complainant fell sick and she was taken to R.K.Hospital at Gajuwaka for treatment on 22.7.2008 and there she was treated for eight days. On 30.7.2008, she gave a report to the Rambilli Police Station for necessary action. The above

circumstances clearly goes to suggest that petitioners have also participated in abducting and A1 committing rape against the complainant against her will and consent by taking her to different places.

9. Section 173 Sub-Section (8) of Cr.P.C. contemplates that nothing in Section 173 deemed to preclude further investigation in respect of an offence after a report under Sub-Section (2) has been forwarded to the Magistrate, and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the magistrate a further report or reports regarding such evidence in the form prescribed. Section 173 deals with investigation and further investigation. Therefore, there is no substance in the contention of petitioners that the Court below not followed the procedure as contemplated under law to array the petitioners herein as accused.

10. In the facts and circumstances discussed above and findings therein I am of the considered view that specific overt acts are attributed to petitioners along with A1 and A2 and that there is clear allegation that petitioners herein also abducted and helped A1 in abducting the complainant and committing rape. There is nothing to suggest that the 2nd respondent by giving a complaint abused the process of law or any prejudice is caused to petitioners.

11. In the result, the criminal petition is dismissed, while vacating the interim stay granted in CrI.P.M.P. No.2282 of 2011, dated 11.3.2011.

12. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

20th February, 2018

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