

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.10205 of 2017

ORDER:

This Criminal Petition is filed by petitioners/A1 to A6 under Section 482 Cr.P.C, to quash the proceedings against them in Crime No.296 of 2017 of Duvvada Police Station, Visakhapatnam City, registered for the offences under Sections 417, 420, 376 IPC r/w 34 IPC.

2. Investigation is reported to be pending.
3. Briefly stating the complaint allegations are that the de-facto complainant came to know about A1 through matrimonial website and A1 informed that he was working in Genpack Company at Hyderabad and getting salary of Rs. 30,000/- and he lost his mother and his father renounced the world and his uncle and aunt (A2 & A3) are seeing his welfare and he brought them to the house of the de-facto complainant for marriage proposals. The de-facto complainant and her widow mother had talks with A1 and A3 and at that time, on their demand, they agreed to pay Rs. 5,00,000/- as dowry and five tulas of gold and one bike and the marriage alliance was settled. Thereafter, A1 on the inducement that they were going to have marriage had sexual intercourse with the de-facto complainant. However, after the engagement was over, A2 to A6 were expressing their displeasure about the dowry and other aspects. A1 stopped contacting the de-facto complainant and he switched off his cell phone and was not available to the de-facto complainant for communication. On enquiry, she came to know that the company authorities of A1 sent him to UK.

When the de-facto complainant approached A2 to A6 to enquire about A1, they curtly told that they did not require their marriage alliance and therefore, they sent A1 to UK. The complainant submits that she gave her ATM card to A1.

4. Denying the complaint allegations, the submission of learned counsel for petitioners is that even if all the complaint allegations are accepted to be true, still no offence under Section 376 IPC is maintainable as against A1 and also consequently against A2 to A6 because the de-facto complainant is major and she voluntarily participated in intercourse with A1 as can be seen from the complaint allegations. In this regard he relied upon the decision reported in **Suram Kiran Kumar Reddy vs State of A.P¹**. So far as A2 to A6 are concerned, learned counsel would submit that absolutely there is no case against them, as they are innocent and in no way they cheated the de-facto complainant. Therefore, the FIR is liable to be quashed so far as petitioners/A2 to A6 are concerned.

5. Per contra, learned counsel for second respondent Sri A.S.C. Bose, would submit that the first petitioner/A1 is concerned, he is liable for the charge under Section 376 IPC as well as other offences inasmuch as the complaint allegations would reveal he induced the de-facto complainant to have the sexual intercourse with him on the promise that he would marry her and in such misconception of facts she surrendered herself to him, therefore, his act would squarely attract the offence under Section 376 IPC. He would

¹ 2002(2) ALD CrI. 835

rely upon the decision reported in **State of U.P v. Naushad**². So far as the other offences against petitioner/A1 are concerned, the learned counsel would submit that he had engagement with the complainant and later induced her to have sexual intercourse on false promise of marriage and betrayed her and went away to UK without marrying her and therefore, the offences under Sections 417 and 420 IPC would also apply against the petitioner/A1. Learned counsel would further submit that the other petitioners/A2 to A6 are concerned, since inception A1 and A3 went along with A1 for marriage alliance and they demanded the mother of the de-facto complainant dowry and articles and confirmed the engagement and thereafter when A1 cheated the de-facto complainant and left for UK, the petitioners/A2 to A6 instead of summoning A1 and performing the marriage of de-facto complainant with him, abused her and stated that they did not like their alliance and that was why they sent away A1 to UK. In view of their conduct, learned counsel would argue, the offences under Sections 417 and 420 IPC would squarely apply against A2 to A6 also. He thus prayed to dismiss the petition.

6. Learned Additional Public Prosecutor also argued in similar lines as that of learned counsel for respondent No. 2.

7. A perusal of the complaint allegations would shed a *prima facie* accusation against all the accused. So far as the contention of learned counsel for petitioners that the offence under Section 376 IPC has no application

² AIR 2014 SC 384

against A1 is concerned, in **State of U.P v. Naushad** (supra-2), the Apex Court in similar circumstances has observed thus:

“11. The High Court has gravely erred in fact and in law by reversing the conviction of the accused for the offence of rape and convicting him under [Section 376](#) of the IPC. It is apparent from the evidence on record that the accused had obtained the consent of the prosecutrix for sexual intercourse under a misconception of fact i.e. that he would marry her and thus made her pregnant. He is thus guilty of rape as defined under [Section 375](#) of the IPC and is liable to be punished for the offence under [Section 376](#) of the IPC. The trial court was absolutely correct in appreciating the evidence on record and convicting and sentencing the accused for the offence of rape by holding that the accused had obtained the consent of the prosecutrix under a misconception of fact and this act of his amounts to an offence as the alleged consent is on the basis of misconception, and the accused raped the prosecutrix. He brazenly raped her for two years or more giving her the false assurance that he would marry her, and as a consequence she became pregnant. For the reasons stated supra, we have to uphold the judgment and order of the trial court in convicting and sentencing the accused for the offence of rape, by reversing the judgment and order of the High Court. We find the accused-respondent guilty of the offence of rape as defined under [Section 375](#) of the IPC”.

Hence, the contra decision reported in **Suram Kiran Kumar Reddy vs. State of A.P** (supra -1) relied upon by petitioner has no application.

8. Applying the above ratio to the case on hand, the facts in the complaint would reveal that the petitioner/A1 induced the de-facto complainant to participate in sexual intercourse on the ground that their engagement was fixed and thereafter they were going to marry and believing the same, she participated in sexual intercourse with him. If these facts are true, as per the ratio of the Apex Court in **State of U.P v. Naushad** (supra-2), the offences under Section 376 IPC would squarely apply to petitioner/A1. Of course, these

aspects need to be determined only after full-fledged investigation. As stated supra, for the time being there is a strong *prima facie* accusation against A1 so far as the offence under Section 376 IPC is concerned. Similarly, there is a strong *prima facie* accusation against him for the other two charges i.e., Sections 417 and 420 IPC are concerned. Therefore, it is not apt to quash the proceedings so far as petitioner/A1 is concerned.

9. Petitioners/A2 to A6 are concerned, it is needless to emphasis that the offence under Section 376 IPC would have no application against them as they are not connected to the offence in any manner even remotely. Therefore, they deserve quashment against the said offence. However, offences under Sections 417 and 420 IPC are concerned, whether petitioners/A2 to A6 since inception had a deceitful intention not to have marriage alliance of the de-facto complainant and thus cheated her by not performing marriage of A1 with the de-facto complainant or not can be determined only after full-fledged investigation. Thus, as the matter stands, the investigation shall lead to logical conclusion to define the roles of A2 to A6.

10. In the result, the Criminal Petition is partly allowed and the offence under Section 376 IPC mentioned in Crime No. 296 is quashed so far as petitioners/A2 to A6 are concerned. Thus, investigation shall continue against petitioners/A1 to A6 i.e., so far as A1 is concerned for the offences under Sections 376, 417 and 420 IPC and the petitioners/A2 to A6 are concerned for

the offences under Sections 417 and 420 IPC. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 11.04.2018

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