

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.92 of 2019

ORDER:

The petitioner is the accused in SC.No.809 of 2018 pending on the file of learned II Special Additional District & Sessions Judge, Ranga Reddy District at LB Nagar, which is outcome of the crime No.682 of 2017 registered by Sanathnagar Police Station, Cyberabad, for the offences punishable under Sections 420 & 376 (2)(n) IPC, on the report of the 2nd respondent-defacto complainant dated 28.12.2017. The police after investigation filed charge sheet by examining LWs.1 to 13 including the defacto complainant-LW.1 victim, LW.2-house owner and circumstantial witness, LW.3-co-tenant and circumstantial witness, LW.4-circumstantial witness, LWs.5 & 6 are panch witnesses for scene of offence, LWs.7 & 8 are panch witnesses for confessional statement cum seizure panchanama, LW.9-Dr. Anitha, Assistant Professor, Obstetrician and Gynecology Department, Gandhi Hospital examined the victim, LW.10-Dr. Ch. Laxman Rao, Assistant Professor, Gandhi Hospital, who conducted potency test on the accused, LW.11-XXV Metropolitan Magistrate who recorded Section 164 Cr.P.C. statement of the victim, LW.12-ASI who also recorded the statement of the victim and LW.13-IO who investigated and filed the charge sheet, from which learned Magistrate taken cognizance by allotting PRC.No.83 of 2018 and on committal to the Court of Session, the learned Sessions Judge allotted SC.No.809 of 2018.

2. The allegations in the FIR speak that on 28.12.2017 defacto complainant-LW.1 by name Kumari Mali Patel Swaroopa lodged a complaint at Sanathnagar Police Station stating that she is elder

daughter among two daughters and one son to her parents and in the year 2015-16 while she was studying B.Tech Final year in Gurunanak Engineering College, Ibrahimpatnam Road, she stayed in a rented room at LB Nagar. In November 2015, one Santhosh-accused contacted her while she was purchasing Lord Krishna Idol and since then he used to meet her and talk to her by saying he is Orphan and residing in a room at Secunderabad with some friends and expressed his intention of getting marriage and he also used to follow her and lured her by saying he loves her and wants to marry her, which she believed and moved with him. In June, 2017 he proposed to stay together in a rented room as they are going to marry saying he took a rented room at H.No.11-5-232/A/1, HP Road, Moosapet, where they are staying and he forcibly had sexual intercourse with her saying that he would marry her and when she insisted for marriage, he said he was already married and had one son and since October 2017 he is not coming to the room regularly and not spending time with her and dragging on the marriage issue, hence to take action. It is therefrom the crime referred supra was registered and the IO-LW.13 taken up investigation and during the course of investigation, IO got recorded the statement of the victim by LW.12-ASI and sent the victim to Gandhi Hospital for medical examination through WPC 5705 Smt. Sukkamma of Sanathnagar PS, where LW.9-Assistant Professor examined the victim and preserved the vaginal smears etc., and LW.13-IO visited the scene of offence and minutely examined the scene. LW.13 has conducted scene of offence panchanama in presence of mediators LWs.5 & 6 and drawn rough sketch and secured the presence of LWs.2 & 3, house owner and co-tenant of the victim and recorded their statements and also examined LW.4, who is the house owner of the victim at

Bhavaninagar, Bharathnagar, where the victim along with accused stayed about one month and recorded his statement. On 28.12.2017 itself, LW.13 arrested the accused and recorded his confessional statement before LWs.7 & 8 and in pursuance of his confession, seized the mobile phone OPPO No.8688289888 which was used for conversation with the victim and later he was remanded to judicial custody. The seized MOs were sent to FSL and as per the FSL report, LW9-Dr. Anitha furnished final opinion. On the requisition of LW.11, LW.13-learned Magistrate recorded Section 164 Cr.P.C. statement of the victim. LW.10-Dr. Ch.Laxman Rao, Assistant Professor, who conducted potency test on the accused furnished opinion stating that there is nothing to suggest that Ch. Santhosh is not capable of performing the sexual act. The investigation reveals that in the year 2008 the accused got married to one Suhasini resident of Secunderabad and since then he is staying at Secunderabad and he had one son aged about 7 years and at present he is working in Nexa Showroom Kukatpally. The investigation further reveals that since October 2017 he is not coming to the room regularly and avoiding her and dragging the issue of marriage with the victim. Though the accused was married and having one son, hiding the facts, became close to the victim in the name of love and induced her to marry and kept her in a rented room and had sexual intercourse forcibly many a time and thereafter avoiding to marry her and thereby cheated the victim.

3. The quash petition averments vis-à-vis oral submissions of the learned counsel for the petitioner/accused that the 2nd respondent-defacto complainant concocted the story of promising to marry her and the allegation of having forcible sexual intercourse with her repeatedly is only to bring the offences punishable under

Sections 420 & 376(2)(n) IPC. It is contended that the fact of coming into contact since 2015 and moving together and staying in a separate rented two houses within a little distance in the same locality where the parents of the defacto complainant resides and the record also shows that the defacto complainant also took active part in getting the houses on rent to stay together, which clearly shows the testimony of prosecutrix that she was in relation with the petitioner/accused since November 2015 till October 2017 and this fact is basing on the own version of the prosecutrix and the case of the prosecution clearly shows the story of the prosecutrix regarding sexual intercourse on false pretext of marrying her is concocted and untrue. It is also contended that there is no clinching and convincing evidence to corroborate the alleged offences supra and the statements of the witnesses i.e., LW.2 house owner where the accused and victim stayed together and LW.3 the co-tenant and circumstantial witnesses i.e., LWs.4 to 6 do not corroborate the version of the prosecutrix of the alleged offence and on the other hand, the statements of the witnesses which are recorded under Section 161 CrPC supports the submission of the petitioner/accused that there are no essential ingredients to attract the offences supra. It is also contended that it is false implication and the allegations against the petitioner/accused are vague and bald and sought for quashing of the proceedings by allowing the petition.

4. Whereas the learned Public Prosecutor opposing the same by saying that there is prima facie accusation and there is nothing to quash the proceedings and sought for dismissal of the petition.

5. Even though notice served on the 2nd respondent-defacto complainant failed to attend, hence taken as heard and heard

learned counsel for the petitioner/accused and learned Public Prosecutor representing the 1st respondent-State and perused the entire material on record.

6. A perusal of the material on the record from the statements of the witnesses i.e., LWs.1 to 4 including the defacto complainant-LW.1 in the same lines of the report given to the police on 28.12.2017, that in October 2017, accused-Santosh and Victim-Swaroopaa taken on rent flat No.7 in second floor single room of house of L.W2 by asserting they are wife and husband and earlier they resided together at Bhavani Nagar, Moosapet at House of L.W4 and they are facing some problem there to shift, same also the version of L.W3 a co-tenant that recently they came to know of accused already married with child and he pretended as if not married and he cheated by promising her to marry in residing with her and had conjugal relation and as the victim was insisting him to marry the accused is avoiding and as per L.W3 at the time of residing there, she observed them under close intimacy and spent over nights in the room and spent hours together on terrace of the house and for the reason of his cheating the complainant by way of false promise to marry her and had conjugal relation with her.

7. Above investigation thereby clearly speaks there is no any offence of rape but for the offence of cheating even from said versions including of the defacto complainant of the acquaintance riped to have conjugal relation not even one time continuously and what she says he suppressed the factum of he is a married person and but for that he could not believed him of promise to marry in allowing to have sexual intercourse with her by accused that too she is a B.Tech student. However, the contention of accused referring to the

expression of the Apex court in **Alok Kumar Vs. State of Karnataka**¹ that even Section 420 also not applicable but for any civil remedy for damages is untenable for clear case of cheating from what is referred supra to frame charge, leave apart no quarrel on the proposition laid down in the expression of the Apex Court in **Tilak Raj Vs. State of Himachal Pradesh**² of consensual sexual intercourse at the residential accommodation of prosecutrix for a continuous period of time by allowing the accused to stay overnight with her no way attracts the offence of rape.

8. Having regard to the above and in the result, this Criminal Petition is allowed in part in quashing the proceedings in so far the offence under Section 376 IPC concerned by continuing the cognizance taken in so far as the offence under Section 420 IPC, for the learned Sessions Judge by virtue of this order under Section 228 Cr.P.C. sent back the file to the learned Magistrate by framing a charge only under Section 420 IPC with any other penal provisions if attracts for trial according to law by the learned Magistrate concerned.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.03.2019
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¹ 2018 (7) SCC 729

² AIR 2016 SC 406