

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.3916 of 2014

ORDER:

The petitioners are the A.2 to A.4 in Cr.No.76 of 2012 of Santosh Nagar Police Station, Hyderabad, dt.05.04.2012 registered for the offences punishable under Sections 366, 376, 342, 506 and 323 IPC against A.1 and u/ sec.376 and 511 IPC against A.2 and u/ sec.109 IPC against the A.3 and A.4 for abetting the crime instead of reprimanding the A.1, on the report, dt.05.05.2012 of the 2<sup>nd</sup> respondent-defacto-complainant-M.A.Pazzak, who is paternal uncle of victim girl-Sadiya Mubeen stating that the victim girl was missing from the home since 03.04.2012 and made a phone call on 04.04.2012 from mobile number 9701209277 stating that she herself left the home and was going to Bangalore and not to try to search for her and disconnected the call, and the complaint reveals further information of her height is 5.3 ft. white in complexion, aged 19 years, student of TRR college of polytechnic, Jillelaguda, Meerpet, Ranga Reddy district, and basing the said complaint, the police registered the crime supra on the even day.

2. After registration of the crime basing on the complaint of 05.005.2012 without mentioning anybody's name as suspected accused, the police in the course of investigation, received further complaint dt.05.09.2013 from Qumerunnisa Begum, mother of the victim girl, stating that on 03.04.2012 her daughter Sadiya Mubeen, a student of 2<sup>nd</sup> year polytechnic at TRR Polytechnic college missed from home and Cr.No.76 of 2012 pending of girl missing with the Santoshnagar Police Station and while so on 04.09.2013 late night said Sadiya Mubeen came home and revealed of she was kidnapped by Satya Prakash Singh-A.1(no other than husband of A.4, brother of A.2 and son of A.3) who runs canteen in TRR college, that on 03.04.2012 from Moinbagh and kept in a lodge at Kothapet for one day and threatened her to marry him and from her refusal, shifted to one independent house at Almasguda and confined there and threatened and had intercourse. He used to lock the door outside and later shifted to one apartment at Meerpet and confined there and sexually assaulted under the threat that he will kill mother and brother of victim, if the victim girl tries to escape from there and out of fear the

victim girl could not escape from there. The A.1 kept on consuming liquor, beat the victim and harassed physically and mentally from the day of kidnap. While so, on 03.09.2013 he beat the victim girl severely and unable to bear, she escaped from clutches of him when he was sleeping in the house and came to her mother on 04.09.2013 late in the night with a very sick condition and revealed the matter to her mother and then the victim was brought to Police Station in lodging the complaint to take action against the A.1 for the offences of kidnap, rape, criminal intimidation, physical assault and wrongful confinement.

3. From the report of mother of the victim girl, the police added the Sections of 366, 376, 342, 323 and 506 IPC to the existing Cr.No.76 of 2013 and took up investigation of the original girl missing case treating the statement of the victim dt.14.09.2013 as additional complaint in tune to the above showing that the victim girl being a student of TRR College, used to visit college canteen for lunch in college days with friends and met the canteen owner Satya Prakash Singh-A.1 many a time and on 03.04.2012 when she was not feeling well, went to canteen to take juice who gave drink to her by asking about her health and after its taking, she felt giddiness and unconscious and when she gained consciousness, found in dark room with her clothes torn and when she tried to shout, the A.1 tied her hands and beat her very badly with a belt and raped her which resulted in bleeding from her private parts and the room was dark and locked outside. Next day he came again with some food packets and asked her to eat, when she refused, A.1 shouted at her and beat again and forced to eat and raped her again. The incident of keeping her in a dark room and raping her continued for nearly one month. When the house owner suspected his activities, asked him to vacate the house. One day at about 3.00 A.M., he came early morning and promised her that he will leave her near her house and asked her to accompany him and by saying so he took her in a Tata Sumo vehicle bearing No.AP11 G 9108 blue colour and after an hour drive, he again took her to another flat Meerpet, Balanagar, Gayatri Nagar and in spite of her protest and shouting, locked her with help of a woman whom she can identify by seeing. In the said flat also he raped her daily and used to abuse her

saying that he will rape all Muslim Girls like this. He used to say that she is the fifth Muslim Girl and he raped all and killed and thrown in a river. The A.1 claimed that his father-A.3 is former defence employee and his brother-A.2 is a criminal lawyer who always saves him from getting into police net. It was around May, 2012 after heavily drunk, he raped her and slept. During that time, as her hands were open, she took his phone and told her mother entire incident. Her paternal uncle who had given a complaint of girl missing in Police Station Santosh Nagar in Cr.No.76 of 2012 went and informed the police about the call. The A.1 did not come to the room for nearly for 5 days. The said lady who was kept to check her used to give her food and water from the window. On 6<sup>th</sup> day, A.1 came in drunken condition and beat her very badly and abused her and her mother and questioned why she called from his mobile as it would make the police to suspect him. With the intervention of the college owner Teegala Krishna Reddy, former Mayor and TDP leader and his son(owner of TRR college), he was set free by the police Santosh Nagar. One day the A.1 came along with the petitioners A.2 to A.4 and asked her to meet them and forced her before meeting them to have a tilak on her head and showed her to them as his wife and said that as he is childless, he married her and introduced her to them as Vanita. When she cried and stated that she is a Muslim Girl and A.1 kidnapped her and raped her for the last 4 months, they all laughed at her and said that they all support A.1 for such deeds to Muslim girls. Seeing her crying the A.3 and A.4 left the room but the A.2- brother of A.1 beat her with a slipper and he also tried to rape. A.2 threatened her that they will kill her brother and mother if they do not withdraw the complaint from Santhosh Nagar. After some months, the A.1 shifted her to a new location where she fell ill and was vomiting heavily. He brought some lady to check her and she said that she is a pregnant. She started crying and asked him to leave her. Then he took her to Nursing Home and got her aborted and in spite of her getting aborted, he forced her to do oral sex and also forced to drink alcohol. On one day while she was crying and shouting, some of the neighbours called police and informed about her. After some time three policemen came to whom she told entire story about A.1 for which they took away A.1 along with them and after some hours, they came back

in a drunken condition and commented her and asked A.1 to have a good rape and took some money from A.1 and touched her private parts and went away. On 04.09.2013 around 1.00 P.M., as usual, the A.1 came to Flat fully drunk with some food packets and after taking lunch he raped her again and slept. As the door was kept open, she ran from his clutches and reached home at 4.30P.M. Thus the complainant requests to take necessary action against A.1 who tortured and raped her many a time, A.2 to A.4 the petitioners for helping the A.1, the three flat owners supra where she was kept illegally, the owner of TRR College who helped A.1 when Santosh Nagar police caught him, the Nursing Home authorities, lady doctor supra who did abortion and the three policemen who tried to molest her.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor representing the 1<sup>st</sup> respondent-State and the defacto-complainant, no other than the paternal uncle of the victim girl, even served from refusal of returned cover not chosen to contest the quash petition, held sufficient service.

5. Even from the complaint of the victim dt. 14.09.2013, the alleged kidnap and confinement was since 03.04.2012 and on 6<sup>th</sup> day the house owner suspected the activity of the accused and asked to vacate the flat at Almasguda, Meerpet after few days of the kidnap and confinement in saying he beat her, she raised cries and he raped her. So far as the A.1 concerned, it is not even her case that she informed the house owner. What she stated that house owner asked to vacate the flat and at that time at least she could have stated and is there any truth of she raised cries, the house owner or somebody of the residents in and around the flat could not know at least to inform the police. The very story of she being a major went to the canteen of the college on 03.04.2012 by feeling not well and asked A.1 for juice and she consumed and fell unconscious besides not believable for not even there were any friends with her and if so at what time if it is not the college working hours, how it is possible in the canteen with no persons but for herself and the canteen owner-A.1 and even saying one day at around 3.00 A.M. he promised to take her to her house and took her in Tata Sumo kept having driven for an hour and forcible kept at Meerpet in a Flat where also she was allegedly beaten saying

he was doing similar of Muslim girls. It is once flat and not a plot not an isolated one, it is easy for others to know that too from her saying serving of food through windows easy to draw attention of at least nearby flat owners and neighbours if raised cries and what stated of in May 2012, he came in an intoxicated condition and raped her and she took his phone as her hands were free when he slept and called her mother. Is it not possible for her if A.1 really in sleep, to open the door from inside and flee away instead of her telephoning to her mother from his phone and is it believable when she was talking from the same room, he did not woke up. When such is the case, what prevented her from fleeing away. Even from the very report of the defacto-complainant-paternal uncle of the victim, she left the house on 03.04.2012 at about 2.00 P.M., without permission and did not come back and searched in the relatives and friends houses and what he stated is next day on 04.04.2012 that is a day before his report dt.05.04.2012, she made a phone call and informed of she was going to Bangalore and did not try to search for her and cut off conversation, that itself shows she voluntary left with someone if not with A.1 and telephoned immediately on the next day by saying she was going to Bangalore and did not try for her. When such is the case, it falsifies her story of the previous day she was given a juice at the canteen by the A.1 and went unconscious and she was kidnapped or abducted or confined in a room and by the time she gained consciousness, her clothes were torn or she tried to shout and is suddenly tied her hands and beat and raped and caused bleeding injuries and locked in a room and went away and on next time served food and on her refusal shouted at her and beat and raped her. Is it possible to believe that her voluntarily telephoning next day on 04.04.2012 of her missing to her paternal uncle from what he lodged a complaint setting law into motion speaks of she voluntarily informed from cell phone saying going to Bangalore and did not try to search for her and cut off phone conversation. There is something behind from this story in implicating not only the A.1 if at all at fault but also the family members by creating religious colour. The statement of her paternal uncle-L.W.1 in tune to the report of him of even day in Cr.No.76 of 2013 so also her mother in the self-same lines so also through other brother L.W.3 on same day and coming to the second statement of

the L.W.2-mother of the victim dt.05.09.2013, there is a change of version just referred supra in saying only on 04.09.2013 late night the victim girl came to the house and she was kidnapped by the A.1 on 03.04.2013 from Moinbagh and kept in a lodge at Kothapet for one day by threatened to marry and from her refusal shifted to Almasguda. She did not speak about keeping at Kothapet for a day and later shifted to Almasguda from her statement dt.14.09.2013 and when from 04.09.2013 the victim girl is in that house of her mother and brothers saying late in the night came whereas the delay in the victim girl's giving of another statement only on 14.09.2013 and why immediately on 04.09.2013 at least on 05.09.2013 when L.W.2 statement recorded by at least not cause recorded Section 161 CrPC statement of the victim girl. These are the million dollar questions on the fairness of the investigation changing versions like changing colours by Chameleon. No doubt the offence is very serious in nature however in the victim scenario it is difficult to sustain any accusation against the A.2 to A.4 who are no other than a practicing Advocate brother of A.1 (A.2), aged and retired defence employee father of A.1(A.3) and wife of A.1(A.4) that too in the chargesheet but for the victims version, there is no any basis to rape and there is no any Test Identification Parade (TIP) to say who was that lady referred in the statement of the victim if at all the A.4 and if not, whether that lady was identified by police by any TIP and even the victim girl, in her statement referred supra no way stated of A.2 committed any rape on the victim but for the allegations against the A.1 for no basis to implicate A.2 so also the A.3 and A.4 on the allegations leveled supra and the charge sheet in fact shows from 31 witnesses referred including the Investigating Officers, L.Ws. 5 and 6-panch witnesses to the so called disclosure statement of A.1, L.W.7 made efforts to trace records of Nakshtra hotel, Kothapet of the year 2005 but found destroyed and there is no visitors register but the visitors are given computerized bills. L.Ws.8 to 11 allegedly to some extent corroborated with the version of L.W.2-mother of the victim. L.W.8 the present resident stated he does not know the previous dwellers of the house. L.W.9-Secretary of the colony stated about the behaviour of the accused and presence of a lady inside the house and she never came out and talked to neighbours. Even

from this, it is difficult to believe that she was kept up for several days without even murmuring or crying to draw attention of the others. Coming to Flat No.305 at Meerpet, L.W.13-Flat owner, L.W.12-watchwoman of the Flat, L.W.14-neighbour were examined who stated that the accused stayed there for 4 months and during that time one lady stayed in the Flat and she never came out and appeared to be suspicious and never mingled with anybody and accused used to lock outside and go out by confining her and he informed the matter to the owner of the house and the owner got vacated. It is not even the case on hand of when they got suspicion, they informed to police and the police questioned A.1 in this regard much less any victim girl that too having found for none of their statements show of she ever cried or she was ever ill-treated.

6. In this regard the material supra at best shows that she voluntarily stayed in the company of A.1 if at all he deceived her with a promise to marry and sexually exploited her, there is nothing to implicate the others therefrom. It does not co-relate to what the statement of victim allegedly recorded by Women Sub Inspector-L.W.27 to the other complaint of the victim referred supra dt.14.09.2013 about 9 days after 4/ 5.09.2013 supra in her baselessly roping other accused/ the petitioners herein who are family members of A.1 for the first time. No doubt from the investigation including from the DNA examination conducted by the L.W.25-Analyst of the victim girl might be exploited sexually by A.1 but no basis for implicating the A.2 to A.4 referred supra.

7. Having regard to the above, the cognizance order of the committal Magistrate in PRC No.6 of 2014 from the police final report against the A.2 for the offence u/ sec.376 and 511 IPC, against the A.3 and A.4 for the offence u/ sec.109 IPC, while charging the A.1 for the offences u/ sec.366, 376, 342, 506 and 323 IPC is liable to be quashed but for to observe that during trial if at all there is any worth evidence, remedy is left open to invoke section 311 CrPC to add any of them as co-accused along with them.

8. Accordingly and with these observations and subject to the above, the Criminal Petition is allowed quashing the proceedings against the petitioners/ A.2

to A.4 in P.R.C.No.06 of 2014 on the file of the VII Addl.Chief Metropolitan Magistrate, Nampally, Hyderabad, outcome of Cr.No.76 of 2012 of Santhosh Nagar Police Station. The petitioners/ A.2 to A.4 are acquitted and their bail bonds shall stand cancelled. Pending miscellaneous petitions, if any, shall stand closed.

Date:22.02.2019  
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Dr. B.SIVA SANKARA RAO J,

