

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.239 of 2011

ORDER :

The petitioner is the accused in S.C.No.332 of 2010 on the file of the V Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad. The learned Sessions Judge taken cognizance for the offences punishable under Sections 376 and 420 or 417 IPC as the case may be, which is out come of the committal proceedings from the learned Committal Magistrate from the police final report of Gopalapuram Police Station of Secunderabad, by investigation of Crime No.320 of 2009 registered under Sections 376 and 417 IPC, on 01.09.2009. The crime was originally registered by Women Police Station, CCS, Hyderabad and Women Police Station, Begumpet, respectively with Crime No.383 of 2009 under Sections 498-A and 420 IPC and later transferred to the Gopalapuram Police Station, who after investigation filed the charge sheet. The charge sheet speaks *prima facie* accusation from the investigation covered by statements of the *de facto* complainant/victim, her mother, father, younger sister, elder sister, one of her friend Kumari Swetha Rao and the medical examination of the victim and of the accused by the respective Doctors and the DNA examination by the scientific officer conducted also cited as LWs.7 to 9, besides the Investigating Officers of Women Police Station, CCS, Hyderabad/LWs.10 and 11 and the Investigating Officer, who re-registered the case at Gopalapuram Police Station/LW.12 and the 1st and 2nd Investigating Officers/LWs.13 and

14, who investigated further. The petitioner filed application under Section 227 Cr.P.C. seeking to discharge saying there are no ingredients to attract the offence defined under Section 375 IPC punishable under Section 376 IPC, leave about attracting or not of the offence of cheating either under Section 417 or 420 IPC, that petition after hearing by the impugned order, dated 19.01.2011, dismissed by the learned V Additional Metropolitan Sessions Judge, saying it is immaterial whether the victim is minor or not for the fact that the several offences of rape committed on the victim by the accused for several times at several places, all mostly against her consent and unwillingness and by force. The main impugment in the revision case is the learned Judge not properly appreciated the facts of there is no force, but for consent, if any, and the offence under Section 376 IPC has no application, thereby, but for if at all any offence of cheating and the accused was more than 17 years even as observed in the impugned order by the learned Sessions Judge and thereby the dismissal of the discharge application is unsustainable and the accused is liable to be discharged at least if not totally for the offence under Section 376 IPC.

2. The learned Public Prosecution opposed the same saying even otherwise the victim is a minor, more particularly from the factual material covered by the police investigation, which is criteria for framing of charge that is also reflected in the impugned order, though

not in so many terms and by drawn attention of this court to the police final report in the form of charge sheet filed by Gopalapuram Police Station, particularly page No.2 onwards which shows according to the victim through the accused from the several acts of rape committed on her, they blessed with a female baby on 17.07.2003 by name Nicole. No doubt, therefrom the charge sheet shows at Page No.4 that by the time the child born the victim/LW.1/*de facto* complainant was about 17 years. In fact, the offence of rape committed earlier to it from which she conceived from her very claim and allegation. Once such is the case, even under Section 112 of the Indian Evidence Act, the gestation period mentioned is 280 days, if that period is excluded, the victim not completed 16 years, as rightly pointed out by the learned Public Prosecutor. For all these reasons and from the prima facie material, there is nothing to interfere with the dismissal of the discharge application of the learned Sessions Judge, but for to say all defences of the accused left open during trial.

3. Accordingly, the revision is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

24th January 2019

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Dr. B. SIVA SANKARA RAO, J