

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.6456 of 2016

ORDER:

This petition is filed by the petitioner – accused under Section 482 Cr.P.C, to quash the proceedings in CC No.718 of 2015 on the file of VII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad taken on file for the offences under Sections 417, 420 and 506 IPC.

2. The case of the prosecution in brief was that the 2nd respondent lodged a complaint before the Malakpet Police on 17.12.2014 at 2.30 PM alleging that she was married with one G.Srinivas 19 years ago and was blessed with two daughters. Subsequently, her husband expired and after his death, she was working as a maid-servant for her livelihood. She worked in the house of the petitioner - accused who was working as a Police Constable in 17th Battalion. He came in close relation with her and stated that he loved her and led conjugal life with her for the past 10 years. They stayed in Malakpet locality in various rented houses. After 10 years, he stated that he had no relation with her and refused to marry her and threatened to kill her if she informed the same at his work place. Basing on the said report, the police registered a case in Crime No.577 of 2014 under Sections 417, 420 and 506 IPC and after investigation, filed charge sheet against the petitioner – accused for the above offences.

3. Heard the learned counsel for the petitioner, learned counsel for the 2nd respondent and the learned Additional Public Prosecutor.

4. The learned counsel for the petitioner submitted that the 2nd respondent never worked as a maid-servant in the house of the petitioner. The petitioner was acquainted with the brother of the 2nd respondent, by name, Sudhakar. Due to the said acquaintance, in the first week of April 2013 said Sudhakar and the 2nd respondent approached the petitioner and requested for an amount of Rs.70,000/- for the purpose of the marriage of the daughter of the 2nd respondent and assured to return the said amount within six months. The petitioner gave the said amount to the 2nd respondent. The brother of the 2nd respondent died in the year 2014. When the petitioner asked the 2nd respondent to return the amount of Rs.70,000/- in the month of October 2014, the 2nd respondent postponed and filed the present case with false allegations. The petitioner was a married person having a son and daughter. He never promised to marry the 2nd respondent. The present case was filed by the 2nd respondent to avoid payment of amount to the petitioner. As per the report and the statements of the witnesses there was no cheating and promise to marry. The allegations against the petitioner were vague and prayed to quash the proceedings against the petitioner.

5. Learned counsel for the 2nd respondent and the learned Additional Public Prosecutor opposed the petition contending that police filed charge sheet against the petitioner as there was a *prima facie* case against the petitioner as per the statements of the witnesses.

6. Perused the record. As per the complaint filed by the 2nd respondent, she was in conjugal relationship with the petitioner for the past 10 years. As per her case, she worked in the house of the petitioner as a maid-servant and got acquainted with him. As such, she must be aware that the petitioner was a married person and was having children. She was a widow having children. Having fully known about each other, they were in a relationship. Section 417 IPC would attract only when the petitioner was engaged in sexual relationship with a woman on the false promise of marrying her. The learned counsel for the petitioner relied upon the judgment of the High Court of A.P. in **Kancharana Venkatesh v. State of Andhra Pradesh**¹ on the aspect that Section 420 IPC would not get attracted to the facts of the case when the accused had sexual relationship with the complainant on promise to marry her, as there was no inducement to deliver the property, as required under Section 420 IPC.

7. Learned counsel for the petitioner also relied upon the judgment of the Hon'ble Apex Court in **Pramod Suryabhan Pawar v. State of Maharashtra and another**² on the aspect that consent with respect to Section 375 IPC would involve an active understanding of the circumstances, actions and consequences of the proposed act. It was held that:

“12 This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the

¹ 2019 (2) ALD (Crl.) 514 (AP)

² 2020 (2) ALD (Crl.) 400 (SC)

various possible consequences flowing from such action or inaction, consents to such action. In Dhruvaram Sonar which was a case involving the invoking of the jurisdiction under Section 482, this Court observed:

“15. ... An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of.”

This understanding was also emphasised in the decision of this Court in Kaini Rajan v State of Kerala [2013 9 SCC 113]:

“12. ... “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was (2013) 9 SCC 113 consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

It was further held by Hon’ble Apex Court that:

“18 To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act”

8. As seen from the above judgment of the Hon’ble Apex Court, the false promise of marriage made by the accused should have a direct nexus to the woman’s decision to engage in sexual act. The complaint would not disclose when the false promise of marriage was made by the petitioner – accused. As the 2nd respondent was in relationship with the petitioner – accused for a period of 10 years as per her complaint itself, her contention that she engaged in the sexual act with the petitioner on the promise of marriage gets diluted. She would have insisted for marriage immediately or discontinued her

relationship for a long time with him if he failed to adhere to the promise made to her. But allowing continuance of relationship between them itself would disclose that it was a consensual affair and not arising out of a misconception of fact out of a promise to marry.

9. The complaint also would not disclose the offence under Section 506 IPC, as the alleged threat given by the petitioner – accused should be a real one and not just a mere word. The person uttering it should mean. what he says and the person at whom threat is launched must feel threatened actually. The Hon’ble Apex Court in **Manik Taneja and another v. State of Karnataka and another**³ observed as follows:

“12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and pointed the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section But, material has to be placed on record to show that the intention is to cause alarm to the complainant.”

10. Thus, as the statement of the complainant itself was lacking the ingredients of the offences initiated against the petitioner and the further investigation conducted by the police and the statements of other witnesses was not supplementing the same, the continuation of proceedings against the petitioner is considered as an abuse of process of law, hence, it is considered fit to quash the same.

³ 2015 (7) SCC 423

11. In the result, the Criminal Petition is allowed quashing the proceedings in CC No.718 of 2015 on the file of VII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, against the petitioner – accused.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

January 21, 2022
KTL