

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
WEDNESDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE
PRESENT**

**THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL
CRIMINAL PETITION NO: 13189 OF 2015**

Between:

M. Salahuddin Ayub, S/o Sadiq Zaheeruddin, Plot No. 259/A, MLA Colony, Rd
No. 12, Banjara Hills, Hyderabad 500034.

...Petitioner/Accused

AND

1. The State of Telangana, rep, PP, High Court at Hyderabad
2. P. Anand Kumar, Inspector of Police, CCS (DD), Hyderabad

...Respondents

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to declare as illegal and unlawful the impugned proceedings in S.C.No.234 of 2013 on the file of the Court of the Assistant Sessions Judge, Vikarabad, Ranga Reddy District and quash the same in limini and intoto.

I.A. NO: 1 OF 2015 (CRLPMP. NO: 13135 OF 2015)

Petition under Section 482 of Cr.P.C Praying that in the Circumstances Stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to grant interim stay of all further proceedings including appearance of the petitioner in court in SC.No.234 of 2013 on the file of the court of the Assistant Sessions Judge, Vikarabad, pending disposal of this criminal petition.

I.A. NO: 2 OF 2015 (CRLPMP. NO: 13389 OF 2015)

Petition under Section 482 of Cr.P.C Praying that in the Circumstances Stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to receive additional documents being filed herewith on record in the interest of justice.

This Petition Coming on for hearing, Upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing, the arguments of Sri R SAMEER AHMED, Advocate for the Petitioner and Sri VIZARATH ALI, the Assitant Public Prosecutor on behalf of the Respondent No.1, and None appeared for the Respondent No.2.

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE E. V. VENUGOPAL**CRIMINAL PETITION No.13189 OF 2015****ORDER:**

This criminal petition is filed seeking to quash the impugned proceedings in S.C.No.234 of 2013 on the file of the Court of Assistant Sessions Judge, Vikarabad, Ranga Reddy District.

2. The brief facts of the case are that –

While investigating the case against the accused namely Mohammed Salahuddin Ayub, director of Parkwood school in Cr.No.173 of 2010 under section 376, 506 IPC and 201 IPC in a case of outraging modesty of Kum.Shama Abdulla Shaikh, student of Parkwood school another girl namely Miss Lee Jeong Ryum who is student of 8th class in the same school on July 1st 2010 and while recording her statement, who is circumstantial witness in this case charge sheet has been filed adding section 354 to the main sections. The accused approached Hon'ble High Court vide criminal revision case No.251 of 2011 against the order in Crl.M.P.No.46 of 2011 in SC No.653 of 2010 dated 2.2.2011 on the file of V Addl. MSJ Mahila Court, Hyderabad and the Hon'ble High Court after hearing both sides allowed the

revision and passed the order directing the trial Court to hold a separate trial in respect of the offence under section 354 IPC alleged to have been committed against the other school girl directing the concerned police to file a separate charge sheet in respect of that offence and the trial court shall take up both the cases simultaneously and dispose them of as expeditiously as possible. Accordingly the said case was registered as Cr.No.25 of 2012 under section 354 of IPC of CCS PS.

3. Learned counsel for the petitioner would submit that this Court had allowed the Crl.R.C.No.251 of 2011 wherein the SC No. 653 of 2010 on the file of V Metropolitan Sessions Judge-cum-Mahila Court, Hyderabad, has been charge sheeted by the Inspector of police WCO Team I, CCS, Hyderabad for the offences punishable under section 376, 354, 506 and 201 of IPC and the said case is arising out of Cr.No.173 of 2010 of Central crime police station, Hyderabad. This court in the said revision while determining the matter has stated that on 20.01.2010 the trial Court framed four charges i.e. for offences under Sections 376, 354, 506 and 201 of IPC against the petitioner indicating that he is going to be put on a single trial for all the aforesaid four offences. It is seen that the petitioner has thereafter filed

Crl.M.P.No.46 of 2011 requesting the trial Court to separate the offence under Section 354 of IPC and conduct a separate trial for it, on the ground that a single trial of the said offence along with the offence under Section 376 of IPC and the other offences would prejudice him as both the said offences are distinct. Elaborating on this plea he urged before the trial Court that the said two offences are distinct and of different kind and the victims are also different and clubbing of the same for a single trial would prejudice him in his defence and the trial Court by its order dated 02.02.2011 held that the offences under section 376 of IPC and section 354 of IPC are of the same kind and since they were committed within a span of twelve months they can be tried together in view of section 219 of Cr.P.C. and challenging that order this revision is filed.

4. By considering the above submissions both the offences alleged against the petitioners in section 354 and 356 of IPC cannot be clubbed together. It has been alleged by the learned counsel that the section 219 Cr.P.C. has no application as the offences under section 376 and 354 of IPC are altogether different and they are not of same kind and victims are also different and alleged to have committed on different dates and hence

considering the same in compliance of the order passed by this Court, the respondent police had registered the FIR. Accordingly an application made by the petitioner herein vide CrI.M.P.No.46/2011 in S.C.No.653 of 2010 before the learned V Addl. Metropolitan Sessions Judge, Mahila Court, Hyderabad the learned counsel vide its order dated 02.02.2011 dismissed the petition as devoid of merits. Aggrieved by the order an FIR vide FIR No.25/2012 dated 2.2.2012 was filed by the petitioner under section 354 of IPC in compliance to the direction passed by this Court, wherein the said complaint the Investigating Officer is shown as complainant and accordingly upon the endorsement by the DCP, Hyderabad a case has been registered under section 354 of IPC vide said FIR in Cr.No.25/2012 and the matter was referred to PS Chengamol, Rangareddy District on the point of jurisdiction and in the said complaint certified copy of 164 Cr.P.C. statement of the victim Jane from learned V Additional Metropolitan Sessions Judge has been obtained and accordingly transferred to the PS Chengamol, Rangareddy District in compliance to the orders of this Court.

5. Based upon which one another FIR has been registered vide 13/2011 dated 9.2.2012 by the PS Chengamol, Rangareddy

District. Thereafter the charge sheet has been laid under section 173 of Cr.P.C. before the I Class Magistrate and the trial stated to have been under progress against which the present criminal petition has been filed under the same substance.

6. Learned counsel vehemently submit that the order of this Criminal revision case was the direction passed by this Court to conduct the trial while allowing the said revision, this Court vide order dated 26.04.2011 ordered to hold a separate trial in respect of the offence under section 354 of IPC which has been committed against the other school girl and the concerned police are directed to file a separate charge sheet in respect of that offence and the trial court shall take up both the cases and dispose the same as expeditiously as possible as petitioner is reported to be in judicial custody.

7. Learned counsel relying upon the order passed by this Court would submit that a separate trial has been conducted under different jurisdiction but not before the same Court while this Court has ordered the trial Court to take up both the cases simultaneously and dispose of further takes objection that when the deemed FIR has been instituted the prosecution ought to have recorded the said statement of section 161 Cr.P.C.

subsequently section 164 Cr.P.C. and they cannot rely upon the statement given by the victim under section 164 Cr.P.C. proceedings before the trial Court which is perse illegal.

8. The learned counsel would further submit that in the absence of non compliance of order of this Court to conduct the separate trial under separate jurisdiction would ultimately result in abuse of process of law and hence takes objection.

9. Learned Assistant Public Prosecutor would submit that unless and until FIR has been registered, charge sheet cannot be laid and FIR can only be registered under the jurisdiction of the crime where the crime/offence has occurred and accordingly the prosecution has appropriately referred the matter to the Chengamol police station and the prosecuting officer under 173 Cr.P.C. has obviously become the complainant in the matter and 164 Cr.P.C. statement of the other victim has already been recorded.

10. Recording of 161 Cr.P.C. statements in each case separately would ultimately amount to double jeopardy as the victim will be subjected to harassment in the name of proceedings and the instinct of the Court was very clear to conduct separate

proceedings and trial simultaneously. This Court has categorically stated that the trial Court shall take up both the cases simultaneously and dispose them of as expeditiously as possible and that does not mean the same trial Court has to take up those cases, as the trial Court cannot conduct trial beyond its jurisdiction and therefore interference of the order by the petitioner is misconceived and seeks to dismiss the criminal petition.

11. Having regard to the submissions made by the learned counsel for the petitioner, the ground canvassed by the learned court was that after filing the FIR the due process was followed by once again recording 161/164 Cr.P.C. statements of victim and thereafter filed the charge sheet before the same Court. This Court does not find any merit with the simple reason that the 2nd FIR has been filed upon the order of this Court and in furtherance of the action to comply with the order of this Court, respondent police have registered FIR and subsequently transferred the FIR upon which the trial is in progress and this Court does not find any reason or infirmity in the action of the police.

12. In these circumstances, this petition does not deserve any merit and there is no ground to interfere with.

13. Accordingly this criminal petition is dismissed.

Miscellaneous Petitions, pending if any, shall stand closed.

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SD/-T. JAYASREE
ASSISTANT REGISTRAR

SECTION OFFICER

To,

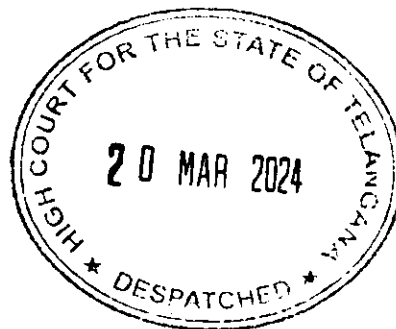
1. The Assistant Sessions Judge, Vikarabad,
2. The Station House Officer, P.S. Central Crime Station, Hyderabad District
3. Two CCS to the Public Prosecutor, High Court for the State Of Telangana, at Hyderabad.[OUT].
4. One CC to Sri. R SAMEER AHMED, Advocate [OPUC]
5. Two CD Copies

ANV
MY

CHR

HIGH COURT

DATED:06/12/2023



ORDER

CRLP.No.13189 of 2015

**DISMISSING THE
CRIMINAL PETITION**

⑦ CHR
6/3/24