
(2014) 06 AP CK 0074

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 6173 of 2014

Kukkala Siva Krishna

APPELLANT

Vs

Chodem. Kalyani

RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(1), 320(2), 320(9), 482
Penal Code, 1860 (IPC) — Section 120B, 302, 323, 376, 417
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x), 3(1)(xii), 3(l)(xii)

Citation : (2015) 1 ALD(Cri) 543

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : V. Sai Kumar, Advocate for the Appellant

Final Decision : Allowed

Judgement

Dr. K.G. Shankar, J.—The petitioner is the sole accused in the First Information Report (FIR) in Crime No. 57 of 2014 on the file of Jeelugumilli Police Station, West Godavari District. A complaint was lodged by the 1st respondent against the petitioner, which was registered under Sections 417, 420, 376 and 506 IPC, and u/s 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the SCs/STs Act, for short). The petitioner sought for quashment of the FIR through this petition u/s 482 Cr.P.C.

2. However, the learned counsel for the petitioner submitted that the 1st respondent/de facto complainant and the petitioner entered into a compromise and made a request to compound the case against him. The offences under Sections 417 and 420 IPC are compoundable u/s 320 Cr.P.C. The offence u/s 506 IPC also is compoundable. The petitioner allegedly committed the offences under Sections 417, 420 and 506 IPC. The 1st respondent certainly can compound these offences if she has entered into a compromise with the petitioner herein. However, the offence u/s 376 IPC as well as the offence u/s 3(1)(xii) of the SCs/

STs Act are not compoundable offences. The question is whether they can be compounded or otherwise.

3. The learned counsel for the petitioner placed reliance upon *Gian Singh Vs. State of Punjab and Another*, . In that case, the petitioner was convicted u/s 420 IPC read with Section 120B, IPC. On the ground that the offence u/s 120B, IPC is not compoundable, the Court refused to record composition of the offence. The petitioner ultimately approached the Supreme Court. The Supreme Court held that the High Court can exercise inherent powers u/s 482 Cr.P.C. and compound the offences. The Supreme Court however cautioned that heinous and serious offences of mental depravity, murder, rape, dacoity etc., or offences under the special statutes like Prevention of Corruption Act or offences committed by public servants while working in their capacity as public servants could not be quashed even if the victim or the victim's family offers to settle the dispute as such offences cannot be termed as private offences in nature and since they have serious impact on the society.

4. In Criminal Petition No. 894 of 2011, where the accused allegedly committed offences under Sections 323 and 506 IPC as well as u/s 3(1)(x) of the SCs/STs Act, on the ground that the de facto complainant entered into a compromise with the accused, a learned Single Judge of this Court quashed the FIR.

5. In *P. Srinivasa Rao Vs. State of A.P.*, , placing reliance upon *GIAN SINGH* (1 supra) this Court quashed the FIR where the case was instituted against the accused u/s 3(1)(x) of the SCs/STs Act and u/s 506 IPC.

6. It may be noticed that the general law is that the inherent powers either u/s 482 Cr.P.C. or u/s 151 C.P.C can be invoked only when there is no provision contrary to the order that the Court proposes to pass or there is a provision in the Code dealing with specific situation. Thus, if there is a specific prohibition regarding a particular procedure, Section 482 Cr.P.C. may not be invoked on the ground that the Court has inherent powers. It may be noticed that Section 320(9) Cr.P.C. envisages that no offence can be compounded except as provided by Section 320 Cr.P.C. Where there is a specific prohibition to compound the offences other than those mentioned in Sections 320(1) and 320(2) Cr.P.C., perhaps such offences cannot be compounded. For instance, the High Court cannot convict an accused for an offence u/s 302 IPC and sentence him to rigorous imprisonment for a period of 3 years or 4 years on the ground of exercising inherent jurisdiction as the Indian Penal Code provides specific punishment for the offence u/s 302 IPC.

7. It may also be noticed that the Supreme Court considered that in heinous and serious offences, the FIR or the charge-sheet cannot be quashed on the ground that the victim or the family of the victim settled the dispute. In the present case, apart from the offences u/s 417, 420 and 506 IPC, the other two offences u/s 376 IPC and u/s 3(1)(xii) of the SCs/STs Act are heinous offences and are offences against the State. I do not consider that the FIR or charge-sheet can be

quashed on the ground that the victim compounded/willing to compound such offences. Therefore, the willingness of the 1st respondent and her affidavit that she has settled the dispute cannot be a ground to quash the FIR so far as the offences u/s 376 IPC and u/s 3(1)(xii) of the SCs/STs Act are concerned.

8. The learned counsel for the petitioner also contended that the offences u/s 376 IPC and u/s 3(1)(xii) of the SCs/STs Act have not been made out. In the FIR, the 1st respondent contended that the petitioner developed carnal acquaintance with the 1st respondent promising to marry her. Thus, the 1st respondent was a consenting party to the carnal acquaintance between the petitioner and the 1st respondent. I agree with the contention of the learned counsel for the petitioner that the offence could be tantamount to an offence of cheating but not an offence u/s 376 IPC where the 1st respondent was a willing partner to the carnal acquaintance between the petitioner and the 1st respondent.

9. Section 3(1)(xii) of the SCs/STs Act reads:

"(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

....."

10. In the present case, the 1st respondent indeed belongs to Scheduled Caste. However, there is no whisper in the complaint to show that the petitioner was in a position to dominate the will of the 1st respondent and used that position to exploit her sexually. Consequently, the offence u/s 3(1)(xii) of the SCs/STs Act also prima facie is not made out from the complaint. Where the offences u/s 376 IPC and u/s 3(1)(xii) of the SCs/STs Act prima facie are not made out from the complaint and where the other offences under Sections 417, 420 and 506 IPC are said to have been agreed to be compounded by the 1st respondent, this petition for the quashment of the FIR is quite justified so far as the offences u/s 376 IPC and u/s 3(1)(xii) of the SCs/STs Act are concerned.

11. Accordingly, this criminal petition is allowed in part. The FIR in Crime No. 57 of 2014 on the file of Jeelugumilli Police Station, West Godavari District is quashed so far as the offences u/s 376 IPC and u/s 3(1)(xii) of the SCs/STs Act are concerned. The petitioner and the 1st respondent may approach proper Court for the composition of the other offences under Sections 417, 420 and 506 IPC. The miscellaneous petitions, if any, pending in this petition shall stand closed.