

Telangana High Court

Major Amit Yadav vs The State Of Telangana on 31 January, 2023

Bench: K.Surender

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.479 OF 2023 and I.A. Nos. 2 & 3 of 2023 in CrI.P.No.479 of 2023 Between:

Major Amrit Yadav ... Petitioner And The State of Telangana, rep. by its Public Prosecutor, High Court for the State of Telangana, Hyderabad & another ... Respondents DATE OF JUDGMENT PRONOUNCED: 31.01.2023 Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K. SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER
+ Criminal Petition No.479 OF 2023
and

I.A. Nos. 2 & 3 of 2023 in CrI.P.No.479 of 2023 % Dated 31.01.2023 # Major Amrit Yadav ... Petitioner And \$ The State of Telangana, rep. by its Public Prosecutor, High Court for the State of Telangana, Hyderabad & another ... Respondents ! Counsel for the Petitioner: Sri. K. Venumadhav ^ Counsel for the Respondents: Sri S. Sudershan Additional Public Prosecutor for R1 >HEAD NOTE:

? Cases referred 2 (2019) 5 SCC 688 (2022) Lawsuit (SC) 973 THE HONOURABLE SRI JUSTICE K. SURENDER CRIMINAL PETITION No.479 OF 2023 ALONG WITH I.A.Nos.2 AND 3 OF 2023 COMMON ORDER:

1. This Criminal Petition is filed under Section 482 Cr.P.C., seeking to quash the proceedings in P.R.C.No.74 of 2022 on the file of the XXII Additional Chief Metropolitan Magistrate at Secunderabad.
2. Heard learned counsel appearing on both sides and learned Additional Public Prosecutor for the State. Perused the record.
3. The petitioner is charge-sheeted for the offences under Sections 376(2)(n), 496, 417 and 506 of IPC on the basis of a complaint lodged by the 2nd respondent. In the complaint, she stated that she got married to one Rajiv Sayam and had two sons. In the month of August 2016, she shifted to Trimulgherry, Hyderabad. In the month of January 2017, she got acquainted with the petitioner. The petitioner allegedly asked her to seek separation from her husband. They lived separately and petitioner used to take care of all the necessities. During November 2018, the petitioner used to call her daily and they had developed physical intimacy. The petitioner promised to marry her after she gets divorce from her husband. On 09.08.2020, the petitioner stayed in the house of 2nd respondent for a week and before leaving to Meerut from Secunderabad, took her to gold shop and purchased Mangalsutra and tied around her neck in the presence of god and her son. Petitioner continued to have sexual intercourse with her for the reason of petitioner marrying her. 2nd respondent went and met the petitioner at Meerut. On 21.12.2020 Petitioner dropped her at Nizamuddin Railway Station and since then the petitioner stopped seeing her, for which reason the present complaint was filed alleging rape and cheating.
4. During the pendency of the present Criminal Petition, the parties have compromised the matter and, accordingly, respondent No.2/defacto complainant filed I.A.Nos.3 and 2 of 2022 to permit to compound the offences and to compromise the case, respectively.
5. Vide order dated 18.01.2023, this Court, after recording the submissions made by the learned counsel for the petitioner as well as respondent No.2, directed the parties to appear before the Secretary, Telangana High Court Legal Services Committee, Hyderabad, for their identification and also directed the Secretary to submit a report by 30.01.2023. In compliance with the said order, the Secretary has submitted her report, on 24.01.2023.
6. In the report of the Secretary, Telangana High Court Legal Services Committee, Hyderabad, it is stated that in obedience of the orders dated 18.01.2023, the petitioner/Accused and the 2nd respondent have appeared before her along with their counsel and on examination and verification of their particulars from their Aadhar Cards, they were tallied. Thus the identification of both the parties has been established.
7. The parties herein have filed a joint memo of compromise stating that at the intervention of the elders, they have settled the disputes between them amicably and 2nd respondent has no objection to quash the proceedings against the petitioner herein in the above case. The said joint memo of compromise and the report of the Secretary are placed on record.

8. Sri S.Sudershan, learned Additional Public Prosecutor appearing for the State-1st respondent would submit that the case was registered under Section 376 of IPC, as such, this Court cannot quash the proceedings as the Hon'ble Supreme Court in the case of State of Madhya Pradesh v. Laxmi Narayan and others [(2019) 5 Supreme Court Cases 688] case, held that in case of serious offences such as rape or offence against society, High Court under inherent powers cannot quash the proceedings. In view of the judgment of the Hon'ble Supreme Court in Laxmi Narayana's case and also in view of the heinous nature of offence alleged, the petition has to be dismissed.

9. In the present case, as seen from the averments, the 2nd respondent/complainant was already married and having two children by the date she got acquainted with this petitioner. Both the petitioner and the 2nd respondent have gone to different places and also had physical relation over a period of four years. The 2nd respondent was not a divorcee when she was having a relation with the petitioner. However, she voluntarily had physical intimacy with this petitioner. It cannot be said that the petitioner had in any manner committed the offence of rape when the 2nd respondent had consented to have physical relationship with the petitioner. During subsistence of her marriage, if the 2nd respondent had physical relation with this petitioner, it cannot be said that this petitioner, in the present facts and circumstances of the case, is liable either for the offence of rape or cheating. The 2nd respondent is aged around 40 years and the petitioner is aged 36 years and unmarried.

10. The Honb'le Supreme Court in the case of Shambhu Kharwar v. State of Uttar Pradesh and another¹ held as follows:

"13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge- sheet, the essential ingredients of an offence under IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge- sheet as they stand, the crucial ingredients of the offence under IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent."

11. A bare reading of the complaint would indicate that the 2nd respondent had sexual relation over a period of four years with this petitioner consensually. In the said circumstances, when the 2nd respondent/defacto complainant is not willing to prosecute the case against the petitioner in the court, the proceedings would only result in wastage of trial court's time. Both on facts when the allegations did not make out any offence of rape or cheating and also when the parties are inclined to compromise the matter, only for the reason of there being mention of rape in the charge sheet and the parties have compromised, intervention of this Court under inherent powers under Section 482 of Cr.P.C, cannot be denied. 2022 LawSuit (SC) 973

12. Considering the said report of the Secretary, Telangana High Court Legal Services Committee, Hyderabad, and in view of the compromise entered between the petitioner and respondent No.2, I.A.Nos.2 and 3 of 2022 are allowed. Consequently, the Criminal Petition is allowed and the proceedings in P.R.C.No.74 of 2022 on the file of the XXII Additional Chief Metropolitan Magistrate at Secunderabad, are hereby quashed against the petitioner/Accused.

As a sequel, the miscellaneous Petitions, pending if any, shall stand closed.

_____ K.SURENDER, J Date: 31.01.2023 Note: LR copy to be marked.

B/o.kvs THE HONOURABLE SRI JUSTICE K. SURENDER CRIMINAL PETITION No.479 OF 2023
ALONG WITH I.A.Nos.2 AND 3 OF 2023 Dt.:31.01.2023 kvs