

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Petition No.8496 OF 2022**

Between:

Kothapally Krishna

... 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: 10.01.2023

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

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|---|--|--------|
| 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 |

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K.SURENDER, J

\* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 8496 of 2022

% Dated 10.01.2023

# Kothapally Krishna

... 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. P. Vamsheedhar Reddy

^ **Counsel for the Respondents:** Sri S.Sudershan, Addl.Public

Prosecutor for R1.

Sri K.C. Venkat Reddy for R2.

>**HEAD NOTE:**

? **Cases referred**

<sup>1</sup> 2022 Live Law (SC) 599

<sup>2</sup> (2013) 7 SCC 675

<sup>3</sup> (2013) 9 SCC 113

**HON'BLE SRI JUSTICE K.SURENDER**  
**CRIMINAL PETITION No.8496 OF 2022**

**ORDER:**

1. This Criminal Petition is filed to quash the proceedings against the petitioner/accused in P.R.C.No.9 of 2022 on the file of V Additional Metropolitan Magistrate-cum-Additional Junior Civil Judge, Cyberabad at L.B.Nagar.

2. The case of the 2<sup>nd</sup> respondent is that to pursue higher studies, she went to London where she met the petitioner herein. They were talking on phone regularly at London and when the petitioner proposed his love, the 2<sup>nd</sup> respondent refused, however, they continued to talk to one another. Petitioner was staying in Leeds and they used to spend weekends by traveling together. In January 2020, after 2<sup>nd</sup> respondent's 1<sup>st</sup> semester examines were over, she came back to India and she could not travel back. The petitioner returned in the month of March 2020 and they were going out together. The petitioner went to 2<sup>nd</sup> respondent's house and convinced her father for marriage. The parents of the petitioner, having agreed for the marriage demanded 40 tulas of gold, Rs.5.00

lahs cash, 100 sq.yds plot and one acre land. On 02.08.2020 engagement was performed in the presence of relatives and Rs.4.00 lakhs cash and two tulas of gold was given. After some time, petitioner started avoiding the 2<sup>nd</sup> respondent and when questioned, petitioner informed that their parents did not like the proposal of marriage, for which reason, the parents of the 2<sup>nd</sup> respondent went and met the parents of the petitioner. The petitioner's parents demanded more dowry apart from what was demanded earlier and a meeting was held with the elders. In the said meeting, the petitioner's mother namely Anjamma stated that the character of 2<sup>nd</sup> respondent was not good and abused them in the said meeting. The petitioner and his brother beat the parents of the 2<sup>nd</sup> respondent. For the reason of cheating them after engagement, police complaint was filed. The said crime was registered for the offence under Sections 417, 420, 509, 323 r/w 34 of IPC. After investigation, the police filed charge sheet for the offences under Sections 376(2)(n) of IPC, 417, 420, 509 and 323 r/w 34 of IPC against A1, A2 for the offence under Section 509 of IPC and A3 and A4 for the offences under Sections 323 r/w 34 of IPC.

3. The petitioner herein is A1 questioning the addition of charge of the offence under Section 376(2)(n) of IPC when the compliant and Section 161 Cr.P.C statement of the 2<sup>nd</sup> respondent did not make out any such offence. Even in the charge sheet, there is no reason as to why Section 376(2)(n) of IPC was added when the case was initially registered for the offence under Section 417, 420, 509 and 323 r/w 34 of IPC. Learned counsel for the relied on the judgment of the Hon'ble Supreme Court in the case of **Ansaar Mohammed v. The State of Rajasthan**<sup>1</sup> and argued that in the event of a person having stayed on her own in a relationship, if the relationship did not work out eventually no offence under Section 376(2)(n) of IPC is made out.

4. On the other hand, Sri S.Sudershan, learned Additional Public Prosecutor submits that there is a serious allegation of rape and the same cannot be determined in a quash proceeding. It is for the trial Court to ascertain whether the

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<sup>1</sup> 2022 Live Law (SC) 599

allegation of rape is made out or not, for which reason, the petition has to be dismissed.

5. The Hon'ble Supreme Court in the case of **Ansaar Mohammed v. The State of Rajasthan (supra)**, held as under:

“It is the admitted case of the complainant that she was in a relationship with the appellant for a period of four years. It is admitted by Mr.Himanshu Sharma, learned counsel for the respondent No.2/complainant that when the relationship started, she was 21 years of age.

In view of the said fact, the complainant has willingly been staying with the appellant and had the relationship. Therefore, now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(n) IPC.”

6. The Hon'ble Supreme Court in the case of **Deepak Gulati v. State of Haryana**<sup>2</sup> held that on facts of the case when the victim essentially consented to sexual intercourse and did not raise any objection at the initial stages it does not amount to rape or cheating.

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<sup>2</sup> (2013) 7 Supreme Court Cases 675

7. In the case of **Kaini Rajan v. State of Kerala**<sup>3</sup>, the Hon'ble Supreme Court considered the scope of Section 375 IPC and also observed that considering earlier Judgments, the consent given by a woman believing the man's promise to marry her, is a consent which excludes the offence of rape on the basis of facts.

8. In the statement of victim/2<sup>nd</sup> respondent it is nowhere stated that her sexual relationship with the petitioner either in London, when they were living in Granger Park Grove Leeds or after they returned to India having physical relation, there was a promise of marriage or that she was under the misconception of any fact including her marriage with petitioner. The proposal for marriage was also after going around for some time when the petitioner informed the 2<sup>nd</sup> respondent that he would meet her parents and proposed marriage, then the marriage proposal was accepted and engagement was performed.

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<sup>3</sup> (2013) 9 Supreme Court Cases 113

9. The statement does not make out that her consent for having sexual intercourse was on account of any promise to marry. Both were majors, pursuing their higher studies abroad and their sexual intimacy was consensual. Further, both the petitioner and the 2<sup>nd</sup> respondent were fully aware of their acts of being in a relationship or having physical relation and the risks involved. In the said circumstances, when adults have consensual physical relationship, it can be reasonably inferred that both of them have knowledge about the consequences of their relationship so also the pros and cons of their relation.

10. As already submitted, the 2<sup>nd</sup> respondent had voluntarily been in physical relation during their stay at London and also in India, even before a proposal of marriage was made by the petitioner herein. As already discussed since physical relation was not consequent of any false promise or any misconception of fact, there can be no offence under Section 376(2)(n) of IPC.

11. Accordingly, the petition is allowed in part and the proceedings against the petitioner/A1 for the offence under Section 376(2)(n) of IPC are hereby quashed. However, the



trial court is at liberty to proceed with the trial against this petitioner and others for the other offences mentioned in the charge sheet. Since the learned counsel for the petitioner had only argued regarding offence under Section 376(2)(n) of IPC, this Court has not dealt with the case whether the circumstances or allegations make out any other offences of IPC including cheating. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

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**K.SURENDER, J**

Date: 10.01.2023

Note: LR copy to be marked.

B/o.kvs

**HON'BLE SRI JUSTICE K.SURENDER**

CRIMINAL PETITION No.8496 OF 2022

Date: 10.01.2023.

kvs

