



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3560]

WEDNESDAY, THE EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1312/2015

Between:

1. SHAIK MOHAMMED ALI, -

...PETITIONER

AND

1. THE STATE OF A P, -

...RESPONDENT

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to

IA NO: 1 OF 2015(CRLRCMP 2030 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the certified copy of the Calendar and Judgment passed in SC.No.112 of 2013 on the file of the Principal assistant Sessions Judge, Tenali Dt.07.01.2014 in the interest of justice.

IA NO: 2 OF 2015(CRLRCMP 2067 OF 2015)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the sentence passed in SC.No. 112 of 2013 on the file of the Principal Assistant Sessions Judge, Tenali, by calendar and judgment dated 7-1-2014 which was confirmed by the judgment dated 6-7-2015 passed in Crl.A.No. 11 of 2014 on the file of the XI Additional District

and Sessions Judge, Tenali and release the petitioner on bail, during the pendency of the above revision case in the interest of justice.

Counsel for the Petitioner:

1.B PARAMESEWARA RAO

Counsel for the Respondent:

1.PUBLIC PROSECUTOR (AP)

The Court made the following:

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1312 OF 2015

ORDER:

1. The present Criminal Revision Case has been filed challenging the concurrent findings of the learned trial court and the learned appellate court, whereby the petitioner was found guilty for the offence punishable under Section 366-A of the Indian Penal Code (for short, 'I.P.C.').

2. BRIEF FACTS OF THE PROSECUTION CASE:

a) On 24.08.2012, PW1 lodged a written report before the police stating, inter alia, that his younger daughter (PW2), aged about 16 years, had went to a shop at around 11.00 AM on 23.08.2012 and thereafter gone missing. Based on the said information, police initiated an investigation by registering a missing case. In the meantime, the relatives of also were searching for the girl. During searching, LW6 and PW4 recovered PW2 from Karimnagar and brought her back to PW1 on 14.09.2012. On the next day, i.e., on 15.08.2012, PW1 along with PW2 approached the police station and lodged a complaint. Hence, a case was registered against the petitioner under Section 366-A IPC.

b) During trial, prosecution examined as many as five witnesses and produced several documents, including the birth certificate of PW2, which was duly marked. After hearing both sides, the learned trial court found the petitioner to be guilty for the offence under Section 366-A IPC and convicted him. The order of conviction and sentence was confirmed by the learned appellate court. Hence, the present Criminal Revision Case.

3. **SUBMISSIONS OF THE PETITIONER:**

- a) The learned counsel for the petitioner submits that both the courts below have failed to properly appreciate the facts and circumstances of the case and have recorded an erroneous finding of conviction. It is submitted that the evidence of PWs1 to 5 are all unreliable and foisted only to implicate the petitioner in this case.
- b) The learned counsel further submits that the learned trial court has failed to observe the cross-examination of PW-3, wherein she stated that she did not remember when the police came to her house. It is also argued that the trial court and the appellate court failed to observe that entire investigation of the police is perfunctory and table work. After recovery of the minor girl, the matter should be informed to the nearby police station in Karimnagar. No evidence of seizure was laid by the prosecution as to how PW-2 was recovered and who has given information of staying PW-2 at Karimnagar.

Thereby the case of the prosecution is doubtful. There are love relationship between petitioner and PW-2 Hence, the petitioner is entitled for acquittal.

4. SUBMISSIONS OF THE STATE

- a) The learned Assistant Public Prosecutor submits that in the present case, PW1 is the father of PW2, who lodged the missing complaint. PW3 is the elder sister of PW2, and PW5 is the Investigating Officer. He submits that all the prosecution witnesses have supported the prosecution case in toto. It has been proved before the learned trial court that the accused wilfully and deliberately induced PW2 from the lawful custody of her parents by deceitful words and by making false promise to marry her. He further submits that the victim girl (PW2) has supported the prosecution case and has categorically stated that the petitioner/accused took her away from her lawful guardianship and kept her in a house at Karimnagar.
 - b) It is further submitted on behalf of the prosecution, the evidence on record is justified to record the guilt against the petitioner. He also submits that, during trial, the petitioner was in custody for 55 days and he has placed the nominal roll on record.
5. Heard the learned counsel for the parties. Perused the entire facts of the prosecution case as well as the observations of the learned trial court and the observations of the learned appellate court.

6. **OBSERVATION OF THE COURT:**

a) A charge was framed against the petitioner under Section 366A of IPC. To prove the prosecution case, the evidence of the victim girl is material. The victim girl appeared as PW-2 before the learned trial court. PW-2 stated that she was studying in 10th class and was aged about 16 years. It has been alleged that the petitioner used to tell her about his liking and loving her and made a false promise to keep her better than her parents. On that pretext, PW-2 travelled with the accused from Tenali to Karimnagar, more than 300 km away. They stayed in a rented accommodation there, wherein the petitioner was running an auto. After some days, LW-6 and PW-4 recovered PW-2. If the prosecution case, on the basis of PW-2, is taken to be true, the prosecution has proved that the accused person had kidnapped or taken away PW-2 from her lawful guardianship. Admittedly, PW-2 was a minor at that time. Thus, her consent has no meaning in the eye of law.

b) The ingredients of Section 366A IPC has to be justified in the attending facts and circumstances. Section 366A IPC reads as follows:

“Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be

punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

- c) To prove the offence under Section 366A IPC, the prosecution must establish that the accused induced a minor girl under the age of 18 years to go from any place or to do any act with the intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person.
- d) The essential ingredients of Section 366A IPC require that the minor girl must be placed in a situation where she is likely to be forced or seduced into illicit intercourse with another person. In the present case, there are no allegations from the prosecution that the petitioner used such force or placed PW2 in such a position so as to compel her to engage in such act as contemplated under Section 366A IPC. Furthermore, PW2 has not reported any ill treatment by the petitioner or any other person, except that she was kept in a house at Karimnagar. Though the prosecution has successfully proved that the petitioner induced PW2 and took her away from lawful guardianship, but essential ingredients of Section 366A IPC is missing in this case. Thereby the observation of the learned trial court holding that accused guilty of offence punishable under Section 366A IPC appears to be illegal and improper. Rather, the evidence on record clearly establishes that the accused committed an offence under Section 363 IPC. The learned trial court convicted

and sentenced the petitioner to undergo rigorous imprisonment for five years. In my view, the petitioner shall be convicted for the offence under Section 363 IPC and shall suffer rigorous imprisonment for one and a half years and to pay a fine of Rs. 500/-.

- e) Accordingly, the revision case is disposed of.
 - f) The order suspending the sentence during the pendency of the Criminal Revision Case stands vacated. The petitioner is directed to appear before the learned Trial Court within four weeks from the date of passing of this order to serve the remaining portion of the sentence. Failing which, learned trial court shall issue a non-bailable warrant against petitioner to comply the order.
7. Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE SUBHENDU SAMANTA

Dt.08.04.2026
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