HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.12387 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings against the petitioners/A.1 and A.2 in C.C. No.233 of 2014 pending on the file of V Additional Judicial Magistrate of First Class, Tirupati, for the offences punishable under Sections 420, 384, 506, 406, 403, 120-B of Indian Penal Code, 1860 (for short, I.P.C.).

The second respondent herein filed a complaint before the V Additional Judicial Magistrate of First Class, Tirupati, under Section 200 of Cr.P.C. and the same was referred exercising power under Section 156(3) of Cr.P.C. to the police for investigation and report and accordingly, the Police, Tiruchanoor Police Station, submitted final report on 29.04.2014 informing that no offence was committed by the accused and requested the court to issue proceedings, treating the case as false by the said report.

On receipt of notice from the Court about the final report, the second respondent filed protest petition before the V Additional Judicial Magistrate of First Class, Tirupati, on 23.09.2014 and the learned Magistrate, after recording the statements of L.Ws.1 and 2, who are second respondent and her mother, taken cognizance of case against the petitioners for the offences punishable under Sections 420, 384, 506, 406, 403, 120-B of I.P.C.

Aggrieved by the order of taking cognizance, the present criminal petition is filed to quash the proceedings against the petitioners in C.C. No.233 of 2014 on various grounds.

The main ground urged by the petitioners is that the learned Magistrate did not follow the procedure and even otherwise, if taken on its face value would not constitute any offence. But the learned Magistrate, without applying his mind took cognizance and committed an error in taking cognizance of the offence against the petitioners.

During hearing, learned counsel for the petitioner reiterated the contentions urged in the petition and drawn the attention of this Court to the Final Report dated 29.04.2014, protest petition and the statements of L.Ws.1 and 2, and it is contended that even if the allegations made in the statements and the complaint are taken on its face value, that would not constitute any of the offence under the above provisions of law and prayed to set aside the same.

The second respondent appeared in person and filed counter denying the material allegations raising several contentions, more particularly, about the harassment she meted out in the hands of the petitioners and filing C.C No.296 of 2013, D.V.C. No.4 of 2014 and F.C.O.P. No.365 of 2014, and Crime No.365 of 2014 of Tiruchanoor Police Station, while contending that the petitioners have committed serious offences, but the first petitioner influenced and managed the police officials and they were gained over by the first petitioner. Therefore, got the final report filed as the complaint is false. Even otherwise the protest petition, filed by the second respondent and statements recorded by the learned Magistrate disclose sufficient material to proceed against the petitioners for the above offences and when the material constitute an offence on its face value, this court while exercising under Section 482 of Cr.P.C. cannot quash the proceedings and prayed to dismiss the petition.

The second respondent appeared in person and argued the matter, reiterated the contentions urged in the counter and pointed out various allegations made in the counter regarding harassment she meted out in the hands of the first petitioner and his son and prayed to dismiss the petition.

Considering the rival contentions, perusing the material available on record, the point that arise for consideration is,

> Whether the allegations made in the complaint, on its face value would constitute offences punishable under Sections 420, 384, 506, 406, 403, 120-B of I.P.C.? If not, whether the proceedings against the petitioners in C.C. No.233 of 2014 are liable to be quashed?

POINT:

Undisputedly, the marriage of second respondent was performed with the son of the first petitioner and there were criminal cases pending before different courts. She filed a private complaint before the learned Magistrate, alleging that the first petitioner purchased certain property i.e. B-schedule property shown in the complaint with the money given by her parents at the time of marriage and that despite several requests, the first petitioner did not execute registered deed for the B-schedule property in her name and later sold the property to the second petitioner. It is also contended that first petitioner informed the second respondent that he intends to raise construction over another property referred to as A-Schedule property in the said complaint and let it out for lease, pressurized the second respondent and took away her Sridhana property comprising of 100 sovereigns of gold and pledged the same and raised a loan to raise the construction over the said property.

Later the son of the first petitioner and the second respondent being the husband and wife went to USA. During her stay at USA, she was subjected to cruelty for her failure to meet the illegal demand for dowry and later returned to India on 15.10.2011 and she was asked to stay back in India and thereafter she lodged the complaint for the offence punishable under Section 498-A IPC before Mahila Police Station, Tirupati, thereupon the Police, Mahila Polie Station, registered a case in Cr.No.22 of 2013.

The first petitioner colluded and conspired with others, and brought into existence the General Power of Attorney dated 15.12.2012 executed by her in favour of the first petitioner and later B-schedule property was transferred to the second petitioner. Thus, the petitioners 1 and 2 committed serious offences. On reference of the private complaint, the Police, Tiruchanoor Police Station, filed a final report dated 29.04.2014 requesting to close the case as false informing that the accused never cheated the complainant by giving promise that they will purchase landed property further with the dowry amount given by her at the time of her marriage. It is also mentioned in the final report that son of the first petitioner never received any dowry amount from the father of second respondent and he did not take the jewellery of the complainant, pledged the same for construction of the house etc. Thus, in total, final report shows that the allegation made in the complaint are all false, thereupon the second respondent filed a protest petition before the court and on enquiry, after recording statement of two witnesses i.e. the *de facto* complainant and her mother, the learned Magistrate took cognizance of the offence.

Even the statements recorded by the learned Magistrate, at best, disclosed about the details of presentations given by her parents at the time of her marriage and construction of house by the first petitioner in an extent of 73.11 square yards at Mahabubnagar and the first petitioner sold the same to the second petitioner. The allegations, at best, would disclose that their parents brought certain amount and with the said amount property was purchased. But, absolutely, no piece of paper is produced in support of her contention before the Court. Based on the alleged oral statement of Shalini and her mother, the learned Magistrate took cognizance of the offence. The property of an extent of 45.2/3 cents was registered in the name of her husband, and he executed a power of attorney in favour of first petitioner authorizing him to sell the property. Therefore, in pursuance of authorization, he sold the property to the second petitioner. In normal course of events when the particular property was registered in the name of a particular person the said person is deemed to be the owner of the property. Therefore, on the face value of the allegations made in the complaint, the property was purchased in the name of son of the first petitioner, who is working in USA, and there is nothing, *prima* *facie,* to establish that the property was acquired with the aid of the dowry allegedly given by parents of the second respondent and pledging of gold ornaments etc., for construction. But the allegations made in the complaint, at best, would go to show that the first petitioner made a promise to purchase the property in her name, however, there is absolutely nothing on record to show that he made any promise. In the absence of any details like date of promise etc., it is difficult for me to accept the contention that the first petitioner made promise to purchase the property in the name of second respondent and pledged gold ornaments for construction of the house etc.

Even if the allegations made in the complaint and in the statements recorded by the Magistrate, if taken on its face value, it is purely a case of civil nature as the petitioner is required to establish the promise, if any, made either oral or in writing and presentation of gold ornaments etc. Assuming for a moment that the first petitioner purchased the property and sold the same to the second petitioner, an effective remedy is available to her is under the Specific Relief Act, but not under criminal law.

Therefore, I find, absolutely, no material to proceed further against the petitioners for the alleged offences, since the allegations made in the complaint and in the statement recorded by the Magistrate on its face value would not disclose the offence punishable under Section 420, 384, 506, 406, 403, 120-B. The principles are well settled to exercise power under Section 482 of Cr.P.C. that such powers can be exercised to give effect to any order under Cr.P.C., to prevent abuse of the process of any court, and to secure the ends of justice

In **R.P. KAPUR** v. **STATE OF PUNJAB**[1], the Apex Court laid down the following principles:-

> "(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
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> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
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> (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
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> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

Similarly in **STATE OF HARYANA** VS. **BHAJAN LAL**[2] the Apex Court laid down the following seven guidelines

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

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[1] AIR 1960 SC 866
[2] (1992) SUPP (1) SCC 335

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Moreover, it is also equally settled that inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code, as already held by the Apex Court in **KAVITA v. STATE**[3] and **B.S. JOSHI V. STATE OF HARYANA & ANR.**[4] Thus, if an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant did not avail that remedy. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide **MRS.**

[3] (2000) Cri.L.J 315
[4] (2003) 4 SCC 675

DHANALAKSHMI VS. R. PRASANNA KUMAR & ORS.[5]; GANESH NARAYAN HEGDE VS. S. BANGARAPPA & ORS.[6] and M/s ZANDU PHARMACEUTICAL WORKS LTD. & ORS. VS. MD. SHARAFUL HAQUE & ORS.[7]

Thus, in view of the law declared by the Apex Court when the complainant resorted to abuse the process of court, this Court while exercising jurisdiction under Section 482 of Cr.P.C. can prevent such abuse for which the court exists. Here the allegations made in the complaint are vague and those allegations would not constitute any offences punishable under sections 420, 384, 506, 406, 403 and 120-B I.P.C.

Section 420 I.P.C. deals with punishment for Cheating and dishonestly inducing delivery of property. The word 'cheating' is defined under Section 415 I.P.C., which reads as follows:

> "Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

Here, there is absolutely no allegation that the first petitioner induced the second respondent to part with any property, and made promise with dishonest intention and in the absence of any allegation of dishonest intention on the part of the first petitioner and part with such amount, it cannot be said that the acts of the

[5] AIR 1990 SC 494
[6] (1995) 4 SCC 41
[7] AIR 2005 SC 9

first petitioner would constitute an offence of cheating as defined under Section 415 I.P.C.

Section 384 I.P.C. deals with punishment for extortion. The word 'extortion' is defined under Section 383 I.P.C. which reads as follows:

> "Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion"

To constitute an offence punishable under Section 384 I.P.C. the *de facto* complainant must be put in fear of any injury to her. The main ingredients of the offence of extortion under Section 383 IPC are, (i) the accused must put any person in fear of injury to that person or any other person; (ii) the putting of a person in such fear must be intentional; (iii) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; and (iv) such inducement must be done dishonestly as held by the Apex Court in **R.S. NAYAK V. A.R.ANTULAY** & **ANR**[8]**.** In these circumstances, there is absolutely no allegation that the second respondent was put in fear and the first petitioner intentionally induced her to part with any property with dishonest intention. In the absence of those allegations, it cannot be said that the acts of the petitioners would attract constitute an offence punishable under Section 384 I.P.C.

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[8] AIR 1986 SC 2045

The learned Magistrate also took cognizance of the offence under Section 506 I.P.C. i.e. punishment for criminal intimidation. The word 'criminal intimidation' is defined under Section 503 I.P.C. it reads as follows:

> "whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

Here there is absolutely no allegation in the complaint or in the statements of the second respondent and her mother that she was threatened with any injury to her or any person. In the absence of those allegations, either in the complaint or in statements, the allegations on its face value would not constitute an offence punishable under Section 506 I.P.C.

The trail court also took cognizance of the case against the petitioners for the offence punishable under Section 406 I.P.C. Section 406 I.P.C. deals with punishment for criminal breach of trust. The word 'criminal breach of trust' is defined under Section 405 I.P.C., which reads as under:

> "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such

> trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"

The learned Magistrate also took cognizance of the case against the petitioners for the offence punishable under Section 403 I.P.C. It deals with dishonest misappropriation of property. It reads as under:

> "Dishonest misappropriation of property.—Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

But no piece of paper is produced to *prima facie* entrustment of any property and appropriation for himself with dishonest intention.

The learned Magistrate also took cognizance of the case under Section 120-B I.P.C. Section 120-B I.P.C. is not a substantive offence. When the allegations would not constitute the offences under Sections 420, 384, 506, 406 and 403 I.P.C., the question of punishment for criminal conspiracy under Section 120-B I.PC. would not arise.

On overall consideration of the entire material on record, including the complaint, final report and protest petition filed by the police, so also the statements recorded by the learned Magistrate exercising jurisdiction under Section 200 of Cr.P.C., I find no, *prima facie,* material to constitute the offences punishable under Sections 420, 384, 506, 406, 403 and 120-B I.P.C. to proceed against the petitioners.

On the other hand, the conduct of the second respondent would show that she is filing complaints one after the other and made serious allegations even against the police and filing protest petition, even without any iota of evidence to prove any of the allegations, is an abuse of process of law.

In those circumstances, this Court by exercising jurisdiction under Section 482 of Cr.P.C. can quash the proceedings against the petitioners in C.C. No.233 of 2014 by applying the principle laid down by the Apex Court in **STATE OF KARNATAKA V. L.MUNISWAMY & ORS.**[9] wherein the apex court held as follows:

> "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

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[9] AIR 1977 SC 1489

As discussed above, there are absolutely no allegations which constitute the offences referred to above and continuation or allowing the court to proceed with the trial is an abuse of process of court as the learned Magistrate took cognizance of the offences against the petitioners without applying his mind. Therefore the proceedings against the petitioners in C.C. No.233 of 2014 are liable to be quashed, since it is an abuse of process of the court, in view of the law declared by the Apex Court referred to supra.

In the result, the criminal petition is allowed and the proceedings against the petitioners in C.C. No.233 of 2013 pending on the file of V Additional Judicial Magistrate of First Class, Tirupati, are hereby quashed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

14-12-2016
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