HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9815 OF 2015

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings in Cr.No.404 of 2015 of Jawaharnagar Police Station, Cyberabad, registered against the petitioner for the offences punishable under Sections 419, 420, 468, 471 read with 120-B of Indian Penal Code, 1860 (for short 'I.P.C.').

One Pasumarthy Durga Devi, the second respondent herein, is the power of attorney holder for her daughter, M.Lalitha Vani, lodged a complaint on 23.08.2015 against the petitioner-K.Shanthan Kumar, alleging that he was appointed as an employee (Admin. & Finance In-charge) in her daughter's company and entrusted with work of over all in-charge of the operation of the company affairs and thereby he gained confidence on the second respondent and managing the affairs of the company in impartial manner and gradually changed his behavior developed dishonest intention and started giving irresponsible answers to the questions put to him.

It is alleged in the complaint that in the second week of July 2015, the second respondent came to Hyderabad from America and verified all accounts and property details of her daughter, and it was noticed that her daughter's house bearing No.5-9-544, Plot No.44, in Sy.No.131 part and 134 part, admeasuring 267 square yards situated at Tulasi Gardens, Yapral Village, Ranga Reddy

District, was sold by the petitioner in the year 2012 to one Mopal Nagaraj, who is the Accountant of the Company, without her daughter's consent.

It is further alleged that the petitioner forged her signature, finger prints and fabricated false documents, transferred the said property to the accountant M.Nagaraj, by executing registered sale deed. It is also further alleged that the petitioner released the house documents from L.I.C. Housing Finance Limited without her knowledge by forging her signatures and obtained loan by keeping the same house documents in Union Bank of India, Ramanthapur Banch, Hyderabad, in the name of M.Nagaraj by playing fraud. The said sale transaction was in the year 2012, while her daughter was at U.S.A. and she came to know about the alleged incident only after she came to Hyderabad and on verification of the accounts and property.

The petitioner filed the criminal petition contending that he is innocent and that the house bearing No.5-9-544, Plot No.44, in Sy.No.131 part and 134 part, admeasuring 267 square yards situated at Tulasi Gardens, Yapral Village, Ranga Reddy District, is own by the Director of M/s. Material Software System India Pvt. Ltd., for which the petitioner is a general power of attorney holder and to administer the matters of Mr.M.Sastry. The said Sastry and his wife, M.Lalitha Vani gave special power of attorney to the petitioner to sell their property at Tulasi Gardens and deposit the same in the bank account. By virtue of the special power of attorney, the following powers are conferred on the petitioner:

> "1) That we are residing at U.S.A. and as such it is not possible for us to present the above said sale deed personally which has been executed by us, therefore, our true and lawful special power of attorney is to do the following acts and deeds in our name and on our behalf.
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> 2) To sign and present document in concerned registration office and sign all the forms, papers, etc., which are essential for the completion of the processes of Registration of Sale Deed.
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> 3) To affix his/ her thumb impression on the said Sale Deed and Registration record in our name and on our behalf."

In the said power of attorney they admitted that they executed sale deed in favour of M.Nagaraju s/o. M.Bhumaiah, but it is difficult for them to come down to India as they are residing in U.S.A. to present sale deed personally, the petitioner was authorized to present same before the Registrar office and complete all necessary formalities. The format of power of attorney is filed along with the petition with covering letter dated 27.12.2012 further discloses that Lalitha Vani executed power of attorney in favour of the petitioner, authorizes to act on her behalf including authorizing him to do several acts, including obtaining loan from L.I.C. Finance Limited and to execute necessary documents etc.

During hearing, learned counsel for the petitioners would contend that when there is no material to proceed against the petitioner for the above offences and in fact, the petitioner was a power of attorney holder of the second respondent to look after the Company affairs and the sale deed was executed for the house bearing No.5-9-544, Plot No.44, in Sy.No.131 part and 134 part, admeasuring 267 square yards situated at Tulasi Gardens, Yapral Village, Ranga Reddy District, by the second respondent in favour of Nagaraju. Thus, the alleged creation of documents etc., are false on the face of the record.

The counsel for the second respondent would contend that at the threshold of the proceedings, when the investigation is feotus stage, the proceedings cannot be quashed, more particularly, when the allegations made in the complaint on its face value would constitute an offence *prima facie,* and prayed for dismissal of the petition.

It is the case of the petitioners that the second respondent sold the property house bearing No.5-9-544, Plot No.44, in Sy.No.131 part and 134 part, admeasuring 267 square yards situated at Tulasi Gardens, Yapral Village, Ranga Reddy District, to one M.Nagaraju under registered sale deed. But it is a disputed question of fact, which cannot be gone into while deciding the petition filed under Section 482 of Cr.P.C.

Whereas the allegations made against the petitioner regarding release of documents from L.I.C. Finance Limited and mortgaged the same with Union Bank of India, Ramanthapur Branch, exceeding the power conferred and its alleged misappropriation on its face value would constitute an offence.

Section 482 of Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is an obvious proposition that when a court has authority to make any order, it must have also power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The authority of the court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the court exists, namely to promote justice and to prevent injustice.

The essential object of the criminal law is to protect society against criminals and law breakers. For this purpose, the law holds out threats of punishments to prospective lawbreakers as well as attempts to make the actual offenders suffer with prescribed punishment they committed and at the same time, the procedure is intended to protect the innocent people from unlawful prosecutions at the threshold itself, to avoid peril of facing trial. Thus, Section 482 of Cr.P.C. vests unbridled power on the courts to exercise its jurisdiction to give effect to an order under the Code or to prevent abuse of the process of Court or to otherwise secure the ends of justice. The Code also controls and regulates the working of the machinery set up for the investigation and trial of offences. On the one hand it has to give adequately wide powers to make the investigation and adjudicatory processes strong, effective and efficient, and on the other hand, it has to take precautions against errors of judgment and human failures and to provide safeguards against probable abuse of powers by the police or judicial officers. This often involves a “nice balancing of conflicting considerations, a delicate weighing of opposing claims clamouring for recognition and the extremely difficult task of deciding which of them should predominate". Thus, the Code obviously conferred power under Section 482 of Cr.P.C. to quash the proceedings in crime by conferring inherent power on the High Courts of all the States being higher court of the State.

Section 482 of Cr.P.C. makes it clear that the provisions of the Code are as intended to limit or affect the inherent powers of the High Courts. Obviously the inherent power can be exercised only for either of the three purposes specifically mentioned in the section. Such inherent power cannot naturally be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provision of the Code, the power under Section 482 Cr.P.C. can come into operation, and the court can exercise subject to other limitations Therefore, the power under Section 482 of Cr.P.C. can be exercised subject to the following conditions:

> "1. The jurisdiction is completely discretionary. The High Court can refuse to use the power.
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> 2. The jurisdiction is not limited to cases that are pending before the High Court. It can consider any case that comes to its notice (in appeal, revision or otherwise).
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> 3. This power can be invoked only in an event when the aggrieved party is being unnecessarily harassed and has no other remedy open to it.
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> 4. The High Court, under section 482, does not conduct a trial or appreciate evidence. The exercise of this power (although it has a wide scope) is limited to cases that

compel it to intervene for preventing a palpable abuse of a legal process.

5. The High Court has the power to provide relief to the accused even if s/he has not filed a petition under section 482.

6. This power cannot be exercised if the trial is pending before the apex court and it has directed the session judge to issue a non- bailable warrant for arresting the petitioners.

7. The power under Section 482 is not intended to scuttle justice at the threshold but to secure justice.

8. This power has to be exercised sparingly with circumspection and in the rarest of rare cases, but cannot be held that it should be exercised in the rarest of rare cases – The expression rarest of rare case may be exercised where death penalty is to be imposed under Section 302 of IPC but this expression cannot be extended to a petition under Section 482 CrPC.

9. So long as inherent power of Section 482 CrPC is in statute, the exercise of such power is not impermissible.

10. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice.

11. Where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal.

12. In proceedings instituted on complaint, exercise of inherent powers under Section 482 CrPC to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same.

13. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

14. All Courts, whether civil or criminal possess, in the absence of any express provisions, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice."

The law is settled on the powers as to when such inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various perspective pronouncements of the Apex Court. The leading case on this aspect is **STATE OF HARAYANA V. BHAJANLAL**[1], wherein 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.

(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.

(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

[1] 1992 Supp.(1) SCC 335

without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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 malafide 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."

Earlier to the Judgment in **BHAJANLAL'S** case, in **R.P. KAPUR VS. STATE OF PUNJAB**[2] the Apex Court laid down the following guidelines:

"(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;

(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;

(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

[2] AIR 1960 SC 866

(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."

The same principle was reiterated in **PADAL VENKATA RAMA REDDY @ RAMU v. KOVVURI SATYANARAYANA REDDY & ORS.**[3] In the said Judgment, the Apex Court categorically held that inherent power can be exercised to prevent abuse of the process of court where the court finds that the ends of justice may be met by quashing the proceedings.

Keeping in mind the broad guidelines laid down by the Apex Court in various Judgments, the High Court is bound to decide the petitions before it filed under Section 482 Cr.P.C. exercising such power sparingly in exceptional circumstances.

When the complaint filed by the second respondent sets out the relevant facts and alleges that the documents have been forged and fabricated only to be used as genuine to make a fraudulent and illegal claim over the land owned by complainant, such allegation is made in the complaint would constitute an offence prima facie against the accused. In such case, the court cannot quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C. vide Judgment of the Apex Court in **C.P.SUBHASH V. INSPECTOR OF POLICE, CHENNAI AND OTHERS**[4].

In **M. VISWANATHAN VS M/S.S.K.TILES & POTTERIES PRIVATE LIMITED AND OTHERS**[5] the Apex Court held that when there is a triable issue and the allegations relating to creating of a

[3] 2011(12) SCC 437
[4] 2013 11 SCC 559
[5] (2008) 16 SCC 390

false agreement purporting to terminate original agreements and pilferage of records relating to a private limited company gives rise in the complaint were not adjudicable solely by civil court or company Law Board. Therefore, such proceedings cannot be quashed by exercising jurisdiction under Section 482 of Cr.P.C.

In **STATE OF A.P. v. ARAVAPALLY VENKANNA AND ANR[6]**. the Apex Court in clear terms expressed its opinion that inherent power should not be exercised to stifle a legitimate prosecution and to exercise such power at the threshold, to quash the proceedings in crime, must be exercised in very exceptional circumstances.

After analyzing the material on record to find out the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered of the accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether *prima facie* case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. A similar view was expressed by the Apex Court in **STATE OF ORISSA AND ANR. v. SAROJ KUMAR SAHOO[7], AMIT KAPOOR v. RAMESH CHANDER AND ANOTHER[8]** and held that power under Section 482 of Cr.P.C. is based upon the maxim *quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest*, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. Section 482 of Cr.P.C. confers very wide power on

[6] AIR 2009 SC 1863
[7] (2005) 13 SCC 540
[8] (2012) 9 SCC 460

the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

In **STATE OF W.B. v. SWAPAN KUMAR GUHA**[9] the Apex Court held that if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.

Thus from the law declared by the Apex Court, where the F.I.R. does not disclose any cognizable offence, this court can exercise power under Section 482 Cr.P.C. and quash he proceedings. Even in **BHAJAN LAL's** case referred to supra, guidelines 1, 5, 6 and 7 clearly stated about the power that can be exercised by the Court. According to guideline No.1 where the allegations made in the complaint or F.I.R. on its face value taking in its entirety, *prima facie*, would not constitute an offence, the court can exercise power under Section 482 of Cr.P.C. Similarly when the complaint was lodged as an abuse of process of the court or to wreak vengeance against a particular individual, considering the material on record, the court can quash the proceedings against such of the persons against whom no allegation is made which constitute an offence on its face value.

In the present facts of the case, there were a specific allegations against the petitioner-K.Shanthan Kumar, who acted beyond the powers conferred upon him, more particularly, release of property documents from L.I.C. Finance Limited and mortgaged the same with the Union Bank of India, Ramanthapur Branch, by forging the

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[9] (1982) 1 SCC 561

signatures of the second respondent, being the special power of attorney holder, would constitute an offence, since he was not authorized to deal with the insurance company. Such act if proved he is liable for punishment for the offence allegedly committed by him. Therefore, by applying guideline No.1 in **BHAJAN LAL**'s case and other guidelines laid down by the Apex Court in other judgments referred to supra, it is difficult for this court at this stage i.e., at the threshold to quash the proceedings in Cr.No.404 of 2015 of Jawaharnagar Police Station at Cyberabad, and that apart in view of the Judgment of the Apex Court in **SAROJ KUMAR SAHOO's** case and **ARAVAPALLY VENKANNA's** case referred to supra, the power under Section 482 of Cr.P.C. should not be exercised by the High Court to stifle a legitimate prosecution and High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy , more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. While exercising jurisdiction under Section 482 of the Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

Therefore, it is difficult to quash the proceedings against the petitioner at the threshold, in view of specific allegations made against him regarding forgery, misappropriation, falsification of documents etc., as those allegations would constitute an offence on its face value. Hence, the proceedings against the petitioner cannot be quashed.

In view of foregoing discussion, the proceedings against the petitioner in Cr.No.404 of 2015 of Jawahar Nagar Police Station, Cyberabad cannot be quashed and the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

19-12-2016
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