

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16756 OF 2016

ORDER:

This petition is filed under Section 482 of Cr.P.C. to quash the proceedings in Crime No.165 of 2016 of Hanamkonda Police Station, Warangal Commissionerate, Warangal District for the offences punishable under Sections 143, 447 and 506 read with 149 I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act in view of alteration memo filed before Magistrate by investigating agency dated 28-7-2016.

Petitioner herein is the accused and 2nd respondent herein is the defacto complainant.

Initially, on the complaint of 2nd respondent dated 24-5-2016, a crime was registered under the Sections referred above.

The case of the 2nd respondent is that while he and his wife along with two others were sitting in front of their house in the compound, two muslim women and two men and two others entered into their compound and at that time, there was no electric power supply and all the four persons called their son and threatened with dire consequences if his son do not marry the first accused etc, and suddenly, the wife of defacto complainant received flames and sustained burn injuries and later she was shifted to hospital where she succumbed to burnt injuries.

The main grounds urged before this court are as follows:

1) The M.L.C. report shows that the wife of the 2nd respondent Vijayalakshmi sustained burn injuries because of pouring kerosene.

2) Dying Declaration disclosed that the said Vijayalakshmi died due to Burns (kerosene flames)

3) There is delay in lodging F.I.R.

4) No independent witnesses were available though the incident allegedly took place in open place and statement of defacto complainant cannot be accepted as true.

(5) The conduct of Vijayalakshmi creates a doubt about the occurrence of the incident in the open place and finally it is contended that the petitioner was not responsible for death Vijayalakshmi and they did commit no offence and prayed to quash the proceedings.

Petitioners alleged committed serious offences punishable under Sections 143, 447, 302, 506 read with 149 of I.P.C. and Section 3(ii) (v) (va) SC/ST (POA) Act. But the 1st and 2nd grounds are about the discrepancy in M.L.C. report and D.D. and the truth or otherwise regarding discrepancies cannot be gone into at this stage while exercising powers under Section 482 Cr.P.C.

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 as reported in a decision of apex court in *MRS. DHANALAKSHMI V. R.PRASANNA KUMAR AND ORS* (¹), *GIDUTHURI KESARI KUMAR AND ORS. V. STATE OF TELANGANA AND ORS* (²).

¹ 1990 AIR 494

² 2015 (2) ALD (Crl.) 470

Hence, on account of discrepancy, the proceedings can not be quashed, in view of law declared by apex court.

The other ground is delay in lodging F.I.R. The delay in lodging F.I.R. is one ground to doubt veracity of the prosecution during trial since due to consultation and there is a possibility of implicating the accused on account of delay but the delay is to be explained during trial by the prosecution. Therefore, at this stage, delay in lodging F.I.R. cannot be considered as ground to quash the proceedings to exercise power under Section 482 Cr.P.C. and on this ground, the proceedings cannot be quashed.

With regard to the offences under Sections 3 and 4 of the Dowry Prohibition Act that no independent witnesses were present and conduct of the defacto complainant and other two persons who were allegedly present at the time of incident would go to show that they were not present actually and the alleged incident is only homicide.

As seen from the allegations made in the complaint lodged with the police, the second respondent-defacto complainant received burn injuries and an attempt was made to rescue his wife Vijayalakshmi..

This is one of the strong circumstances to support the plea of his presence at the time of incident. However, the two persons who are allegedly present did not sustain any injury, that by itself is not a ground to quash the proceedings. Therefore, this court cannot appreciate the evidence while deciding an application under Section 482 Cr.P.C. but can analyze the material for limited purpose to find

out whether court can proceed against the petitioner or not. Therefore, the grounds urged in this petition and also during arguments are not sufficient to quash the proceedings.

Admittedly, investigation is pending and when the investigation is pending, the Court should not exercise powers under Section 482 Cr.P.C. to stifle a legitimate prosecution. The court is not required to appreciate the evidence to conclude when the material placed is sufficient or not for convicting the accused as held by apex court in *STATE OF ORISSA AND ANR VS SAROJ KUMAR SAHOO* (³)

By applying the principle laid down in the above judgment, the grounds urged before this court cannot be accepted as grounds to quash the proceedings since those grounds are pertaining to appreciation of evidence but not evaluation of material before the court.

The settled law is that this court can exercise inherent powers under Section 482 Cr.P.C. in exceptional circumstances to prevent abuse of process of court and to meet the ends of justice.

The apex Court in *STATE OF HARYANA V. BAJANA LAL* (⁴) laid down certain guidelines as to exercise of inherent jurisdiction under Section 482 Cr.P.C. According to guideline No.1,

“(a) 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.”, the court can

³ 2005 (13) SCC 540.

⁴ 1992 Supp (1) SCC 335

exercise its inherent jurisdiction under Section 482 of
Cr.P.C. and quash proceedings.

Here the allegations made in the complaint and the alteration
memo after completion of part of investigation would constitute
offences punishable under the above referred sections.. Moreover,
the deceased Vijayalakshmi was a member of Schedule Caste
whereas petitioners are muslims by religion.

By applying the above principles, it is difficult for me to quash the
proceedings when the investigation is now pending. Therefore,
I find no merit in this petition at this stage and this petition is liable
to be dismissed.

In the result, this Criminal Petition is dismissed. However, it is
left open to the petitioner to raise all these contentions at appropriate
stage.

As a sequel to the disposal of this petition, the Miscellaneous
Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 15-12-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 15-12-2016.

Dvs