

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.16746 OF 2016

ORDER:

This Criminal Petition, under Section 482 of the Code of the Criminal Procedure (Cr.PC.), is filed to quash the proceedings against the petitioner-accused No.3 in C.C.No.300 of 2011 on the file of the II Additional Chief Metropolitan Magistrate, Visakhapatnam, for the offences punishable under Sections 420, 419, 468, 471 and 120-B of the Indian Penal Code (IPC).

The case of the prosecution is that accused Nos.1 to 4 hatched a plan and conspired together to defraud the bank submitting fake documents and in pursuance of their conspiracy, A-1 to A-3 secured fake documents viz., (1) Gift deed document No.517 dated 29.03.1940; (2) 10(1) Adangal dated 11.03.2002 photostat copy; (3) Tax Receipt No.1663 & 5831642; (4) Legal Heir Certificate dated 02.04.2002 photostat copy; (5) Certificate issued by MRO dated 02.04.2002; (6) Encumbrance Certificate No.4118 & 1554 both dated 08.04.2005; (7) Adangal/Pahani 10.03.2002 photostat copy through A-4 Ramappadu in the name of Sabbi Appa Rao and Saripalli Satyavathi in respect of the property of an extent of Ac.0.92 cents of Madhurawada Village covered by old Survey No.234/4 instead of actual new survey No.94/5 said to have been belonging to Sabbi Appa Rao, aged 54 years and Saripalli Satyavathi, aged 52 years. Later A-4, Ramappadu, with the assistance of his friend A-5, Marrapu Kesava Naidu @ Master, secured the presence of A-6, Gundreddi Janardhana Rao and A-7, Marrapu Simhachalam to impersonate as Sabbi Appa Rao and Saripalli Satyavathi respectively, obtained loan of Rs.15,00,000/- from Bank of India, SME Branch, Opp. Saraswathi Theatre,

Visakhapatnam, by creating mortgage over the property. After due investigation, the police filed charge sheet against the petitioners.

The main contention of the petitioner-accused No.3 is that he is no way concerned with the offence and his role was not specifically mentioned in the charge sheet. So also, no evidence is produced to establish his involvement either directly or indirectly. Therefore, the proceedings against the petitioner-accused No.3 in CC.No.300 of 2011 pending on the file of the II Additional Chief Metropolitan Magistrate, Visakhapatnam are liable to be quashed.

During hearing, the counsel for the petitioner, Ms. Jyothisri Vankina, would contend that there is no legal evidence against the petitioner to proceed further in the above said Calendar Case and drawn the attention of this Court to the submission of Sri G.V.Krishna Rao, Advocate and Notary and Legal Advisor of the Bank to support her contention. As seen from the allegations made in the charge sheet, accused Nos.1 to 3 conspired together to obtain loans by producing fake documents and accordingly, obtained Rs.15,00,000/- on 19.04.2005 by depositing title deeds with the bank agreeing to mortgage and the role of the other accused, A-4 to A6 is that A-4 secured two persons, A-6 and A-7, Gundreddi Janardhana Rao and Marrapu Simhachalam to impersonate Sabbi Appa Rao and Saripalli Satyavathi and obtained loan. Even according to the submission of Sri G.V.Krishna Rao, Advocate and Legal Advisor of the Bank, on 12.04.2015, one Budamkayala Madhusudhana Rao, the petitioner herein, came to him with a legal opinion on documents while saying that he was sent by the Manager for legal opinion and thereafter, he verified the document and issued an opinion as per the documents are in order. But this statement of legal

advisor of the bank is of no assistance and on the other hand it shows that the petitioner-A3 himself produced the document along with the opinion before the Advocate, Sri G.V.Krishna Rao. That itself shows that he is responsible for getting a legal opinion from the counsel which itself is sufficient *prima facie* to conclude the he also involved in the offence.

The scope of Section 482 of Cr.P.C was time and again discussed in catena of perspective pronouncements of the Apex Court and in a classic judgment of the Apex Court in State of Haryana v. Bhajan Lal¹, seven guidelines were laid down and they are as under:

- (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;
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;
- (c) where the uncontroverted 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;
- (d) 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;
- (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of

¹ 1992 Supp. (1) SCC 335

which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) 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;

(g) 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. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justification and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] *State of West Bengal v. S.N. Basak*, [1963] 2 SCR 52; distinguished.

In *R.P. Kapur v. State of Punjab*², this 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;
- (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
- (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.

² MANU/ SC/ 0086/ 1960 : AIR 1960 SC 866 : (1960) 3 SCR 388

Thus, in view of the law declared by the Apex Court in the above two judgments, the Court can exercise such power under Section 482 Cr.PC. only when the allegations made in the charge sheet on its face value would not *prima facie* constitute an offence. Here, the allegations made in the charge sheet would constitute a serious offence. Therefore, while exercising power under Section 482 Cr.PC., this Court cannot exercise its jurisdiction to quash the proceedings at this stage. Even otherwise, this Court cannot go into details of the case while exercising jurisdiction under Section 482 Cr.P.C.

In *State of Orissa and Anr. v. Saroj Kumar Sahoo*³, it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus:

“It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.”

Thus, in view of the limited power conferred on this Court under Section 482 Cr.PC., this Court cannot appreciate the evidence to decide whether there is any possibility of quashing of proceedings before commencement of the trial.

In any view of the matter, the allegations made in charge sheet would constitute offences punishable under Sections 420, 419, 468, 471

³ MANU/ SC/ 2264/ 2005 : (2005) 13 SCC 540

and 120-B IPC as such, this Court cannot exercise jurisdiction under Section 482 Cr.PC. in view of the law declared by the Apex Court in *State of Tamilnadu, Rep.by Inspector of Police, CCI W/ CID, Dharmapuri Unit v. K.Ramesh and another*⁴.

In the present case, the petitioner-A3 along with other accused produced fake documents and obtained huge amount as loan creating a mortgage by depositing fake title deeds would fall within Section 420 IPC. Since the petitioner-A3 along with other accused made the bank authorities to believe that the documents are genuine and made them to part with huge amount of Rs.15,00,000/-, it would fall within the definition under Section 415 IPC and similarly, obtaining such loan amounts to serious offence since the amount advanced with the bank belongs to the public and if the officers of banks indulge in such activities it would lose its confidence of the public and thereby it is difficult to run banking institution by itself. In those circumstances, it is difficult for me to quash the proceedings at this stage, since, the material on record *prima facie* discloses the involvement of the petitioner-A3 in the above offence. Consequently, the petition is liable to be dismissed.

In the result, the Criminal Petition is dismissed at the stage of admission. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

14th December 2016
RRB

⁴ 2015(15) SCC 673