

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.13944 and 14375 of 2016

COMMON ORDER

These two petitions are filed under Section 482 Cr.P.C. by accused Nos.6 and 7 respectively, to quash the proceedings in S.C.No.333 of 2016 on the file of XIII Additional District and Sessions Judge, Narasaraopeta, Guntur District, registered for the offences punishable under Sections 354-A&C IPC and under Section 67 of Information Technology Act, 2000, against them.

2. The main contention of petitioners before this Court is that they were not arrayed as accused in the crime and in the complaint lodged by the de-facto complainant with the police long prior to filing of the charge sheet i.e., 5-12-2014, there was no allegation against the petitioners of committing such offences. Upon such complaint, Crime No.23 of 2015 was registered and F.I.R. was issued against other accused on 19-2-2015. The other contention of petitioners is that during the course of investigation, the statements of de-facto complainant and others were recorded and the de-facto complainant disclosed about the alleged role played by the petitioners and therefore, they were implicated in the crime. The petitioners also contend that such allegation of the de-facto complainant is an after thought and she has to explain each and every incident with material particulars, but failed to furnish the same and that the petitioners were implicated due to the disputes between their families and therefore, it is nothing but abuse of process of law and the

proceedings shall not be continued against the petitioners and prayed to quash the proceedings against them.

3. During hearing, learned counsel for petitioners while reiterating the said contentions has drawn the attention of this Court to the complaint lodged by the de-facto complainant and the statements recorded by police under Section 161(3) Cr.P.C. including statements of de-facto complainant and L.W.2. He contended that the allegations made in the charge sheet would not attract the offence punishable under Section 67 of the Information Technology Act, 2000 (for short 'the Act') and also other offences because the petitioners did not publish or transmit the information by electronic form and prays to quash the proceedings. He placed reliance on the judgments reported in **B.VASUDEVA CHARY v. K.MOHAN REDDY**¹ and **RISHIPAL SINGH v. STATE OF U.P.**².

4. Per contra, learned Public Prosecutor would contend that while exercising jurisdiction under Section 482 Cr.P.C., the Court has to confine to the allegations made in the charge sheet and if the allegations made in the charge sheet would constitute the offences on its face value, proceedings cannot be quashed. He would further contend that the allegation in the charge sheet would constitute the offence punishable under Section 67 of the Act and that forcing the de-facto complainant to have sexual intercourse under the threat of

¹ 2013 (1) ALD (CrI.)659 (AP)

² 2014 (2) ALD (CrI.) 1000 (SC)

publishing video recording of sexual intercourse would amount to grave offence punishable under Section 354-D of I.P.C., and therefore, there are absolutely no grounds to quash the proceedings and prays to dismiss the petition.

5. Before advertng to the allegations made in the charge sheet, I would like to discuss the scope of powers of this Court under Section 482 of Cr.P.C. The inherent jurisdiction under Section 482 Cr.P.C. can be used sparingly in exceptional circumstances with due care. The Apex Court in **STATE OF HARYANA v. BHAJAN LAL**³ held as follows:

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (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 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.
- (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.

³ 1992 Supplement (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 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.”

6. In **R.P.KAPUR v. STATE OF PANJAB**⁴, the Apex Court laid down four guidelines to exercise the powers by virtue of Section 482 of Cr.P.C. At the same time, there are certain restrictions to exercise such jurisdiction since inherent power is to be exercised to do real substantial justice. But the Apex Court made certain guidelines in **BAJAN LAL** (3 supra). In view of the law declared by the Apex Court in **BAJAN LAL** (3 supra) and in later judgment in **MADHAVRAO JIWAJI RAO SCINDIA AND ANOTHER v. SAMBHAJIRAO CHANDROJI RAO ANGRE AND OTHERS**⁵, the real test to be applied by Court is whether any allegations made *prima facie* to establish the offence. Therefore, the Court cannot go into the allegations made in the charge sheet and the material available on record meticulously to find out whether the case would end in acquittal or not. Vide **MSS DHANALAKSHMI Vs. R. PRASANNA KUMAR**⁶ and even according to guideline No.1 in

⁴ AIR 1960 SC 866.

⁵ AIR 1988 SC 709

⁶ AIR 1990 SC 494

BAJAN LAL, the Court can exercise its jurisdiction only 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. Therefore, the jurisdiction of this Court is limited under Section 482 of Cr.P.C.

7. Keeping in mind the law declared by the Apex Court in various judgments referred to supra, I would like to advert to the allegations made in the charge sheet against the petitioners. The specific allegations made against the petitioners in the charge sheet are extracted hereunder:

Later, A.1 & A.2 sent the video clipping to the cell phones of A. 3 and some others; in turn A.3 sent the same to the cell phone of A.4. Thereafter A.1 & A.2 loaded the said video into CDs. through their friend i.e., A.9 who distributed the said CDs. among A.2, A.5, A.6. After that all the accused started to harass L.W.1 to satisfy their lust otherwise they will spread over the video to the cell phones of others and also through internet and thereby will spoil her life.”

Further, in paragraph No.4 of the charge sheet, there is a specific allegation against A6 and A7 and the same is extracted hereunder:

“A1 and A2 noted above are the prime accused that committed rape on the victim L.W.1; A3 to A9 are the persons that threatened that L.W.1 to fulfill their sexual lust intimidating her that they are having video clipping of A1 committing rape on L.W.1 and restrained the L.W.1 to satisfy their sexual lust”.

The allegations made in the charge sheet would show the involvement of A6 and A7 and other accused.

8. During hearing, learned Additional Public Prosecutor contended that the statements recorded under Section 161 Cr.P.C. during the course of investigation must also be looked into as they form part of the final report under Section 173 Cr.P.C. He placed reliance on the judgment of the Apex Court in **SATESH KUMAR Vs. STATE OF U.P.**⁷, wherein the Apex Court while deciding a petition under Section 482 Cr.P.C. held as under:

“A perusal of the charge-sheet means perusal of all the documents submitted by the police along with the charge-sheet including case diary as envisaged by section 173(5) of the Code of Criminal Procedure”.

Learned Public Prosecutor also placed reliance on the judgment of the Apex Court in **D. AYYANNA Vs. STATE OF KARNATAKA**⁸, wherein the same view was expressed at paragraph No.5, which is extracted hereunder:

“Therefore in my opinion, the allegations made in the charge sheet consist of the statement of the eyewitnesses, the First Information Report, injury certificate and the post-mortem report and all the materials have to be taken into consideration by the trial Court while framing of the charges”.

9. Thus, the consistent view expressed by the Courts in both the judgments is that the final report includes all material produced along with the final report inclusive of statements recorded during investigation under Section 161(3) Cr.P.C. and other relevant documents submitted by the investigating agency to the Court.

⁷2010 SCC Online AII 406

⁸ 2014 SCC Online Kar 7696

Therefore, the statements recorded under Section 161(3) Cr.P.C. would form part of final report.

10. Persuaded by the judgments referred to supra, it must necessary to advert to the allegations made by the de-facto complainant in her statement recorded under Section 161(3) Cr.P.C. Her statement is to the effect that on 11.02.2015, Bandela Srinu, Bandela Anjaiah and Venubabu together were sitting on pial of Anjaiah's house and informed the de-facto complainant stating that the video clippings of Mahendra raping her are available with them and demanded her to satisfy their sexual lust and otherwise, they would transmit the photos by electronic form and threatened to spoil her life. This statement would clearly show the involvement of both A6 and A7 who demanded her to satisfy their sexual lust, and if those allegations are taken on its face value, it would attract the offence punishable under Section 67 of the Act.

11. At this stage, learned counsel for petitioners Sri Peeta Raman has drawn the attention of this Court to Section 67 of Information Technology Act, which reads as follows:

Punishment for publishing or transmitting obscene material in electronic form-"Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees."

Learned counsel has also drawn the attention of this Court to the meaning of the words 'lascivious' and 'prurient'. The word 'lascivious' means "lustful, wanton" and the word 'prurient' means 'appealing to sexual desire'. Even if the meanings of these two words used in Section 67 of the Act are taken into consideration, threatening the de-facto complainant to transmit the video clippings recorded while she was being raped by A1-Mahendra and A2 would amount to cause to transmit or publish as per Section 67 of the Act. Therefore, the Court has to examine whether those statements would amount to 'lascivious' or 'prurient'. The meaning of these two words is almost identical or they are synonyms and publishing such lustful or appealing to sexual desire i.e., video clippings of rape, amounts to transmitting prurient or lascivious material in electronic form. Therefore, threatening to transmit or publish such video clippings or cause to be published would attract the offence punishable under Section 67 of the Act on its face value of the allegations made in the charge sheet. On this ground, the proceedings against the petitioners cannot be quashed for the offence punishable under Section 67 of the Act.

12. The other offence which the petitioners 1 and 2 were charged is punishable under Section 354-A & C. Section 354-A IPC reads as under:

Sexual harassment and punishment for sexual harassment-

(1) A man committing any of the following acts-

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks,
- shall be guilty of the offence of sexual harassment.

Similarly, Section 354-C deals with 'Voyeurism', which reads as under:

"Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine".

Thus, disseminating such image while the de-facto complainant was engaging in private act or whether she was being raped by A1 and A2 at a place where she would usually have the expectation of not being observed. Therefore, the alleged acts committed by the petitioners-A6 and A7 would attract the offence punishable under Section 354(a) & (c) on its face value of the allegations made in the charge sheet.

13. The main endeavor of learned counsel for petitioners is that the de-facto complainant gave complaint on 19.02.2015 and the alleged incident took place on 11.02.2015, but she did not disclose the said incident in the complaint lodged by her. That itself is a

strong circumstance to disbelieve. However, that cannot be a ground to quash the proceedings and in case, she is able to explain the reason for her failure to disclose the incident in the complaint dated 19.02.2015, the Court can record its finding on it and it is a matter of explanation during trial.

14. The other ground urged before this Court is that there were cases pending between the parties and learned counsel for petitioners has also drawn the attention of this Court to the FIR in Crime No.24 of 2015 of Edlapadu Police Station, Guntur District, registered based on the report dated 21.02.2015, wherein Karasala Elisamma is one of the accused and the same was referred on the statements of the victim and her husband. However, that itself is not a ground to quash the proceedings. Learned counsel has further drawn the attention of this Court to the guidelines in **BHAJAN LAL** case (3 supra) and relied on guidelines 5 and 7 referred to supra. According to guideline No. 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 and according to guideline No.7, where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreak vengeance on the accused and with a view to spite him due to private and personal grudge. Learned counsel for petitioners pointed out that failure of the de-facto complainant disclosing about the incident when the

complaint was lodged on 19.02.2015, would amount to absurdity and inherent improbability in the subsequent statement and on that ground, the proceedings can be quashed. But the reason may be different since non-disclosure of incident can be explained as stated above and it would not amount to absurdity or inherent improbability in the prosecution version and mala fides cannot be decided at this stage unless there is sufficient material to come to a definite conclusion that the incident was disclosed for the first time before the police during investigation more particularly such act is linked with family prestige. Such disputed question of fact cannot be decided at this stage while exercising jurisdiction under Section 482 Cr.P.C.

15. Learned Public Prosecutor would contend that certain disputed facts have to be proved only during trial, such facts cannot be decided. In support of his contention, he has drawn the attention of this Court in **BHASKAR LAL SHARMA Vs. MONICA**⁹, wherein the Apex Court while dealing with a petition under Section 482 Cr.P.C. held as under:

“The facts, as alleged, therefore will have to be proved which can only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court’s power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very fact of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to

⁹ (2014) 3 SCC 383

be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence”.

In view of the principles laid down in the above judgment, the disputed facts with regard to the mala fides etc., can be examined on appreciation of evidence during trial, but not at this stage. Therefore, I find that the allegations made in the final report including the material annexed to it would constitute the offences alleged on its face value and by applying guideline No.1 in **BHAJAN LAL**

(3 supra), the proceedings cannot be quashed at this stage. Therefore, I find no ground to quash the proceedings viewed from any angle and the criminal petitions are liable to be dismissed.

16. In the result, the Criminal Petitions are dismissed at the stage of admission. Miscellaneous petitions, if any, pending in these criminal petitions shall stand dismissed.

M. SATYANARAYANA MURTHY, J

18th November, 2016

Note: Issue CC in one week.

sj/dvs