HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9645 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.403 of 2015 of Jawaharnagar Police Station, Cyberabad, registered against the petitioners 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 Venu Madhav, the second respondent herein, lodged a complaint on 23.08.2015 alleging that in the second week of May 2015 he came to Hyderabad from America and verified all accounts and property details, noticed that his house bearing No.5-9-543 plot No.43, in S.No.131 part and 134 part, admeasuring 267 square yards situated at Tulasi Gardens, Yapral Village, Ranga Reddy District, was sold by the first petitioner herein, in the year 2011 to his wife- K.Jhansi Rani, the second petitioner herein, without his consent or knowledge. It is further alleged that the first petitioner forged his signature and finger prints and fabricated false documents, transferred the said property to the second petitioner, by executing registered sale deed. It is also further alleged that the first petitioner released the house documents from L.I.C. Housing Finance Limited without his knowledge by forging his signatures and obtained loan by keeping the same house documents in Karnataka Bank, Dilshuknagar Branch, Hyderabad, in the name of second petitioner by playing fraud. The said sale transaction was in the year 2011, while he was at U.S.A. and he came to know about the alleged incident only after he came to Hyderabad and on verification of the accounts and property.

The petitioners main contention is that the second petitioner is innocent and no way concerned with the allegations and admitted that the house belongs to the second respondent. The second respondent executed a special power of attorney in favour of one Mr.Sastry, who is his brother-in-law, for the plot No.43 in Survey No.131 part and 134 part admeasuring 267 square yards at Tulasi Gardens. On the special power of attorney, the property was bought by the petitioners from the said Sastry. The first petitioner obtained housing loan of Rs.60 lakhs in Karnataka Bank Limited, Dilsukhnagar Branch, Hyderabad, from the loan amount of Rs.12,45,184.05 was paid to L.I.C. Housing Finance Ltd., for release of the property documents and the remaining amount of Rs.47,54,815.95 ps. was credited to the A/c.No.331250010026270 of the second respondent in Karnataka Bank Ltd., Dilsukhnagar, Branch, Hyderabad. But in the entire complaint, the details of Sastry, who is a special power of attorney holder, receiving amount was not mentioned. An amount of Rs.47,54,815.95 ps. was credited in the Bank account was not even verified by the second respondent for 4 years and therefore, either of the petitioners did not commit any offence punishable under Sections 419, 420, 468, 471, read with 120-B of I.P.C. But the second respondent was staying in the house on monthly rent from April 2011 and suddenly stopped payment from April, 2015 and notice for eviction was issued in the month of September, 2015 , thereupon he lodged the present complaint.

It is also contended that the proceedings in Cr.No.122 of 2015 of Central Crime Station, Hyderabad, filed by the second respondent in May 2015 against the petitioners were quashed by this Court and the Apex Court declined to grant stay of such proceedings, hence he filed the present complaint as counter blast.

During hearing, learned counsel for the petitioners would contend that when there is no material to proceed against the petitioners for the above offences and in fact, the first petitioner was a power of attorney holder of the second respondent to look after the Company affairs and the sale deed was executed in the house bearing No. 5-9-543 plot No.43, in S.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 K.Jhansi Rani, second petitioner herein. Thus, the alleged creation of documents etc., are false on the face of the record, and filed Photostat copy of the sale deed dated 17.03.2011 executed by the second respondent in favour of the second petitioner.

The counsel for the second respondent would contend that at the threshold of the proceedings, when the investigation is at 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 petitioner purchased the plot bearing No.43, Sy.Nos.131 part and 134 part, admeasuring 267 square yards situated at Tulasi Gardens, Yapral

Village, Ranga Reddy District, under registered sale deed dated 17.03.2011, the second respondent executed the sale deed in favour of the second petitioner, K.Jhansi Rani for sale consideration of Rs.79,75,755/-. Mr.Sastry is an attested witness in the documents. The document was duly signed by the second respondent himself and he also passed a receipt acknowledging the receipt of Rs.5,75,000/- from K.Jhansi Rani, the second petitioner herein, towards part of sale consideration of the plot bearing No.43, in Sy.Nos.131 part and 134 part, admeasuring 267 square yards situated at Tulasi Gardens, Yapral Village, Ranga Reddy District. But it is a disputed question of fact. However, execution and registered sale deed does go to show that the first petitioner is nothing to do with the alleged sale except the relationship with the second petitioner. Even otherwise lodging the complaint after executing registered sale deed in favour of the second petitioner is nothing but an abuse of process of the court to wreak vengeance against the petitioners.

The first petitioner has nothing to do with the transaction of the sale. However, he admitted in the petition that he mortgaged the property with Karnataka Bank, Dilsukh Nagar Branch, and obtained loan of Rs.60,00,000/- and discharged the loan due to the LIC Finance Limited for release of the property documents and deposited the balance of amount to the account the second respondent. Thus the first petitioner, though power of attorney holder to look after the affairs of the company, exceeded his authority in releasing the property from L.I.C. Finance Limited, as he was not authorized to deal with the insurance company except taking loans from the Bank and execute documents. Therefore, payment of debt due to the L.I.C. Finance Limited and releasing the property documents is beyond the authorization conferred on him under the registered general power of attorney.

However, if the first petitioner exceeded the power conferred on him under the general power of attorney, that would not amount to an offence, if really the amount is deposited, since no amount was misappropriated for himself, even otherwise when he did act of realizing the mortgaged property with Karnataka bank and deposited the amount Rs.47,54,815.95 ps. to the credit of second respondent if accepted, it would not constitute an offence, 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.

Moreover, the second petitioner has nothing to do with the offence, since she is only a purchaser of the property under registered sale deed dated 17.03.2011 executed by the second respondent. Therefore she cannot be made liable for commission of any offence and lodging the complaint against her after executing registered sale deed by second respondent is nothing but an abuse of process of law. In such case, to meet the ends of justice, or to prevent abuse of process of court, the court can exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings against the second petitioner in Cr.No.403 of 2015 of Jawaharnagar Police Station, Cyberabad.

Whereas the allegations made against the first petitioner regarding misappropriation of sale consideration by discharging loan due to L.I.C. Finance Limited and exceeding the power conferred on its face value would constitute an offence.

It is also contended by the counsel for the petitioners that earlier a similar and identical complaint in Cr.No.122 of 2015 of Central Crime Station, Hyderabad, was lodged by the second respondent, it was quashed by this Court. But the offence allegedly committed by the petitioners in the said crime is totally distinguishable from the offence allegedly committed by the petitioners.

Therefore, quashing of FIR No.122 of 2015 of Central Crime Station, Hyderabad, is not a ground to quash the proceedings in Cr.No.403 of 2015 of Jawahar Nagar Police Station, Cyberabad.

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.
>
> 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).
>
> 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.
>
> 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 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.

---

[1] 1992 Supp.(1) SCC 335

> (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
>
> (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

---

[2] AIR 1960 SC 866
[3] 2011(12) SCC 437

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 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.

[4] 2013 11 SCC 559
[5] (2008) 16 SCC 390
[6] AIR 2009 SC 1863

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 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,

---

[7] (2005) 13 SCC 540
[8] (2012) 9 SCC 460
[9] (1982) 1 SCC 561

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 first 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 Karnataka Bank, Dilsukh Nagar Branch, by forging the signatures of the second respondent, being the 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.403 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 first petitioner, K.Shanthan Kumar, 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 first petitioner cannot be quashed, as there is material to proceed against him for the said offence.

The specific case of the petitioners is that second petitioner no way concerned with the alleged offence except making a bald allegations in the last page of the complaint. No specific role played by K.Jhansi Rani was disclosed in the entire complaint including date of commission of offence etc. In such case, the Court cannot be a silent spectator and allow vengeful prosecutions against such innocent persons.

The Apex Court in **STATE OF KARNATAKA VS. L.MUNISWAMY & ORS.**[10] highlighted the powers of the High Court to exercise jurisdiction under Section 482 Cr.P.C. and held that 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

[10] AIR 1977 SC 1489

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.

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. Dhanalakshmi vs. R. Prasanna Kumar & Ors. AIR 1990 SC 494; Ganesh Narayan Hegde vs. S. Bangarappa & Ors. (1995) 4 SCC 41; and M/s Zandu Pharmaceutical Works Ltd. & Ors. vs. Md. Sharaful Haque & Ors. AIR 2005 SC 9).

In view of the law declared by the Apex Court in **L.MUNISWAMY**'s case, when a complaint was lodged without any details so as to connect the second petitioner, K.Jhansi Rani, based on bald allegations, they cannot be proceeded in Cr.No.403 of 2015 of Jawaharnagar Police Station for the alleged grave and serious offences.

In fact, it is not the case of the second respondent at any stage that these two persons are concerned with the affairs in the business or with the personal affairs of the second respondent. Therefore, based on such bald allegations without any details, if the investigation agency is allowed to investigate into the offence, allegedly committed by the second respondent K.Jhansi Rani, it would amount to abuse of process of the Court. If the investigation is permitted without any material by this court, it is nothing but to failure to exercise jurisdiction which conferred on the court by the Code and consequently, I find that it is a fit case to quash the proceedings in Cr.No.403 of 2015 against the second petitioner, since there are no specific allegations regarding role played by her in the commission of the such offence referred above and she is not connected with either business or the personal affairs, of the second respondent, to avoid abuse of process of the court and to meet the ends of justice. Keeping in mind the very object of incorporating Section 482 Cr.P.C. conferring power on the court to prevent such abuse and vengeful prosecutions against any particular individual by disgruntled the complainant.

In view of foregoing discussion, the proceedings against the second petitioner in Cr.No.403 of 2015 of Jawahar Nagar Police Station, Cyberabad, are quashed, while declining to quash the proceedings against the first petitioner, K.Shanthan Kumar.

In the result, Criminal petition is partly allowed, quashing the proceedings against the second petitioner while declining to quash the proceedings against the first petitioner in Cr.No.403 of 2015 of Jawaharnagar Police Station. Cyberabad.

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

M. SATYANARAYANA MURTHY, J

19-12-2016
BV