

**HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.15200 of 2016**

**ORDER :**

This criminal petition is filed by the petitioner/A.2 under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in S.C.No.450 of 2015 pending on the file of the Metropolitan Sessions Court, City Criminal Courts at Nampally, Hyderabad, for the offences punishable under Sections 364(A) read with 34 IPC against six accused persons.

2. The allegations made against the petitioner/A.2 is that on 29.12.2013 at about 1600 hours the victim-Sandra Kumar called Sandra Shankaraiah-de facto complainant and informed that he was coming to Hyderabad by the evening of 30.12.2013, but he did not return to the home till the evening of 30.12.2013 and when the de facto complainant called on his phone, the victim's phone was switched off and while he was searching for the victim, he received a call from the victim's phone on 31.12.2013 informing that he was kept in a hostage in some unknown location in Leelanagar of S.R.Nagar by Dayanand Chowdary (A1), Gopi (A3), Damodhar Reddy (A2), Srineevas Reddy (A4), Pruthviraj (A5) and Pramod (A6) and he was also informed about demanding money by the accused persons, otherwise they will kill him. Immediately A.1 picked the phone and threatened the de facto complainant to kill him if the money is not paid. The de facto complainant also threatened to kill the victim if the incident disclosed to any other person. Thereupon,

the de facto complainant lodged a report with the police and the police seized one white colour Celkon cellular phone with Idea SIM No.9640644049 belonging to the victim, one white colour Samsung Duos Touch screen cellular phone with SIM No.7842794567 belonging to A.1 at his instance and possession from his person and Skoda make Laura model silver colour car bearing registration No.AP-09/BM-4466 belonging to A.4 at his instance.

3. The police recorded the statement of witnesses and in the statement of Sandra Shankaraiah, de-facto complainant, a specific allegation is made about the kidnap of the victim by all the accused persons including the petitioner herein. Similarly, Sandra Jaya Kumar-brother of victim specifically stated before the police during examination under Section 161 (3) Cr.P.C. that on 29.12.2013 evening at 1600 hours about the incident, similar to that of de facto complainant. Similarly, the other witnesses specifically testified, but the victim-Sandra Kumar in his statement disclosed about the absconding to avoid payments etc. Thus, the evidence collected during investigation disclosed that the accused are the persons who committed a serious offence of kidnapping a person demanding Rs.5,00,000/- from them.

4. Learned counsel for the petitioner/A.2 contended that there was a rivalry between the petitioner and the victim and filed a compliant in Crime No.480 of 2009 on 20.10.2009 in connection with a business transaction. But, no action has been taken by the police for the last

seven years and the result was not known till today either to the counsel for the petitioner or to the petitioner and mere giving a police complaint in the year 2009 is not a ground, prima facie, to conclude that the de facto complainant falsely foisted the case against the petitioner and others. However, the role played by the petitioner was specifically mentioned and it is not a casual allegation made against him. Investigating Agency specifically attributed overt acts against the petitioner that he along with A.4 threatened to kill the victim if the dues of A.1 and A.4 are not cleared. Thus, the acts are sufficient to conclude that there is prima facie material to proceed further against the petitioners.

5. The jurisdiction of this Court under Section 482 Cr.P.C. is limited though it is inherent and such jurisdiction can be exercised only in exceptional cases as laid down by the Apex Court in **State of Haryana v. Bhajan Lal**<sup>1</sup>, explaining the limits of jurisdiction under Section 482 Cr.P.C. and laid down the guidelines either to exercise the power or not to exercise the power under Section 482 Cr.P.C., they are as follows:

(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

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<sup>1</sup> 1992 Supp (1) SCC 335

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 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 mala fide 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. Even in the later judgment in **Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre**<sup>2</sup>, the Apex Court held that the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to

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<sup>2</sup> AIR 1988 SC 709

continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

7. In the present case, the allegation made in the charge sheet, evidence collected during investigation by the police and the statements recorded under Section 161 (3) Cr.P.C. disclosed a prima facie material to proceed against the petitioner including the other accused. Therefore, by applying the principles laid down in the above judgments, I find no grounds to quash the proceedings basing on the previous enmity or animosity complained in 2009.

8. Accordingly, the criminal petition is dismissed.

9. Miscellaneous petitions pending, if any, shall stand closed. No costs.

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**M. SATYANARAYANA MURTHY, J**

26<sup>th</sup> October 2016

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