

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.2859 of 2011

ORDER:

This petition is filed by the petitioners, who are accused Nos.2 to 5, seeking for quash of proceedings in C.C.No.156 of 2011 on the file of the court of XV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing for the 1st respondent. The counsel for the 2nd respondent did not appear in spite of notice.

3. The case was registered based on the private complaint filed by the complainant making only omni bus allegations against the accused.

4. A perusal of the complaint does not show any specific allegations against any one of the accused. The accused are the husband (A1), parents-in-law (A2 & A3), brother-in-law (A4), and sister-in-law (A5) of the complainant. A1 is reported to be no more. Hence, the petitioners herein are accused Nos.2 to 5.

5. The counsel brings the background facts to the notice of this Court. He contends that there is a Memorandum of Understanding between the parties after the divorce petition was filed by the husband of the 2nd respondent. But as the 2nd respondent did not comply with the terms of compromise, again a divorce OP was filed by the husband of the 2nd respondent and the marriage was dissolved by virtue of a

decree passed by the concerned court, directing the husband to pay Rs.2,50,000/- towards permanent alimony. M.C.No.12 of 2009 was filed by the 2nd respondent, but the same was dismissed for the default of the 2nd respondent. There was a report made by the husband of the 2nd respondent, that the matter was settled out of court.

6. The conduct of the 2nd respondent, as reflected by the above proceedings, would water down the intensity, if any, of the allegations made by her in the complaint. As already observed, absolutely there are no specific allegations made against any of the accused. The MOU also shows that while the above CC was pending, the same was entered into, thereby implying that she is not insisting on the allegations made in the complaint. The documents relied upon by the petitioners' counsel are irrefutable, being the orders of the court. Hence, this Court is permitted to look into the said documents in order to understand the truth of the allegations made in the complaint, by virtue of the ruling of the apex court in *Rajiv Thapar and others vs. Madan Lal Kapoor*¹. Relevant paragraph reads as follows:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under [Section 482](#) of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under [Section 482](#) of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such

¹ 2013(3) SCC 330

a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of [Cr.P.C.](#) the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under [Section 482](#) of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

7. The 2nd respondent/complainant does not show any interest in this petition also and was absent on the date of hearing, thereby drawing support for the opinion of this court that she is not interested in prosecuting the case.

8. With the above observations, the Criminal Petition is allowed and the proceedings in C.C.No.156 of 2011 on the file of the Court of XV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, are hereby quashed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

November 17, 2017
LMV