

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P. NO.8751 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C. to quash the proceedings in FIR NO.276 of 2017 of Police Station, Mahboobabad registered for the offences punishable under Sections 417, 420, 427, 201 of IPC, Section 3(2) (Va) of SC & ST(POA) Act on various grounds.

2. After arguing the matter for a while, the learned counsel for the petitioner requested this Court to direct the police to follow the guidelines in *ARNESH KUMAR V. STATE OF BIHAR*¹.

3. The complaint is lodged by the de facto complainant viz. Galiga Sujana daughter of Buchaiah making serious allegations against the petitioner to attract the offences referred supra.

4. The investigation in the case is not yet commenced.

5. No doubt, the second respondent lodged a complaint against the petitioner and normally this court would not exercise its inherent jurisdiction under Section 482 Cr.P.C. at the stage of registration of crime itself. A similar question came up in "*State of Orissa v. Saroj Kumar Sahoo*²", wherein the Apex Court held that the inherent powers under Section 482, Cr. P.C. should not be exercised by the High Court to stifle a legitimate prosecution. The 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

¹ (2014) 8 SCC 273

² (2005) 13 SCC 540

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.

6. Even otherwise, as admitted by the counsel for the petitioner except registration of crime against the petitioner, the investigation is not commenced. In such a case, it is difficult to conclude at this stage whether any case is made out against the petitioner or not. The F.I.R. is not an encyclopaedia of facts and it need not contain minute details since it is an information to the police about commission of cognizable case by any individual. Therefore, merely because the complaint disclosed intention of petitioner, it cannot be quashed at this stage. Moreover, the Apex Court in *R.P. Kapur v. State of Punjab*³, 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;

³ AIR 1960 SC 866

(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.

7. In (Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others⁴, the Supreme Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases 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 is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. in that event there would be no justification for interference by the High Court.

8. But, in the judgment in State of Haryana v. Bhajan Lal⁵ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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.

⁴ AIR 1990 SC 494

⁵ 1992 Supp. (1) SCC 335

(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.

(7) 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.

9. By applying the principles laid down by the Apex Court in various judgments including the judgment in STATE OF ORISSA referred supra, it is difficult for this court to exercise inherent power under Section 482 Cr.P.C. to quash the proceedings since the investigation is fetus stage and no material was collected to find out the incident as to whether the allegations made in the complaint constituting any offence or not.

10. In view of the request made by the counsel for the petitioner, if the offences allegedly committed by the petitioner is covered by guidelines in ARNESH KUMAR v. STATE OF BIHAR (supra), the police is directed to follow the procedure contemplated under Section 41-A Cr.P.C. It is needless to say that the investigating agency is bound to follow the procedure under Section 41-A of Cr.P.C. and the guidelines laid down by the Apex Court in

ARNESH KUMAR v. STATE OF BIHAR, otherwise it would amounts to contempt. Therefore, this Court is not required to give any specific direction to follow the Apex Court guidelines.

11. Acceding to the request made by the counsel for the petitioners, the investigating agency is directed to follow the procedure contemplated under Section 41-A Cr.P.C. and the guidelines laid down by the Apex Court in ARNESH KUMAR v. STATE OF BIHAR (supra), if applicable, to the offences allegedly committed by the petitioner.

12. With the above direction, the criminal petition is dismissed.

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

DATE:18-09-2017
ccm



M.SATYANARAYANA MURTHY,J

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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