

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Petition No.3944 of 2011

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioner-accused requesting to quash the proceedings against him in CC.No.2 of 2011 on the file of the Court of the learned Judicial Magistrate of First Class, Nidadavole.

2. I have heard the submissions of *Sri Mangena Sree Rama Rao*, learned counsel for the petitioner-accused, and of the learned Public Prosecutor (AP) representing the 1st respondent-State. There is no representation for the 2nd respondent and no submissions are made on his behalf. I have perused the material record.

3. The case of the petitioner-accused in support of the request for quashing the proceedings against him, in brief, is as follows:

The 2nd respondent-informant physically and mentally harassed his wife, who is a Muslim woman, and necked her out long time back as she did not satisfy his demands for additional dowry etcetera. She lodged a report with the police of Jangareddygudem Police Station. A crime was also registered against the 2nd respondent-informant. The petitioner-accused is an advocate. When the wife of the 2nd respondent-informant was unable to cope up with the harassment at the hands of the 2nd respondent-informant, she took the advice of the petitioner-accused at one point of time and then reported the matter to the police. Therefore, the 2nd respondent-informant bore grudge against the petitioner-accused and falsely implicated him in the case. Even as per the contents of the report his wife is not residing with him. By the time of lodging of the report, they got separated that too a long ago. The allegations are made against his wife by the 2nd respondent-informant to avoid payment of

maintenance to her and to further harass her. There is no truth in the averments in the report lodged and the report lodged is not a *bona fide* report. No elements of any penal provision are attracted to the case. The petitioner-accused being an advocate always questioned illegal and high handed acts of police in dealing with the accused in various cases. Therefore, the police are also having grudge against him. The case is foisted only to blackmail advocate community and make the advocates not to question the illegal activities of the police. Section 198 of the Code in categorical terms postulates that no Court shall take cognizance of an offence punishable under Chapter XX of the IPC except upon a complaint made by some person aggrieved by the offence. In the instant case, 2nd respondent-informant lodged a report directly with the police and a case was registered. It is not a case where the wife of the 2nd respondent-informant is in his care and custody at the time of lodging the report. Therefore, the registration of the crime for the offence under Section 497 of the IPC is illegal. Unless the husband and wife are residing together and the wife is under the care and custody of the husband and had illicit intimacy, the elements constituting the offence of Section 497 IPC do not get attracted. Since the wife of the 2nd respondent-informant was already necked out long time back, and as she also lodged a report against the 2nd respondent-informant and as the petitioner being an advocate assisted her in lodging of report against the 2nd respondent-informant, the case was foisted by abusing the process of law, to take revenge and to defame the petitioner-accused who is having reputation and social status.

4. Learned counsel for the petitioner and the learned Public Prosecutor stated that the CC is still pending and that charges are not yet framed.

5. At the time of hearing, learned counsel for the petitioner-accused reiterated the pleaded case of the petitioner. As already noted, though an advocate entered appearance for the 2nd respondent-informant there is no

representation for the 2nd respondent-informant and no arguments were advanced on his behalf.

6. Learned Public Prosecutor stated the facts of the case as borne out by record, which are as follows:

2nd respondent-informant is a resident of Vellachintalagudem village. One D.Koushya is his legally wedded wife. 2nd respondent-informant earlier worked as Supervisor in Cashewnut factory at Jangareddygudem. He married her having fell in love with her. She is a Muslim. Their marriage was registered. They were blessed with two children. For the purpose of education of the children the 2nd respondent-informant shifted his family to Nidadavole. His children were admitted in a school and they started residing in Gandhinagar. The petitioner-accused induced the said wife of the 2nd respondent and developed illicit intimacy with her and took her away without the knowledge of the 2nd respondent-informant.

7. I have given earnest consideration to the facts and submissions. It is apt to note that, on 08.07.2011, this court granted interim stay for a period of four weeks; and, later by order dated 08.08.2011, the said orders were extended.

8. Before proceeding further, it is profitable to refer to the undisputed legal position obtaining. A charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him under a particular penal provision of law. In case the prosecution fails in its primary duty to show a *prima facie* case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith under Section 227 CrPC. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is

required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge or at the time of considering the request made by the accused for quashing the proceedings, the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others* [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In *Union of India v. Prafulla Kumar Samal and another* [1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227

the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

9. I have gone through the material record including the petition of the petitioner, copy of FIR and charge sheet. The contents of the prosecution case are already stated supra. It is an admitted that Koushiya is the legally wedded wife of the 2nd respondent-informant and their marriage took place about 12 years prior to the lodging of the report and that she gave birth to two daughters under lawful wedlock. According to the prosecution case for the sake of education of the children, 2nd respondent-informant shifted his family to Gandhinagar, Nidadavole, and they started residing in a rented house and that in the absence of the 2nd respondent-informant, the petitioner-accused who is an advocate induced his wife and developed illicit intimacy with her and took her away without the knowledge of the 2nd respondent-informant and started residing at Balajinagar. Even according to the first information lodged with the police by the 2nd respondent-informant, his wife was not residing with him since one year prior to the lodging of the said report. Be that as it may. The marriage between the 2nd respondent-informant and his wife Koushiya is not dissolved by a decree of divorce. The marriage is subsisting. Even assuming for a moment that she was necked out of the house by her husband, no person is supposed to have illicit intimacy with her she being a legally wedded wife of the 2nd respondent-informant. If anybody develops illicit intimacy with a married woman, the aggrieved person would be the husband despite the fact that the wife is living separately for whatever reasons. Though the petitioner alleges that the 2nd respondent-informant necked his wife out

long time back, the report lodged by the 2nd respondent with the police discloses that his wife is not residing with him since one year prior to the lodging of the report. Therefore, the contentions of the petitioner-accused need no countenance. The Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. If the allegations on the face of it are taken there is a *prima facie* case for proceeding against the petitioner-accused and therefore the request of the petitioner is devoid of merit and is liable to be dismissed.

10. Further, there is no need at this stage to form an opinion that petitioner-accused is certainly guilty of the offence alleged against him. This Court examined the issue involved, keeping in view the limited scope of interference and the restricted ambit of jurisdiction and also the precedential guidance in the decision in *State of Rajasthan v. Fatehkaran Mehdu*¹. On consideration of the broad probabilities of the case, the total effect of evidence including the documents produced before the Court and in the absence of any basic infirmities in the case warranting acceptance of the request of the petitioner-accused and also in view of the limited scope of jurisdiction, which vests with the Court, it is noticeable that this is a case where a final adjudication of the proposed charge against the petitioner-accused has to be made only after oral and documentary evidence is adduced in a full-fledged trial.

¹ 2017 (1) ALD (CrI) 842 (SC)

11. On the above analysis and for the reasons assigned supra, this Court finds that the request of the petitioner-accused to quash the criminal proceedings against him does not merit consideration and that the petition is liable for dismissal. However, it is needless to state that this Court did not express any opinion on the merits of the matter and it is always open to the accused herein to raise before the trial Court all the defences, which the facts and law permit.

12. In the result, the Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

19.09.2017
VJI



M. SEETHARAMA MURTI, J