

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.4536 of 2017

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioners/ accused Nos.1 to 6 in C.C.No.74 of 2017 on the file of the Court of VII Additional Metropolitan Magistrate, Bheemunipatnam.

2. Learned counsel for the petitioners submitted that it is a fit case to quash the proceedings against the petitioners on the following grounds:

1. There is a delay of two days in lodging the complaint;
2. The second respondent developed illicit intimacy with the husband of the first petitioner and foisted a false case; and
3. She further submitted that the police have not taken any action against the complaints submitted by the first petitioner.

Per contra, learned Assistant Public Prosecutor submitted that the allegations made in the complaint *prima facie* sufficient to proceed further against the petitioners. He further submitted that there is no flaw in the investigation conducted by the Station House Officer, P.M.Palem Police Station, Visakhapatnam City (hereafter, the SHO).

3. A perusal of the record reveals that basing on the complaint lodged by the second respondent, the SHO registered a case in Crime No.375 of 2016 under Sections 452, 323 and 354 read with 34 IPC. After completion of investigation, the SHO laid charge sheet against the petitioners for the offences punishable under the above sections of law. The learned VII Additional Metropolitan Magistrate, Bheemunipatnam, after following due procedure has taken the cognizance of offence under Sections 452, 323 and 354 read with 34 IPC and numbered it as C.C.No.74 of 2017 and issued summons.

4. The first and foremost contention of the learned counsel for the petitioners is that there is a delay of two days in filing the complaint. As per the allegations made in the complaint, the incident has taken place on 21.09.2016 at about 12.30 p.m., however, the second respondent lodged the complaint to the police on 23.09.2016. As per the recitals of the complaint, the second respondent has taken treatment in KGH, Visakhapatnam and thereafter lodged the complaint. It is a settled principle of law that mere delay in lodging the complaint itself is not a valid ground to quash the proceedings while exercising the jurisdiction under Section 482 Cr.P.C. Whether the prosecution has assigned reasons much less cogent and valid reasons for delay in lodging the complaint will be considered at the time of trial. If this Court expresses any opinion on this aspect, at this point of time, the same may cause prejudice to one of the parties to the proceedings. Having regard to the facts and circumstances of the case, I am of the considered view that it is not a fit case to quash the proceedings on this ground alone.

5. The second contention of the learned counsel for the petitioners is that the second respondent developed illicit intimacy with the husband of the first petitioner and foisted a false case. Learned counsel for the petitioners strenuously submitted that the second respondent married the husband of the first petitioner. A perusal of the record reveals that the second respondent lodged a complaint on 23.09.2016, whereas the first petitioner lodged a complaint to the police on 07.10.2016. Whether the second respondent developed illicit intimacy with the husband of the first petitioner or not is purely a disputed question of fact, which cannot be gone into at this stage.

6. Another contention of learned counsel for the petitioners is that the SHO has not taken any action basing on the complaint lodged by the

first petitioner. A perusal of the record reveals that the first petitioner lodged a complaint to the SHO on 07.10.2016. No material is placed before this court with regard to the stage of the investigation. Even assuming, but not conceding, that the SHO has not taken any action on the complaint lodged by the first petitioner on 07.10.2016, that itself is not a legally valid ground to quash the criminal proceedings in this case. There is no flaw in the investigation conducted by the SHO, in this case.

7. As per the allegations made in the complaint, on 21.09.2016 when the second respondent along with her son was proceeding to the school, the petitioners herein wrongly restrained her in the middle of the road. It is further alleged that the petitioners herein beat the second respondent. While deciding the petitions under Section 482 Cr.P.C., the Court has to consider whether the allegations made in the complaint are *prima facie* sufficient to proceed further against the accused or not. This is not the stage to decide whether the material available on record is sufficient to convict the accused or not. Whether the second respondent lodged a false case or not will be decided during the course of trial. I have carefully scanned the charge sheet placed before this Court. A perusal of the charge sheet clearly reveals the role played by the other petitioners. A perusal of the record *prima facie* reveals that the petitioners herein misbehaved with the second respondent on the middle of the road with an intention to outrage her modesty. The allegations made in the complaint are *prima facie* sufficient to proceed further against the petitioners. Various queries raised by the learned counsel for the petitioners involve complexity of disputes questions of fact, which cannot be gone into while exercising the jurisdiction under Section 482 Cr.P.C. The Criminal Procedure Code provides various provisions to safeguard the interest of the accused persons. If there is

no specific provision in Cr.P.C, then only this Court can exercise power under Section 482 Cr.P.C to protect the personal liberty of the individual. In order to resolve this issue, this court is placing reliance on the following decisions:

(1) Madhu Limaye Vs State of Maharashtra¹, wherein the Hon'ble apex court held thus:

“At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably barring a few exceptions:-

- (a) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (b) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice.
- (c) That it should not be exercised as against the express bar of law engrafted in any other provision of the code”

(2) Padal Venkata Rama Reddy @ Ramu V Kovvuri Satyanarayana Reddy², wherein the Hon'ble apex Court held thus:

“It is well settled that the inherent powers under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (Vide Kavita v State, 2000 CrI.L.J. 315 (Delhi) and B.S.Joshi v State of Haryana, 2003 (1) ALD (CrI).842 (SC) = (2003) 4 SCC 675 = AIR 2003 SC 1386= 2003 AIR SCW 1824). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, especially when the applicant may not have availed of that remedy.”

(3) Amit Kapoor v Ramesh Chander³, wherein the Hon'ble Apex Court held as follows:

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the court may interfere.

¹ AIR 1978 SC 47

² 2011 (2) ALD (CrI.) 948 (SC) = (2011) 12 SCC 437

³ (2012) 9 SCC 460

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

(4) Umesh v State of Kerala⁴ wherein the Hon'ble apex Court at Paras 2, 4 and 6 held as follows:

2. The appellant is aggrieved by the refusal on the part of the High Court in quashing the criminal proceedings now pending before the Judicial Magistrate, First Class, Chavakkad in CC Nos.289/ 1996 and 280/ 1996. The appellant is accused No.5 in both the cases.

4. We find it difficult to appreciate the contention. Even if all contentions taken by the appellant are taken on their face value also, it is for the Magistrate concerned to consider those contentions in an appropriate application filed under Section 239 of the Cr.P.C.

6. We direct the learned Magistrate to consider the applications, if any filed, having regard to the contentions taken by the appellant and dispose of the same, in accordance with law.

8. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the view that it is not a fit case to quash the proceedings against the petitioners/ accused Nos.1 to 6 in C.C.No.74 of 2017 on the file of the Court of VII Additional Metropolitan Magistrate, Bheemunipatnam.

9. Accordingly, the Criminal Petition is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T. SUNIL CHOWDARY, J

Date: 19.06.2017
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⁴ (2017) 3 SCC 112