

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.4681 OF 2013

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to declare the conducting of trial in S.C.No.156 of 2012 on the file of Additional District Judge, Vikarabad by ignoring Section 164 Cr.P.C. statement of the deceased as illegal and against the law and procedure mainly on the ground that the death of the deceased was due to harassment or instigation of the accused in the above Sessions Case No.192 of 2012 on the file of Metropolitan Sessions Judge, Vikarabad. But, the Court took cognizance of the offence under Section 304-B of IPC instead of taking cognizance for the offence punishable under Section 306 of IPC. It is also contended that the Court is going to decide the case on the basis of incomplete record produced before it and that the Judge is bound to function within four corners of Cr.P.C, which do not permit him to verify whether the record produced by the police is complete or incomplete. He further contended that the record produced before the Court by the prosecution is incomplete due to collusion between the investigating agency and the accused and that on account of such failure, there is any possibility of miscarriage of justice to the petitioner. It is also further contended that the statement recorded under Section 164 Cr.P.C of the deceased has not been produced before the Court and the Court is going to decide the case without taking into consideration of

statement under Section 164 Cr.P.C. of the *de facto* complainant and thereby caused injustice to the petitioner.

2. Learned counsel for the petitioner, during hearing, reiterated the contentions raised in the petition while reading entire petition and mainly contended that the investigating agency did not bring certain facts to the notice of the Court in trying the sessions case on account of such lacunas in view of collusion between the investigating agency and the accused and the said case was ended in acquittal. Therefore, the petitioner requests this Court to direct the Sessions Judge to conduct trial in S.C.No.156 of 2012 considering the statement recorded under Section 164 Cr.P.C. of the deceased and pass appropriate orders.

3. Learned Additional Public Prosecutor representing the State drawn the attention of this Court about the disposal of the Sessions Case on 24.07.2013 and that in case the petitioner is aggrieved, the remedy open to him to file an appeal under Section 378 of Cr.P.C or proviso to Section 372 of Cr.P.C. but such proceedings cannot be challenged by filing a petition under Section 482 of Cr.P.C. and prayed for dismissal of the petition.

4. This petition was filed on 29.04.2013, but no stay was obtained during pendency of the petition and that the Sessions Court disposed of the matter on 24.07.2013 acquitting the accused therein, the respondent herein, for the charge framed

against him. Now, the contention of the petitioner is that the Court did not take into consideration of the Statement recorded under Section 164 of Cr.P.C by the Judicial Magistrate and he himself admitted in ground No.4 that those statements were false and not taken by the prosecution, but Judge is under obligation to decide the matter based on the material produced before the Court and Judge cannot compel any one to produce any other material. However, it is for the prosecution to produce the material, if any, collected during investigation before the Court completely so as to enable the Court to come to just conclusion in the matter. But here the statement recorded under Section 164 of Cr.P.C. of the deceased by the Magistrate is not allegedly produced, but even copy of the statement also not produced before this Court much less to consider the defect in the investigation done by the investigating agency and laches in the investigating agency.

5. The statement of Nadiha Begum recorded under Section 164 of Cr.P.C is produced before the Court, but it was marked as exhibit or not before the Court during trial is not known. When the Sessions Case was disposed of by the Court after trial, the remedy open to the petitioner being the father of the deceased.

6. The 'victim' as defined under Section 2[(wa) of Cr.P.C. is entitled to claim certain reliefs as per the provision under

Section 372 of Cr.P.C. and according to it, the victim has to prefer appeal against any order passed by this Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. Section 2(wa) defines the 'victim' as follows:

“"victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir”

7. Here the petitioner is a victim within the definition of Section 2(wa) of Cr.P.C. and intended to claim reliefs under Section 372 of Cr.P.C, at the same time Section 378 of Cr.P.C permits an appeal against an acquittal subject to special leave of the Court as contemplated under Section 378(4) of Cr.P.C. But instead of filing an appeal by the petitioner being an victim as defined under Section 2(wa) of Cr.P.C read with Sections 372 and 378(4) of Cr.P.C continued proceedings before this Court and this Court at this stage cannot pass any order when the sessions case was disposed of acquitting the accused therein and the remedy open to the petitioner is only to file an appeal against an acquittal under Section 378 of Cr.P.C. subject to obtaining special leave under Sub-section (4) therein. Therefore, at this stage, it is highly difficult for this Court to grant any relief while exercising power under Section

482 of Cr.P.C, which is purely discretionary which can be exercised by this Court only to implement the orders or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

8. In **State of Haryana vs. Bhajan Lal**¹ 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.

(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.

¹ 1992 Supp.(1) SCC 335

(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. When the remedy is available under the Act, this Court cannot exercise inherent jurisdiction under Section 482 of Cr.P.C. Here the remedy open to the petitioner to file an appeal against the acquittal order in S.C.No.192 of 2012 passed on 24.07.2013, and by exercising power under Section 482 of Cr.P.C. this Court cannot direct the Sessions Court to retry the case after reopening the judgment passed therein and this Court re-appreciate the evidence in view of limited scope of power under Section 482 of Cr.P.C. Therefore, I find no ground to exercise inherent power under Section 482 of Cr.P.C. However, it is left open to the petitioner to resort remedy under Section 378 read with Section 372 of Cr.P.C.

10. With the above observations, the criminal petition is disposed of.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

06.02.2017
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