

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.12177 of 2011

ORDER:

This petition is filed seeking for quashment of the proceedings against the petitioners, who are Accused Nos.1 and 2 in C.C.No.749 of 2011 on the file of X Additional Chief Metropolitan Magistrate, City Civil Court, Secunderabad.

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 facts of the case, as reflected in the complaint, are that the complainant is the tenant of the petitioners herein. The petitioners filed a complaint against the complainant to the Bar Council, in response to which the Bar Council addressed a letter to the complainant along with the complaint and supporting papers filed by the petitioners. Thereafter, the petitioners subjected him to unbearable harassment for about 9 years during the stay as their tenant and even after vacating the premises. In reply to the false allegations, the complainant gave an explanation to the Bar Council and later the Bar council closed the case stating that the complainant therein failed to establish the case. No appeal was preferred against the said finding of the Bar Council. A false defamatory letter was issued by the petitioners to the complainant on 31.05.2005. Hence, the impugned complaint seeking for

prosecution of the petitioners for the offences punishable under Sections 200, 500, 506 read with 34 IPC.

4. The counsel for the petitioners takes this court to the background facts of the above complaint. He submits that the complainant gave a complaint to the GHMC against the petitioners herein stating that the house is not in accordance with the norms of GHMC and the GHMC issued a notice to the 2nd petitioner and while those proceedings were under consideration, the complainant filed a suit on behalf of the petitioners herein, seeking for injunction against the GHMC and later the suit was dismissed. The acts of the complainant were taken to the notice of the Bar Council for appropriate action and that action of the petitioners herein is what is termed as 'Defamation' that lead to the filing of the complaint by this complainant. The counsel filed copy of the letter issued by the 2nd petitioner to the GHMC wherein, reference No.2 is the complaint filed by the complainant-Srinivasa Chary, Advocate.

5. From the above, it can be understood that the complaint filed by the complainant is the basis for the GHMC to initiate action against the petitioners. The proceedings, dated 11.07.2003, of GHMC also make a reference to the complaint of the complainant. The decree in the original suit viz., O.S.No.690 of 2003, which was allegedly filed by the complainant, shows that the complainant is Advocate for the 2nd petitioner, who was the complainant therein. Hence, the above two incongruous acts of the complainant itself would suggest that there was basis for

these petitioners to report the matter to the Bar Council. The copy of the letter issued by the Bar Council to the complainant is also filed, wherein, it was found that there was a *prima facie* case against the complainant with regard to the professional misconduct. The closure of the complaint, even if it is taken as true, cannot form a basis for this complainant to say that the report given by the petitioners herein has resulted in defamation to the complainant. When the conduct of the complainant is reflected by the acts, which would *prima facie* amount, if not to professional misconduct, to a misconduct on moral plane. There was absolutely a ground for the petitioners to approach the Bar Council, to redress their grievances. The acts of the persons to redress their grievances through the available mode cannot, at any rate, be termed as acts made with an intention to defame the persons, against whom grievance is expressed.

6. This Court is aware of the parameters on the basis of which quash of the proceedings can be done, which were laid down by the Apex Court in *State of Haryana and ors., vs. Ch.Bhajanlal and others*¹, wherein it was held that in the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently

¹ AIR 1992 SC 604

channelised and inflexible guide, myriad kinds of cases wherein such power should be exercised;

- a) 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;
- b) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;
- c) Where the uncontroverted 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;
- d) 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;
- e) 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;
- f) 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 proceeding 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;
- g) 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.

7. However, in *Rajiv Thapar and others vs. Madan Lal Kapoor*², the apex court permitted certain documents to be relied upon. Relevant paragraph reads as follows:

² 2013(3) SCC 330

“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 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. With the above observations, the Criminal Petition is allowed and the proceedings against the petitioners, who are Accused Nos.1 and 2 in C.C.No.749 of 2011 on the file of X Additional Chief Metropolitan Magistrate, City Civil Court, Secunderabad, are hereby quashed.

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

T. RAJANI, J

November 17, 2017
LMV