

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.6104 of 2017

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner/accused in C.C.No.49 of 2016 on the file of the Court of I Additional Chief Metropolitan Magistrate, at Visakhapatnam (old C.C.No.629 of 2013 on the file of the Court of III Additional Chief Metropolitan Magistrate at Gajuwaka).

2. Learned counsel for the petitioner strenuously submitted that the allegations made in the charge sheet do not constitute any offence much less the offence alleged to have been committed by the petitioner. She further submitted that the victim was confined only for six hours, therefore, it is a fit case to quash the proceedings against the petitioner. She further submitted that the second respondent foisted a false case against the petitioner. **Per contra,** learned Public Prosecutor for the State of Andhra Pradesh submitted that the allegations made in the charge sheet *prima facie* sufficient to proceed further against the petitioner. He further submitted that taking into consideration the age of the victim and the nature of the offence alleged to have been committed by the petitioner, it is not a fit case to quash the proceedings at this stage.

3. A perusal of the record reveals that basing on the complaint lodged by the second respondent, the Station House Officer, Gajuwaka Police Station, registered a case in Crime No.453 of 2013 under Section 363 IPC. After completion of investigation, the SHO laid charge sheet against the petitioner for the offence punishable under the above section of law before the III Additional Chief Metropolitan Magistrate, at Gajuwaka. The learned Magistrate after following due procedure has taken the case on file under Section 363 IPC and numbered it as C.C.No.629 of 2013. Subsequently, the matter was transferred to the file of the I Additional Chief Metropolitan Magistrate, Visakhapatnam and renumbered as C.C.No.49 of 2016.

4. As per the allegations made in the charge sheet, on 01.09.2013 at about 3.00 p.m. the daughter of the second respondent left the house and came back in the night. It is further alleged that the petitioner herein taken the daughter of the second respondent to RK beach and from there to RTC complex. During that period, two persons came on a motor cycle and saw the victim girl.

5. I have carefully perused the record placed before this Court. There is no flaw in the investigation conducted by the investigation agency. The learned Magistrate after satisfying himself with the material placed before him, has taken the case on file and numbered it as C.C.No.629 of 2013 and

issued summons. The learned Magistrate has not committed any illegality or irregularity while taking the case on file. It is needless to say that at this stage, the Court has to consider whether the material placed before it is *prima facie* sufficient to proceed further against the petitioner or not. If the uncontroverted allegations made in the complaint *ex facie* taken to be true and correct and no *prima facie* case is made out, then this Court can quash the proceedings while exercising the jurisdiction under Section 482 Cr.P.C. By the time of the alleged incident, the victim was studying 6th class. There is no necessity for the petitioner to take the girl to RK Beach and from there to RTC Complex and confine her for a period of six hours. There is no necessity for the petitioner to take the victim to a show room at Chinnagantyada. The material placed before the Court *prima facie* reveals that the petitioner without any right whatsoever taken the victim girl to two to three places. In order to resolve this issue, this court is placing reliance on the following decisions:

(1) **Madhu Limaye Vs State of Maharashtra**¹, 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

¹ AIR 1978 SC 47

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 Chander**³, 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.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would

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

³ (2012) 9 SCC 460

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 Kerala**⁴ 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.

6. As per the principle enunciated in the cases cited supra, if there is a *prima facie* material to proceed further, the Court cannot quash the proceedings while exercising its jurisdiction. As observed in the foregoing paragraphs, the material placed before the Court *prima facie* sufficient to proceed further against the petitioner.

7. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited

⁴ (2017) 3 SCC 112

supra, I am of the view that it is not a fit case to quash the proceedings against the petitioner/accused in C.C.No.49 of 2016 on the file of the Court of I Additional Chief Metropolitan Magistrate, at Visakhapatnam, while exercising the jurisdiction under Section 482 Cr.P.C..

8. Accordingly, the Criminal Petition is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed. However, the trial Court is hereby directed to dispose of C.C.No.49 of 2016 uninfluenced by the observations if any made by this Court in this petition.

Date:25.07.2017
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T.SUNIL CHOWDARY, J

