

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2239 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 11.12.2015 passed in CrI.M.P.No.2323 of 2015 in CrI.M.P.No.1388 of 2013 in C.C.No.8 of 2012 by the Principal Special Judge for CBI Cases, Hyderabad, to the extent of "the petitioner/A.1 shall appear before this Court on the dates fixed for hearing of the case without fail. He may remain absent only in unavoidable circumstances and with the permission of the Court" imposed vide orders dated 23.09.2013 in CrI.M.P.No.1388 of 2013 in C.C.No.8 of 2012.

The petitioner is accused in the above case and he was enlarged on bail subject to certain conditions by order in CrI.M.P.No.1388 of 2013 dated 23.09.2013. While releasing the petitioner on bail, the Court below imposed five conditions, out of which condition Nos.3 and 4 were sought to be relaxed by the petitioner before the Court below in CrI.M.P.No.2323 of 2015 on various grounds. The main ground urged before the Court below was that the petitioner being the member of Legislative Assembly and Opposition Leader in the Andhra Pradesh State Assembly, he is required to interact with the public at large in the State of Andhra Pradesh and he being a President of registered political party viz. Y.S.R.Congress Party has to interact with the public of various corners of the State to raise issues of public importance in the Assembly and that he wanted to pursue his political career without any hindrance. Insisting the petitioner to appear before the Court on every date of adjournment caused harassment to him.

The presence of the petitioner on every date of adjournment is not required since various petitions are filed by other accused for discharge are pending for consideration and the Court if insists his personal appearance on every date of adjournment, it would cause much inconvenience in pursuing his political career; his presence on each and every date of adjournment is not imperative and on the dates of his appearance, his advocate will represent in the event of relaxing condition and that he did not violate any of the conditions imposed by the Court and requested to relax the condition of appearance.

Respondent – CBI filed a counter contending that number of charge sheets were filed against the petitioner in different cases and that the gravity of allegations and effect of influence of the petitioner on the process of trial, be taken into consideration while relaxing the conditions. It is further contended that the petitioner has been delaying the matter at the stage of arguments before charge and the present petition is only an attempt to protract the proceedings on one pretext or other. If the conditions are relaxed, it would frustrate the purpose for which, the Court has imposed conditions and prayed to dismiss the petition.

The trial Court upon considering various facts and circumstances relaxed the condition No.3 only and condition No.4 is modified to the extent of permitting the petitioner to remain absent only in any unavoidable circumstances, for appropriate reasons to be made out, subject to filing an appropriate application and if represented by his advocate.

Aggrieved by the said order, the present petition is filed

under Section 482 of Cr.P.C. with a request to invoke inherent jurisdiction of this Court to relax such condition imposed by the Court below.

While reiterating the contentions raised before the Court below, the petitioner specifically narrated additional facts regarding granting permission in Crl.M.P.No.1540 of 2013 to visit New Delhi and other places in Andhra Pradesh by order dated 30.10.2013 with a condition to intimate the respondent 2 days in advance to this travel. Subsequently, the petitioner approached the Court and filed petition in Crl.M.P.No.1648 of 2014 to relax the condition imposed in Crl.M.P.No.1540 of 2013 with regard to 2 days advance intimation before leaving Hyderabad to the respondent and the said condition of 2 days advance intimation was also relaxed on 18.11.2013. Petitioner also admitted that whenever he filed applications to dispense with his presence, the Court allowed those applications. Continuing such condition to appear before the Court on every date of adjournment is nothing but subjecting him to harassment and prayed to relax the condition in view of the averments made in the petition and there is no possibility of completing the trial in near future as the Court below is on the job of deciding various applications filed by other accused for discharge etc and prayed to exercise inherent power to quash the impugned order to the extent referred above.

During hearing, Sri S.Niranjan Reddy, learned senior counsel for the petitioner reiterated the contentions urged in the petition while contending that the appearance of the petitioner before the Court below would not serve any purpose and if such

condition is relaxed, the petitioner can concrete on public issues and raise important issues in the Assembly being a member of Legislative Assembly and leader of Opposition party i.e. Y.S.R. Congress Party and requested this Court to relax such condition.

Whereas K.Surender, Special Public Prosecutor for Central Bureau of Investigation, supported the order in all respects and prayed for dismissal of the petition.

Petition filed before the Court below was under Section 439 (1) (b) of Cr.P.C. i.e. to relax the condition Nos.3 and 4 imposed by the Court below while enlarging the petitioner on bail, on such application; the Court below relaxed the condition No.3 only and modified the Condition No.4.

Though the Court below modified condition No.4 in Crl.M.P.No.2323 of 2015 in Crl.M.P.No.1388 of 2013 in C.C.No.8 of 2012 to some extent, now the petitioner is seeking to quash condition No.4 imposed in Crl.M.P.No.1388 of 2013 in C.C.No.8 of 2012.

According to condition No.4, the petitioner, who is the accused in C.C.No.8 of 2012, shall appear before the Court without fail and he may remain absent only in unavoidable circumstances and with the permission of the Court.

This condition is virtually not a condition to enlarge the petitioner on bail. When a calendar case is pending before the Court in a serious case, the petitioner being one of the accused is bound to appear before the Court on all the dates of adjournments and it is a statutory requirement. Even if such condition is not imposed by the Court below while enlarging the petitioner on bail,

still it is his duty to appear before the Court on every date of adjournment unless and until his appearance in-person before the Court is dispensed with by exercising power under Section 205 of Cr.P.C. or under any other provision of law, but he filed application before the Court below under Section 205 of Cr.P.C., the Court below did not exercise its power to dispense with the appearance of the petitioner while permitting his advocate to represent him. As the Court below did not relax the condition No.4 imposed in Crl.M.P.No.1388 of 2013 while enlarging the petitioner on bail, the petition is filed to quash the order to the extent stated above.

The order under challenge was passed in a petition filed under Section 439 (1) (b) of Cr.P.C. for relaxation of conditions earlier imposed and the same is in the nature of interlocutory order. Merely because the petition filed before the Court below was dismissed the avenues to challenge the order are not closed and the remedy available to the petitioner is to file an application for relaxing the condition, before the High Court. Instead of resorting to file such application under Section 439 (1) (b) of Cr.P.C. before the High Court against the order passed by the Court below, the petitioner invoked the inherent jurisdiction of this Court by filing a petition under Section 482 of Cr.P.C. to quash the order to the extent stated above.

The question before this Court is “Whether this Court can exercise such inherent jurisdiction under Section 482 of Cr.P.C. to quash the interlocutory order?” This question is no more *res integra* in view of the law declared by the Apex Court in

“Madhu Limaye v. State of Maharashtra¹”, wherein the Apex Court examined the scope of Section 482 vis-à-vis Section 397 (2) and modified the earlier observations made in **“Amar Nath v. State of Haryana²”**. The Apex Court held that the High Court cannot exercise its revisional power in respect of interlocutory orders because of the provision in Section 397 (2) of Cr.P.C., but the power under Section 482 of Cr.P.C. is exercisable in respect of an order, whether or not it is termed interlocutory, if the conditions for invocation of the inherent powers are fulfilled.

In **“Arun Shankar Shukla v. State of U.P.³”** the Apex Court held that “it is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well neigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code.”

¹ AIR 1978 SC 47

² AIR 1977 SC 2185

³ (1999) 6 SCC 146

In “**Hamida v. Rashid**⁴” the Apex Court reiterated the principle laid down in “**Madhu Limaye v. State of Maharashtra**” (referred supra) and held that the following principles may be stated in relation to the exercise of the inherent power of the High Court -

(1) 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;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

Thus, from the law declared by the Apex Court in the judgments referred supra, it is clear that to exercise inherent power under Section 482 of Cr.P.C. the Court must satisfy itself that passing of an order would meet the ends of justice or to prevent abuse of process of law.

In the present facts of the case, petition was filed under Section 439 (1) (b) of Cr.P.C., the Court below relaxed the conditions to some extent, but still the petitioner filed the present petition to relax the other part of condition No.4 extracted above, on various grounds referred supra.

When the law permits the petitioner to file an application under Section 439 (1) (b) of Cr.P.C. before the High Court, even if the Court failed to relax the condition on any ground, this Court

⁴ (2008) 1 SCC 474

cannot exercise such inherent power in view of the principle laid down in “**Madhu Limaye v. State of Maharashtra**” (referred supra).

The main reason to seek relaxation of condition No.4 is to pursue his political career as a President of Y.S.R. Congress Party and as a member of Legislative Assembly of State of Andhra Pradesh, but that is not a ground to relax the condition *prima facie*. Since it is the statutory obligation on the part of the petitioner to appear before the Court on every date of adjournment except when his personal appearance is dispensed with by the Court below under Section 205 of Cr.P.C. or under any other provision of law, but here the alleged offence committed by the petitioner is a serious and grave in nature which dent the economy of the State itself and such power cannot be exercised to relax the condition imposed against petitioner by exercising power under Section 205 of Cr.P.C. as held by this Court in Crl.P.No.7446 of 2017 and batch.

When the petitioner filed an application before the Court below and the Court below refused to grant relief, the remedy open to him is to file an application before the High Court to relax such condition but not an application under Section 482 of Cr.P.C. When a remedy is available to the petitioner, this Court cannot exercise inherent power under Section 482 of Cr.P.C.

When specific provision is there in the Code for grant of bail inherent power cannot be invoked to grant bail as held in “**State of**

***Gujarat v. Salimbhai Abdul Gaffar Shaik*⁵**

High Court should not interfere with interlocutory orders. Though inherent power is available to interfere with interlocutory orders, this Court can exercise such power only to prevent abuse of process of Court or to meet the ends of justice. But, here there is nothing to show that the order passed by the Court below is an abuse of process of Court and that apart his appearance before the Court in a serious crime is imperative unless his appearance is dispensed with, but imposing condition for his appearance on all the dates of adjournments is not contrary to any of the procedural laws, but it is in consonance with the requirement under Cr.P.C. Therefore, relaxing such condition would amount to granting blanket permission dispensing his appearance. Even in the absence of such condition, the petitioner is bound to appear before the Court in person.

On the other hand, the petitioner himself admitted that whenever he filed application for relaxing certain conditions seeking permission to go to New Delhi, the Court ordered those applications.

When a remedy is available to the petitioner to file an application before the High Court under Section 439 (1) (b) of Cr.P.C. the petitioner is not entitled to invoke the jurisdiction of this Court under Section 482 of Cr.P.C. and the Court should not interfere when an alternative remedy is open as held in “**Avadh Narain Lal v. State of U.P.**”⁶

⁵ AIR 2003 SC 3224

⁶ 1986 Cr.L.J. 1233

Similarly, in “**Raj Kapoor v. State**”⁷ the Apex Court held that the inherent power cannot be invoked to serve purposes for which there is express provision of law.

Inherent power of the High Court under Section 482 of Cr.P.C. cannot be exercised in regard to the matters, specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash a proceeding in appropriate cases either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice.

Thus, in view of law declared by the Apex Court when an alternative remedy is available in a statute to grant such relief, this Court cannot exercise such inherent jurisdiction to grant relief under Section 482 of Cr.P.C. On this ground, the petition is not maintainable.

On overall consideration of the entire material available on record, the petition is not maintainable and this Court cannot exercise inherent jurisdiction for the following reasons:

- (1) This Court cannot exercise inherent jurisdiction to quash the orders passed by the Court below in interlocutory proceedings.
- (2) When a remedy is available for the relief claimed in the petition, the petitioner is entitled to file an appropriate application before appropriate Court against such order, but not a petition under Section 482 of Cr.P.C.

⁷ AIR 1980 SC 258

(3) The condition imposed by the Court below is in consonance with the statutory requirement i.e. appearance of the accused before the Court on every date of adjournment.

Therefore, I find no ground to exercise inherent jurisdiction under Section 482 of Cr.p.C. to quash the impugned order. Consequently, the petition is liable to be dismissed as it is devoid of any merit.

In the result, the petition is dismissed. However, liberty is given to the petitioner to file appropriate application before the competent Court.

Consequently, miscellaneous applications pending if any, shall also stand closed.

31.08.2017
Ksp

JUSTICE M. SATYANARAYANA MURTHY

