

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CRIMINAL PETITION No.1260 OF 2017**

**ORDER:**

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking to quash the proceedings in P.R.C. No.6 of 2017 on the file of XVII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

2. The petitioners, who are arraigned as accused Nos.4 and 5 respectively, alleged to have committed the offences punishable under Section 324 of Indian Penal Code, 1860 and Section 3 (i)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Heard Sri Sharad Sanghi, learned counsel for the petitioners, and the learned Additional Public prosecutor for the State of Telangana, and perused the material on record.

4. The main submission of the learned counsel for the petitioners is that when the complaint was lodged and First Information Report (FIR) was issued, names of the petitioners were not occurring and only when the charge sheet is filed, petitioners herein are roped in. His further submission is that the allegations do not contain a single sentence with respect to the petitioners as they are omnibus in nature and does not disclose specific overt-acts and on a

reading of the charge sheet, *prima facie*, does not disclose any offence against the petitioners. It is his submission that since the petitioners are shown as absconding in the charge sheet and even P.R.C. number is also assigned, there is a threat of arrest of the petitioners, and, therefore, sought to quash the proceedings.

5. The learned Additional Public Prosecutor for the State of Telangana would submit that presence of both the petitioners, their participation is also stated in the statements made under Section 161 Cr.P.C. by the *de facto* complainant and the eye-witnesses, though, they are relations of the *de facto* complainant. He would, however, submit that the FIR does not show names of the petitioners, but that would not in any way have effect on the result of investigation and filing of charge sheet against the petitioners also.

6. Learned counsel for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court in **Umesh Kumar v. State of Andhra Pradesh**<sup>1</sup>, **State of Bihar v. P.P. Sharma**<sup>2</sup>. He places reliance on the expression of the Hon'ble Supreme Court in **P.P. Sharma**<sup>2</sup> in paragraph No.68, which is thus:

“68. The another crucial question is whether the High Court, in exercise of its extra-ordinary jurisdiction under [Art.226](#) of the Constitution would interfere and quash the chargesheet. The High Court found that the documents relied on

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<sup>1</sup> (2013) 10 SCC 591

<sup>2</sup> AIR 1991 SC 1260 (1)

by the respondents/accused were not denied by the State by filing the Counter Affidavit. Therefore, they must be deemed to have been admitted. On that premise the High Court found that there is no prima facie case was made out on merits and chances of ultimate conviction are "bleak". The court is not passive spectator in the drama of illegalities and injustice. The inherent power of the court under [Art. 226](#) of the Constitution of India is permitted to be resorted to. When the documents relied on by the respondents "demonstrate that no prima facie offence is made out on the face value of those materials, then the criminal prosecution should not be allowed to continue and so it should be quashed", and "in such a situation and circumstances the petitioners who had got a right under the Constitution for the protection of their liberty have rightly approached this Court and this Court in these circumstances has no option but to grant the relief by quashing the F.I.R. and both the charge-sheets". Accordingly it quashed them. If this decision is upheld, in my considered view startling and disastrous consequence would ensue. Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to "killing a still born child". Till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by [the Code](#) as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie

evidence to stand on accused for trial amounts to pre-trial of a criminal trial under Article 226 or 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. Once the proceedings are entertained the further proceedings get stayed. Expeditious trial of a criminal case is the cardinal rule. Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks. It is not to suggest that under no circumstances a writ petition should be entertained. As was rightly done by Rajasthan High Court in this case at the instance of the directors of the company, wisdom lies to keep the hands back and relegate the accused to pursue the remedy under the Code. In several cases this Court quashed the criminal proceeding on the sole ground of delay. In a case, F.I.R. filed in 1954 for violation of the provisions of the Customs Act and Foreign Exchange Regulation Act as challenged in the Allahabad High Court. It was deliberately kept pending in the High Court and in this Court till 1990. The accusation was violation of law by named persons in the name of non-existing firm. The F.I.R. was quashed in the year 1990 by another Bench to which I was a Member solely on the ground of delay. He achieved his object of avoiding punishment. This would show that an accused with a view to delay the trial, resorts to writ proceedings, raises several contentions including one on merit as vehemently persisted by Sri Jain to consider this case on merits and have the proceedings kept pending. The result would be that the people would lose faith in the efficacy of

rule of law. Documents relied on by the respondents are subject to proof at the trial and relevancy. If proved to be true and relevant that they may serve as a defence for the respondents at the trial. The State quite legitimately and in my view rightly did not choose to file the Counter-affidavit denying or contradicting the version of the respondents, in those documents. The commission of offence cannot be decided on affidavit evidence. The High Court has taken short course "in annihilating the still born prosecution" by going into the merits on the plea of proof of prima facie case and adverted to those facts and gave findings on merits. Grosset error of law has been committed by the High Court in making pre-trial of a criminal case in exercising its extraordinary jurisdiction under Art.226. After the charge-sheet was filed, the F.I.R. no longer remains sheet anchor. The charge-sheet and the evidence placed in support thereof from the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the charge-sheets and the First Information Report. It is, therefore, not necessary to consider all the decisions dealing with the scope of the power of the High Court either under S.482. Cr.P.C. or Art. 226 of the Constitution to quash the First Information Report.

But the fact-situation in the aforesaid extracted decision is not akin to the one occurring in the present case. The result contained in paragraph No.71 is to the effect that the Hon'ble Supreme Court

found fault with observing that the learned Judges committed grave errors of law in quashing the FIR and charge sheet and since the proceedings were yet to start, declined to go into the merits of the contentions opining that expressing any view, either way, would gravely prejudice the case of the accused or the prosecution, and allowed the appeals.

7. The learned counsel for the petitioners has also placed reliance on the observations of the Hon'ble Supreme Court in **Umesh Kumar**<sup>1</sup> in paragraph Nos.20 to 23, which are thus:

“20. The scope of [Section 482](#) CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under [Cr.P.C.](#); to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed alongwith the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under [Section 482](#) CrPC for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing

of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide [Pepsi Foods Ltd. v. Judicial Magistrate](#) [(1998) 5 SCC 749], [Ashok Chaturvedi v. Shitul H Chanchani](#) [(1998) 7 SCC 698], [G. Sagar Suri v. State of U.P.](#) [(2000) 2 SCC 636], and [Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy](#) [(2011) 12 SCC 437].

21. In *Rajiv Thapar v Madan Lal Kapoor*, [(2013) 3 SCC 330], this Court while dealing with the issue held as follows: (SCC P. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of [the Code](#) of Criminal Procedure:

30.1. *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?

30.2. *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?

30.3. *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?

30.4. *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?”

22. [In State of Bihar v. P.P. Sharma](#) [1992 Supp (1) SCC 222], this Court dealt with an issue of whether an application under [Section 482 CrPC](#) for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under: (SCC pp.269-70, para 68)

“68. ... Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to '*killing a still born child*'. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by [the Code](#) as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial *amounts to pre-trial of a criminal trial*.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the charge-sheets and the first information report.”

(emphasis added)

23. The issue of mala fides loses its significance if there is a substance in the allegation made in complaint moved with malice. [In Sheonandan Paswan v. State of Bihar](#) [(1987) 1 SCC 288], this Court held as under: (SCC P.318, PARA 16)

“16. ...It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or complainant.” ”

8. Turning to the allegations against the petitioners in the present case, it is true, in the FIR, the *de facto* complainant has referred the names of (1) Nikhil Jain, (2) Madan Lal Jain and (3) Mukesh Jain, who are accused Nos.1 to 3, while narrating the incident of abusing him by taking his caste name and attacking on him by dealing with stick blows, but in the statements made by one Smt. K. Sunitha, Smt. M. Jyothi, M. Prakash, Koreti Satyanarayana, K. Ajayraj, would contain names of both the petitioners heckling the *de facto* complainant and abusing him and beating him with stick and accused Nos.2 and 3, who are Nikhil Jain and Mukesh Jain, joined them. When the statements of these witnesses consistently refer to the overt-acts of the petitioners herein, the mere fact that their names were not occurring in the FIR would not be a ground to view that the proceedings in P.R.C. would amount to abuse of the process of law.

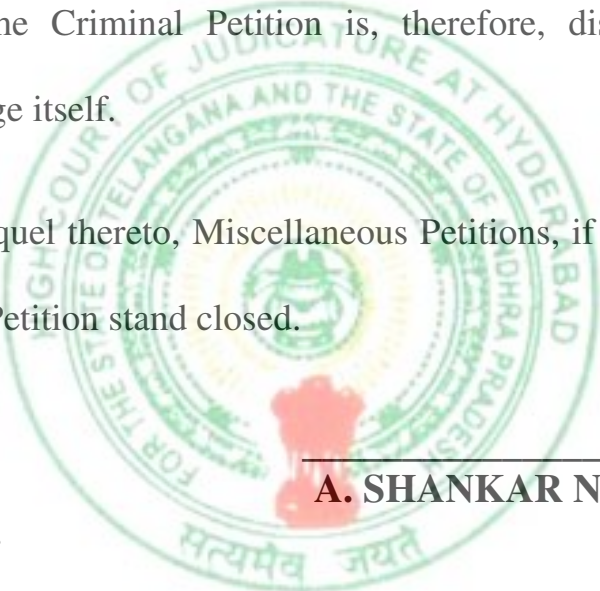
9. In **P.P. Sharma**<sup>2</sup>, the Hon'ble Supreme Court in the afore-extracted paragraph No.68, expressed the view that after the charge sheet was filed, the FIR no longer remains sheet-anchor.

10. In such an event, certainly, the submission of the learned counsel for the petitioners that the FIR does not contain names of the petitioners and that the petitioners are roped in during the course of investigation is no ground to accede to the request herein.

11. It is open to the petitioners to confront the discrepancies raised, to the prosecution witnesses when they are examined during trial.

12. The Criminal Petition is, therefore, dismissed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.



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**A. SHANKAR NARAYANA, J**

**April 4, 2017.**

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