

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.6152 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.762 of 2015 on the file of the Court of XXIII Metropolitan Magistrate, Cyberabad at Rajendranagar.

2. Learned counsel for the petitioner strenuously submitted that when the petitioner asked for return of Rs.20,000/-, the second respondent foisted a false case against him. She further submitted that the allegations made in the charge sheet *ex facie* taken to be true and correct, no *prima facie* case is made out to proceed further against the petitioner, therefore, it is a fit case to quash the proceedings. **Per contra**, learned Assistant Public Prosecutor for the State of Telangana submitted that the allegations made in the charge sheet *prima facie* sufficient to proceed further against the petitioner.

3. A perusal of the record reveals that basing on the complaint lodged by the second respondent, the Station House Officer, Narsingi Police Station, registered a case in Crime No.163 of 2015 under Sections 448 and 354 IPC. After completion of investigation, the Investigation Agency laid charge sheet against the petitioner for the offence punishable under the above sections of law before the XXIII Metropolitan

Magistrate, Cyberabad at Rajendranagar. The learned Magistrate after following due procedure has taken the case on file and numbered it as C.C.No.762 of 2015 and issued summons.

4. In **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 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”

5. In **Padal Venkata Rama Reddy @ Ramu V Kovvuri Satyanarayana Reddy**², 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

¹ AIR 1978 SC 47

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

not exercise its powers under this section, especially when the applicant may not have availed of that remedy.”

6. In **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 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.

7. In **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.

³ (2012) 9 SCC 460

⁴ (2017) 3 SCC 112

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.

8. Let me consider the facts of the case on hand in the light of the above legal position. I have carefully scanned the material placed before this Court in order to ascertain whether the Investigation Officer committed any error during the course of investigation. There is no flaw in the investigation conducted by the investigation agency. A perusal of the record also reveals that the learned XXIII Metropolitan Magistrate after satisfying himself with the material placed before him has taken the case on file by following the due procedure as contemplated under Cr.P.C. and issued summons, thereby, the learned Magistrate has not committed any irregularity or illegality while taking the cognizance of the offence. It is the case of the prosecution that on 04.04.2015 at about 12.00 hours the petitioner entered into the house of the second respondent and made an attempt to outrage her modesty. A perusal of the record also reveals that the petitioner herein used to contact the second respondent over phone on number of occasions. This Court can quash the criminal proceedings if the uncontroverted allegations made in the complaint are *ex facie* taken to be true and correct and no case is made out against the petitioner-accused. The material placed before the Court is *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 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.762 of 2015 on the file of the Court of XXIII Metropolitan Magistrate, Cyberabad at Rajendranagar, 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.

Date:26.07.2017
Rns

T.SUNIL CHOWDARY, J

