

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.4836 of 2016

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in C.C.No.715 of 2015 on the file of I Additional Judicial First Class Magistrate, Nizamabad, registered for the offences punishable under Sections 498-A and 506 IPC, against the petitioners/A2 and A3.

2. The main contention of petitioners for quashment of the proceedings is that there was absolutely no material to proceed against them and in the last paragraph of the charge sheet also, the investigating agency made it clear that as per the investigation of the Sub-Inspector of Police and the material collected by him, A2 and A3 did commit no offence, and therefore, they requested to drop the proceedings against them while requesting to take cognizance for the offence punishable under Section 498-A IPC against A1.

3. Based on the last paragraph of the charge sheet, the present petition is filed stating that when no material is available on record, the Magistrate ought not to have taken cognizance for the offences punishable under Sections 498-A and 506 IPC against the petitioners/A2 and A3.

4. During hearing, learned counsel for petitioners would draw the attention of this Court to the statements recorded by the police during investigation, and on the strength of those statements, he contended that in the absence of any material directly pointing out

the complicity of the petitioners, the Court cannot proceed against them for the offences punishable under Sections 498-A and 506 IPC.

5. On the other hand, learned Public Prosecutor opposed the petition on the ground that there is material on record to *prima facie* proceed against the petitioners and requested this Court to dismiss the petition.

6. Section 482 of Cr.P.C., conferred inherent jurisdiction on this Court to quash the proceedings if the Court finds that there is absolutely no material against the petitioners on considering the material available on record and that the allegations made in the complaint and the charge sheet on its face value do not constitute any offence, the Court can exercise power under Section 482 of Cr.P.C.

7. In the present case, the victim, by name, Hari Priya, lodged a complaint against the petitioners and A1 for the offences punishable under Sections 498-A and 506 IPC, and on the strength of the same, the police registered a case in Cr.No.46 of 2015 on 12.05.2015 and issued FIR. Thereafter, the investigation was taken up by the Sub-Inspector of Police and recorded the statements of witnesses under Section 161 Cr.P.C. Undoubtedly, the investigating agency, in the last paragraph of the charge sheet, requested the Court to take cognizance of the offence punishable under Section 498-A IPC against A1 alone while making it clear that no material is found against A2 and A3 for the offences punishable under Sections 498-A

and 506 IPC. Taking advantage of the said paragraph in the charge sheet, the counsel for petitioners contended that the material on record is not sufficient to proceed against the petitioners since the material even if taken on its face value do not constitute the offences punishable under Sections 498-A and 506 IPC.

8. While taking cognizance of an offence, the Magistrate has to take into consideration the entire material on record, including the charge sheet, the documents filed along with the charge sheet and the evidence collected during investigation. But in the charge sheet though a mention is made that no material is found against A2 and A3, petitioners herein, to constitute the offences punishable under Sections 498-A and 506 IPC, the statements disclosed that these petitioners subjected the victim to cruelty and that the statement of Smt Paramala Shoba Rani would disclose that on 05.05.2015 at 12.30 mid night, she received information from her daughter about causing injuries by her husband, mother-in-law and father-in-law and pressed her neck with an intention to kill her and thereafter, confined her in a room. Similarly, the statement of Paramalla Pawan also disclosed the same incident. The statement of Gambiraopet Suryanarayana made it clear that on 05.05.2015 at about 11.00 PM., i.e., mid night, when A1 beat his wife, i.e., victim, she informed the same over phone to her mother and immediately her brother dialled 100 and the Police of Mahankali Police station came and took them. But the counsel for petitioner contended that the said witness Suryanarayana stated at the end of the statement that there is no truth in the complaint lodged by Hari Priya with the police. Similarly,

in the statement of Gottepally Dayanand, though he stated about the same incident that took place on 05.05.2015 mid night at about 11.30 PM, at the end of the statement, he stated that these petitioners are not concerned with the alleged offences. Similar is the statement of Bombay Venkata Chary. Taking advantage of all these statements of Suryanarayana, Dayanand and Venkata Chary, it is contended by the counsel for petitioners that the allegations made in the charge sheet would not constitute the alleged offences, thereby requested this Court to quash the proceedings.

9. The statement recorded by the police during investigation is not a substantive piece of evidence and it is only useful for limited purpose to test the veracity of the witnesses. But the consistent statements of L.Ws.1,2 and 3 disclosed the complicity of these petitioners, i.e., mother-in-law and father-in-law of the victim. Therefore, taking cognizance against the petitioners by the Magistrate based on the evidence collected by the investigating agency during investigation cannot be faulted. Hence, I find no substance in the contentions raised by petitioners before this Court to quash the proceedings by exercising inherent jurisdiction under Section 482 of Cr.P.C.

10. Section 482 of Cr.P.C., conferred inherent jurisdiction only to implement the orders passed, to prevent the abuse of process and to secure the ends of justice. The Apex Court in **State of Haryana v.**

Bhajanlal¹, laid down the following 7 guidelines, which are extracted hereunder:

- (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 proceedings 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.

¹ 1992 Supp(1) SCC 335

Even according to guideline Nos.2 and 3 of the said judgment, if the allegations made in the charge sheet or FIR, if taken on its face value, would constitute the offences alleged, this Court cannot quash the proceedings. But, here in this case, the statements recorded by the police during investigation disclose about the commission of offence by the petitioners punishable under Sections 498-A and 506 IPC. Therefore, at this stage, it is difficult for this Court to exercise inherent jurisdiction to quash the proceedings against the petitioners since the Magistrate took cognizance of the offences against the petitioners based on the material available on record. Therefore, I find no material in the contention of the petitioners and the petition is liable to be dismissed.

11. In the result, the Criminal Petition is dismissed. However, it is left open to the petitioners to raise the above contentions during trial before the Court and the findings, if any, recorded herein will not preclude the petitioners from raising such contentions before the Magistrate during trial.

12. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

11th December, 2017

sj