

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.9929 of 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.2712 of 2017 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad, registered for the offence punishable under Section 474 of IPC

It is the case of the petitioner that after completing his intermediate, he joined in B-Tech Course in S.R.Engineering College, Warangal, and due to his health problem, he discontinued the course. Thereafter, he joined B.Tech course in Krushi Educational Academy by paying Rs.1,20,000/- per year. He completed the course by writing semester examinations conducted by the University. Originally, his admission was given by the Indira Gandhi National University and later he was transferred to Karnataka State Open University. He obtained certificates from Karnataka State Open University as well as Indira Gandhi National University. He joined the Krushi Educational Academy, after enquiring about the genuineness of the Institution and he came to know that Krushi Educational Academy is affiliated to the Indira Gandhi National University as well as Karnataka State Open University. He is the bonafide student of the Indira Gandhi National University and Karnataka State Open University through Krushi Educational Academy. However, basing on the complaint made by the Sub-Inspector of Police, Begumpet Police Station, police registered

the case in the above crime and filed charge-sheet before the Additional Chief Metropolitan Magistrate, Secunderabad.

Now, the contention before this Court is that the petitioner genuinely prosecuted his studies and if the Krushi Educational Academy is a bogus one, the police have to take action against the said Academy and no action has been taken against the said Academy. He obtained marks memo for various semester examinations and finally obtained provisional certificate. Even according to the allegations made in the charge-sheet, after completion of investigation, it is found that the provisional certificate was genuine, but the marks lists found in possession of the petitioner are forged documents. Therefore, the police have filed charge-sheet for the offence punishable under Section 474 IPC and the case was taken on file by the XI Additional Chief Metropolitan Magistrate, Secunderabad.

The contention of the counsel for the petitioner at this stage is that Krushi Educational Academy or other institutions have played fraud, issued such certificates and without impleading the concerned persons, who are running Krushi Educational Academy and other institutions, the petitioner cannot be proceeded for the offence punishable under Section 474 IPC, merely, because he believed the management of Krushi Educational Academy and received the marks memo and provisional certificates issued by Karnataka State Open University as well as Indira Gandhi National University. Therefore, he is innocent of the offence and prayed to quash the proceedings.

As seen from the allegations made in the charge-sheet, the petitioner was found in possession of forged marks memorandum for various semester examinations allegedly issued by Karnataka State Open University as well as Indira Gandhi National University. But, the provisional certificate is found to be genuine. Therefore, for possessing Provisional certificate issued by any University, the petitioner cannot be proceeded for the offence. However, possessing forged marks memo for various semester examinations, referred in the charge-sheet, he is liable to be proceeded for the offence punishable under Section 474 IPC.

The counsel for petitioner did not produce any material except the FIR and charge-sheet, for perusal to find out whether the allegations mentioned in the charge-sheet are based on any evidence or not or the charge-sheet was filed by an abuse of process of Court. In the absence of any material, it is difficult for this Court to decide whether the charge-sheet was filed without any bonafides.

In *State of Haryana v. Bhajan Lal*¹ the Apex Court considered in detail the powers of High Court under Section 482 Cr.P.C. and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and

¹ 1992 Supp (1) SCC 335

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) Where the 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

In “*R.P. Kapur v. State of Punjab*²”, the Apex Court laid down the following principles:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

² AIR 1960 SC 866

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Therefore, in view of the principles laid down in the above judgments, the Court has to exercise its power under Section 482 Cr.P.C. in the circumstances stated above. But, in the present case, the petitioner was found in possession of forged marks lists for eight semesters allegedly obtained from Karnataka State Open University as well as Indira Gandhi National University, on payment of Rs.1,20,000/- per year, as fee. Possessing such forged marks memos is an offence punishable under Section 474 IPC. In such circumstances, it is difficult to exercise power under Section 482 Cr.P.C. but in the recent judgment in *UMESH VS. STATE OF KERALA*, (Criminal Appeal No.227 of 2017 (arising from Special Leave Petition (Criminal) No.1048/2017) (arising from CrI.M.P.No.732/2017), the Apex Court held that even if all contentions taken by the appellant are taken on their face value also, it is for the Magistrate concerned to consider the said contentions in an appropriate application filed under Section 239 Cr.P.C. and dismissed the petition filed under Section 482 Cr.P.C.

If this principle is applied to the present facts of the case, the petitioner may approach the Court or Magistrate concerned, who has jurisdiction, by filing an application under Section 239 Cr.P.C. for discharge, but this Court while exercising power under Section 482

Cr.P.C. cannot quash the proceedings, since the certificates allegedly found in possession of petitioner are genuine or not, is a question of fact to be decided after full fledged trial. Therefore, I find no ground to quash the proceedings by exercising power under Section 482 Cr.P.C and consequently, the Criminal Petition is liable to be dismissed.

In the result, the Criminal Petition is dismissed at the stage of admission.

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

30.10.2017
Prv



M.SATYANARAYANA MURTHY,J

