

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.10251 of 2017

ORDER

This petition is filed under Section 482 of Cr.P.C., to quash the proceedings in Crime No.61 of 2017 of Midthur Police Station, Kurnool District, registered for the offences punishable under Section 304-II read with Section 34 IPC, against the petitioners/A1 and A2, on the strength of the report lodged by the 2nd respondent, by name, Owk Uppari Samanna.

2. The 2nd respondent lodged a report to the police on 07.10.2017 alleging that the accused removed lateral support completely while laying slab over the joint wall and despite his request, the accused did not take proper care and caution while removing lateral support of the wall and due to heavy rains and on account of removal of lateral support, the wall was collapsed and consequently, the roof of his house was crumbled and his son, by name, Uppari Jaswanth, who was suffering from severe fever, lying on bed in the house, died on account of the said incident.

3. The main contention of petitioners before this Court is that the police registered the crime with a mala fide intention to harass the petitioners and that collapse of house was due to act of God and not on account of removal of lateral support to the joint wall and that the acts allegedly attributed to the petitioners would not constitute the offence punishable under Section 304-II or 304-A of IPC and thereby, they are not liable to be proceeded with for the offences punishable under Section 304-II read with Section 34 IPC.

4. During hearing, learned counsel for petitioners Sri B. Mohan Vijaya Kumar, contended that the 2nd respondent submitted an application for payment of ex-gratia to the Tahsildar and later, the Village Revenue Officer inspected the house and submitted his report on 07.10.2017, and on the basis of the report of the Village Revenue Officer, an amount of Rs.5,200/- was sanctioned as ex-gratia vide proceedings dated 18.10.2017 and the same was also paid to the 2nd respondent acknowledging receipt of the same. Therefore, the cause of collapse of the house was due to rains, but not due to removal of lateral support as contended by the 2nd respondent and in the absence of any specific allegations against these petitioners, the investigating agency cannot proceed with the alleged offences and prayed to quash the proceedings at this stage. He placed reliance on the judgment of the Apex Court in **Tilly Gifford V. Michael Floyd Eshwar and another**¹.

5. The counsel for the 2nd respondent Sri Harsh Kumar Asthana, contended that this Court cannot quash the proceedings at this stage since the facts are incomplete and hazy before the Court irrespective of magnitude offence and that on the basis of those documents, this Court cannot come to conclusion at this stage that the petitioners did commit no offence much less the offences punishable under Section 304-II read with Section 34 IPC and requested this Court to dismiss the petition.

¹ AIR 2017 SC 3823

6. As seen from the allegations made in the report lodged by the 2nd respondent to the police, the proximate cause for collapse of the wall is the removal of lateral support of joint wall while laying slab on the ground floor by petitioners 1 and 2. It also disclosed that the 2nd respondent cautioned them to fill up the pit to give strength to the joint wall and despite caution, the petitioners did not fill the earth to support the wall and due to their negligence, during rainy season, the entire building was collapsed and his son, by name, Jaswanth, succumbed to the injuries on the spot in the house. These allegations are suffice to come to conclusion that the petitioners' negligence, *prima facie*. But the investigation in this matter is not yet commenced and it is at initial stage and when the investigation is not commenced, this Court cannot exercise its inherent jurisdiction to quash the proceedings as held by the Apex Court in **Kurukshetra University v. State Of Haryana**², where it was held as follows:

“It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the CrPC, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

In **State of Orissa v. Saroj Kumar Sahoo**³, while deciding a criminal appeal against an order passed under Section 482 of Cr.P.C., the Apex Court held that the inherent powers under Section

² AIR 1977 SC 2229

³ (2005) 13 SCC 540

482 Cr. P.C. should not be exercised by the High Court to stifle a legitimate prosecution. The High Court, being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. While exercising jurisdiction under Section 482 of the Cr. P.C., it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only *prima facie* be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

7. In view of the law declared by the Apex Court in the above two judgments, when the investigation is not yet commenced, the Court cannot quash the proceedings.

8. Thus, in view of the law declared by the Apex Court in the above judgments referred supra, at this stage, this Court cannot quash the proceedings when the investigation is not yet commenced and the allegations made against these petitioners are that they

removed lateral support of the joint wall negligently and the consequence of such removal resulted in collapse of the house which resulted the death of the son of 2nd respondent *prima facie*. When the proximate cause for collapse of the house is removal of lateral support of the joint wall, proceedings in Cr.No.61 of 2017 of Midthur Police Station, Kurnool District, cannot be quashed.

9. No doubt, the 2nd respondent made an application for sanction of ex-gratia for the death of his son due to collapse of his house during rainy season vide letter dated 07.10.2017 to the Tahsildar, Midthur Mandal, Kurnool district and on that, the Village Revenue Officer enquired and submitted a report that on 07.10.2017 at about 6.30 AM due to rain, the building was collapsed and he sustained damage to an extent of Rs.50,000/- and his son Jaswanth died in the said incident. The Government also sanctioned an amount of Rs.5,200/- vide proceedings dated 18.10.2017 as ex-gratia for the death of Jaswanth, son of 2nd respondent, and receipt of the same has been acknowledged by the 2nd respondent.

10. As seen from these documents, the building was collapsed due to rains, but the cause for crumbling down the house is removal of lateral support of the joint wall, but none of the documents disclose the proximate cause for collapse of the house. In the circumstances at this stage, this Court cannot quash the proceedings.

11. Learned counsel for petitioner placed reliance on the judgment of the Apex Court in **Tilly Gifford's** case, referred supra, wherein it was held in paragraph No.4 as under:

“A perusal of the order of the High Court released on 21.05.2015 would indicate that the High Court has gone far beyond the contours of its power and jurisdiction under Section 482 Cr.P.C., to quash a criminal proceeding, the extent of such jurisdiction having been dealt with by this Court in numerous pronouncements over the last half century. Time and again, it has been emphasized by this Court that the power under Section 482 Cr.P.C., would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a Court of Law.

Therefore, based on the principles laid down in the above judgment, it is difficult for this Court to quash the proceedings by exercising power under Section 482 of Cr.P.C., at this stage. Hence, I find no grounds to quash the proceedings and consequently, the petition is liable to be dismissed.

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

13. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

28th November, 2017

sj