

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10365 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in PRC.No.19 of 2017 on the file of the Additional Judicial First Class Magistrate, Chodavaram, Visakhapatnam District, for the offences punishable under Sections 498-A, 448, 307 and 509 read with Section 34 of the Indian Penal Code (IPC).

Petitioners are accused Nos.1 and 2 in PRC.No.19 of 2017 and their claim is that the allegations made in the charge sheet on its face value do not constitute any offence, much less offences punishable under Sections 498-A, 448, 307 and 509 read with Section 34 IPC. Earlier, the petitioners moved an application before this Court under Section 438 Cr.P.C. in CrI.P.No.2420 of 2017 for grant of pre-arrest bail and this Court granted pre-arrest bail and pending further investigation, fresh complaint was registered. The second FIR is not maintainable *prima facie* and, therefore, the registration of crime itself is illegal. It is also contended that the allegations in the charge sheet, on its face value, would not constitute an offence and apart from that, registration of second crime on the same facts of the report lodged by the same respondent is nothing but abuse of process of law and requested this Court to quash the proceedings.

During hearing, learned counsel for the petitioners contended that in exercise of inherent power under Section 482 Cr.P.C., if the allegations made in the charge sheet on its face value would not attract any offence, the Court can quash the

proceedings irrespective of the stage, whether crime or PRC or any proceeding pending for trial before the Sessions Court and relied on the judgment of the Apex Court in **Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy & Ors**¹ (CrI.A.No.1499 of 2011 dated 29.07.2011) and another judgment of learned Single Judge of this Court in CrI.P.No.8220 of 2010 dated 04.10.2017 wherein it is observed that even at the stage of PRC, if the Court is satisfied that charge sheet does not disclose commission of any offence, it can quash the proceedings.

Learned Public Prosecutor contended that at the PRC stage, the proceedings cannot be quashed and relied on the judgment of the Apex Court in **Umesh Kumar v. State of Andhra Pradesh**².

Considering the rival contentions, the point that arises for consideration is:

“Whether this Court can exercise inherent power under Section 482 Cr.P.C. at the stage of PRC”.

According to Section 482 Cr.P.C., this Court can exercise inherent jurisdiction to quash the proceedings in order to implement the orders passed under the Code and to prevent abuse of process of Court or to meet the ends of justice.

In **State of Haryana v. Bhajan Lal**³ this Court considered in detail the scope of Section 482 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 (2011)12 SCC 437

² (2013)10 SCC 591

³ 1992 Supp. (1) SCC 335

(1) 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.

(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**⁴, the Apex Court held as follows:

(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;

⁴ 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.

In view of the guidelines laid down by the Apex Court in the judgments referred supra, if the allegations in FIR on its face value are taken into consideration, it constitutes an offence, *prima facie* if proved. The Court cannot interfere, except when the Court comes to a conclusion that it is an out come of abuse of process of law.

While deciding an application under Section 482 Cr.P.C, the guidelines issued by the Apex Court in the judgments referred to supra did not lay down any law at what stage the jurisdiction can be exercised to quash the proceedings. But in the two judgments relied on by the counsel on **Padal Venkata Rama Reddy** (1 supra) and the judgment of the learned Single Judge of this Court in CrI.P.No.8220 of 2010, this Court quashed the proceedings at the stage of PRC. Therefore, on the strength of the judgments, the counsel requested this Court to quash the proceedings.

The Apex Court in **Umesh Kumar** (2 supra) relied on the judgment in **State of Bihar v. P.P.Sharma**⁵ dealt with an issue whether an application under Section 482 Cr.P.C. for quashing the charge-sheet should be entertained before cognizance is taken by a criminal Court and held as under.

⁵ 1992 Supp(1) SCC 222 : 1992 SCC (Cri)192 : AIR 1991 SC 1260

“Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to *‘killing a stillborn 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.”

The Apex Court in **Umesh Kumar** (2 supra) while deciding at what stage the Court can exercise power under Section 482 Cr.P.C. held that when the matter is pending in PRC, request to quash the proceedings under Section 482 Cr.P.C. is premature and at the said stage, the High Court could examine the charge-sheet, case diary and other material in the charge-sheet which by no means can be termed as substantive evidence. Therefore, quashing of the charge sheet in respect of one of the several witnesses cannot be done and dismissed the petition.

Even according to Section 209 Cr.P.C., a charge sheet is filed, the Magistrate is required to follow the procedure prescribed under Section 209 Cr.P.C. if the Magistrate finds that the case is exclusively triable by the Court of Session. When in a case instituted on a police report or otherwise, the accused appears or is brought before the magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session he

shall commit it after complying with the provisions of Section 207 or 208 Cr.P.C., as the case may be, the case to the Court of Session and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made and subject to the provisions of this Court relating to bail, remand the accused to custody during and until the conclusion of the trial. The power conferred on the Magistrate under Section 209 Cr.P.C. is to verify the charge sheet and conclude whether the allegations made in the charge sheet constitute an offence which is triable by Court of Session exclusively and if the matter is committed to the Court of Session, then the petitioner is competent to request this Court to quash the proceedings. Till then, the duty of Magistrate is to examine and commit the case to Court of Session, during pendency of the PRC. Therefore, at that stage, this Court cannot exercise inherent jurisdiction to quash the proceedings. Consequently, the Criminal Petition is liable to be dismissed without touching other aspects as to the merits of the case. It is left open to the petitioners to challenge the charge sheet after its committal to the Sessions Court by exercising power under Section 209 Cr.P.C. by the Magistrate.

With the above observation, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

9th November 2017
RRB