

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.9820 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in Crime No.619 of 2017 on the file of Krishna Lanka L&O Police Station, Vijayawada City, Krishna District, registered for the offences punishable under Section 420 IPC and Section 8(c) read with 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), based on the mediators report.

2. The petitioner/accused is an Excise Constable in Anakapalli Task Force and allegedly committed the above offence. It is the contention of the petitioner that based on the confessional statement, the petitioner cannot be connected with the above offences and apart from that the allegations made in the mediators report would not constitute any offence.

3. Learned counsel for the petitioner drawn the attention of the Court to the few sentences of the mediators report that the mediator asked the petitioner about the route to go to national high way with load of ganja and payment of amount.

4. At this stage, it is difficult to express any opinion as to which of the person approached him. In view of the law declared by the Apex Court in **Umesh Kumar v State of Andhra Pradesh**¹ since it is the power of the Magistrate to exercise power under Section 216 Cr.P.C. If such opinion is expressed by this Court, the power conferred on the Magistrate would become redundant.

¹ 2013(10) SCC 591

5. Admittedly, the investigation in this matter is not yet completed and the investigation is at the foetus stage. In such a case, this Court cannot exercise inherent jurisdiction in a serious offence under the NDPS Act, which involved more than 400 kgs of ganja, in view of the law declared by the Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**²”, that the inherent powers under Section 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.

² (2005) 13 SCC 540

6. In ***Kurukshetra University v. State Of Haryana***³, the Supreme Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C and observed 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.”

7. Therefore, in view of the law declared by the Apex Court in ***State of Orissa v. Saroj Kumar Sahoo*** and ***Kurukshetra University v. State Of Haryana*** (referred supra) when the investigation is at fetus stage, this Court cannot interfere with the process of investigation and quash the proceedings by exercising power under Section 482 of Cr.P.C.

8. The FIR is only intimation to the police about commission of cognizable offence and whether the petitioner committed such offence or not is a question to be determined based on the evidence collected during investigation. But at this stage, it is difficult for this Court to exercise power under Section 482 Cr.P.C. Therefore, I find that it is not a fit case to quash the proceedings as it lacks merit.

³ AIR 1977 SC 2229

9. Accordingly, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

27.12.2017
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