

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.12305 of 2017**

**ORDER:**

This petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in Crime No.303 of 2017 of Devarakonda Police Station, Nalgonda District, registered for the offence punishable under Section 354 of IPC.

2. The 2<sup>nd</sup> respondent lodged a report with the police alleging that the petitioner outraged her modesty by his acts while she was working as Conductor in Devarakonda Bus Depot.

3. The contention of the petitioner before this Court is that the 2<sup>nd</sup> respondent based on identical allegations lodged a complaint with the Depot Manager, TSRTC, Devarakonda and enquiry was held by the Superintendent of the office and submitted his report to the Depot Manager finding that the petitioner not guilty after recording necessary statements of the witnesses. Therefore, when the petitioner was found not guilty for the same incident in the departmental enquiry proceedings, the petitioner cannot be proceeded under Section 354 IPC and prayed to quash the proceedings.

4. Learned counsel for the petitioner while reiterating the contentions placed on record the statements of the witnesses recorded by the Enquiry Officer in departmental proceedings and on the strength of those statements, the same witnesses testified before the Enquiry Officer that the petitioner did commit no offence and found not guilty for the alleged misconduct.

5. Finding the petitioner not guilty in the departmental proceedings is not a ground to quash the proceedings in view of the settled law. Moreover, the investigating agency recorded

statements of as many as four witnesses, whose statements disclose that the petitioner *prima facie* outraged the modesty of the 2<sup>nd</sup> respondent. Therefore, the material on record, *prima facie* discloses the offence punishable under Section 354 IPC. The statements recorded by the Enquiry Officer in departmental enquiry proceedings is not a substantive evidence and the same cannot be taken into consideration and that apart finding him not guilty in the departmental enquiry is of no avail the petitioner to seek relief under Section 482 Cr.P.C. before this Court by exercising inherent jurisdiction.

6. Investigation is not yet completed and at the threshold inherent powers under Section 482, Cr.P.C. should not be exercised by the High Court to stifle a legitimate prosecution when the entire facts are incomplete and hazy. The Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**<sup>1</sup>” held 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,

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<sup>1</sup> (2005) 13 SCC 540

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 “**Kurukshetra University v. State Of Haryana**<sup>2</sup>”, 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.”*

8. 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) more particularly when the statements recorded by the police under Section 161 Cr.P.C. as part of investigation, discloses the offence punishable under Section 354 IPC and this Court cannot exercise power under Section 482 of Cr.P.C. to quash the proceedings.

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<sup>2</sup> AIR 1977 SC 2229

9. Keeping in mind the judgment of the Apex Court in ***State of Haryana v. Bhajan Lal***<sup>3</sup>, the Court considered in detail the provisions 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) 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 to 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*

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<sup>3</sup> 1992 Supp. (1) SCC 335

*(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.*

10. In view of Guidelines 1 to 3 referred supra, I am of the view that it is not a fit case to quash the proceedings. Even otherwise, the scope of power under Section 482 Cr.P.C. is limited and this Court can exercise such power only to implement the orders passed under the Code or to prevent abuse of process of the Court and to secure ends of justice. Therefore, I find no ground in view of the law declared by the judgments referred supra and consequently, the criminal petition is liable to be dismissed.

11. Accordingly, the criminal petition is dismissed.

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

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**M. SATYANARAYANA MURTHY,J**

22.12.2017  
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