

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.12327 of 2017

ORDER

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in C.C.No.45 of 2013 on the file of II Additional Chief Metropolitan Magistrate, Visakhapatnam, registered for the offences punishable under Sections 420, 427, 500, 149, 109, 120-B read with Section 34 IPC.

2. The first respondent filed a private complaint before the Magistrate and the same was referred to the police exercising power under Section 156(3) of Cr.P.C. On receipt of reference, the police registered a case in Cr.No.196 of 2012 of Gopalapatnam Police Station, Visakhapatnam City, and issued FIR. During investigation, the police examined L.Ws.1 to 4 and recorded their statements under Section 161 of Cr.P.C., and after investigation, they filed charge sheet before the II Additional Chief Metropolitan Magistrate, Visakhapatnam, for the offences referred supra.

3. The brief facts of the case are that the marriage between daughter of the first respondent and the first petitioner/A1 was fixed and betrothal function was performed, but A1 refused to marry the daughter of the first respondent for one reason or the other and thereby, the accused defamed them in the public etc.,

4. After appearance, the petitioners filed a petition under Section 239 of Cr.P.C., in Crl.M.P.No.240 of 2015 in C.C.No.45 of 2013 and the same was allowed in part, by order dated 22.07.2016, wherein

the Magistrate held that there is a *prima facie* material to proceed against the petitioners for the offence punishable under Section 500 read with Section 34 IPC, while holding that there are no *prima facie* grounds to proceed against the petitioners for the offences punishable under Sections 109, 420, 120-B, 427, 149 and 120-B IPC and discharged them for the said offences.

5. Aggrieved by the said order, the petitioners preferred a revision in Crl.R.P.No.61 of 2016 on the file of I Additional Metropolitan Sessions Judge, Visakhapatnam, and the same was dismissed by order dated 27.07.2017 confirming the order passed in Crl.M.P.No.240 of 2015 in C.C.No.45 of 2013. Therefore, the order passed by the revisional Court attained finality and it was not challenged before this Court or any other Court. When the Magistrate and the Sessions Judge recorded a specific finding that there is a *prima facie* material to proceed against the petitioners for the offence punishable under Section 500 read with Section 34 IPC, they approached this Court by invoking inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings on the following grounds:

(i) The act of the petitioners would not constitute the offence as defined under Section 499 of IPC and that there was no publication of any defamatory material either libel or slander.

(ii) The marriage of the daughter of the first respondent and the first petitioner/A1 was performed with different persons and they are living with their families and therefore, continuation of proceedings would not serve any purpose.

(iii) The first respondent also filed suit in O.S.No.461 of 2013 on the file of VII Additional District Judge, Visakhapatnam, claiming damages for Rs.20 lakhs and refund of amount under different heads against the petitioners and it is pending before the Court.

6. During hearing at the stage of admission, learned counsel for the petitioners contended that the alleged act of refusal of petitioners to perform the marriage does not amount to defamation and it would not effect the reputation of the first respondent and that there was no publication virtually to constitute the offence punishable under Section 499 of IPC. He placed reliance on the judgment of this Court reported in **M. Giriprasad and others V. K. Munikrishna Reddy and another**¹ and contends that such incident of refusal to perform the marriage would not constitute the offence punishable under Section 500 of IPC and the Court can exercise such power under Section 482 of Cr.P.C., to quash the proceedings.

7. The first respondent admittedly filed a private complaint before the Magistrate and the same was referred under Section 156(3) of Cr.P.C., to the police and after completion of investigation, the police filed charge sheet for various offences referred supra. The copies of the statements are not placed before this Court for perusal to find out whether there was any material to conclude that these petitioners caused disrepute to the first respondent by their act, except producing the office copy of the notice, plaint copies and

¹ 2014(2) ALT (CrI.) 171 (A.P)

written statement in O.S.No.461 of 2013 and the orders passed by the Magistrate and the Sessions Judge.

8. Before the magistrate, the petitioners requested to discharge them for the alleged offences including Section 500 read with Section 34 of IPC. But the Magistrate having found sufficient material to proceed against the petitioners further allowed the petition in part discharging them for the offences punishable under Sections 109, 420, 120-B, 427, 149, 120-B IPC, while holding that there is sufficient material to proceed against them for the offence punishable under Section 500 read with Section 34 IPC and the said order has become final in view of the dismissal of Crl.R.P.No.61 of 2016 by the I Additional Metropolitan Sessions Judge, Visakhapatnam, and no petition is filed for quashment of the said order. Therefore, when the Magistrate and the Sessions Judge, based on the material filed along with the charge sheet, considered and passed such orders, entertaining an application under Section 482 of Cr.P.C., and quash the proceedings in C.C.No.45 of 2013 would amount to review the orders passed by the Magistrate in Crl.M.P.No.240 of 2015 in C.C.No.45 of 2013 and the Sessions Judge in Crl.R.P.No.61 of 2016 without any application for quashment of those orders and exercise of such power would amount to circumventing the law.

9. The main contentions urged in the earlier paragraphs are not sufficient to quash the proceedings for the offence punishable under Section 500 read with Section 34 of IPC. Even, in the judgment relied upon by the counsel for petitioners in

M. Giriprasad's case, referred supra, the offences allegedly committed by the petitioners are under Sections 406, 420 read with Section 34 IPC., and this Court held that refusal to perform the marriage would not constitute the offences punishable under Sections 406, 420 read with Section 34 IPC and quashed the proceedings. But, in the present case, the offence allegedly committed by the petitioners is punishable under Section 500 read with Section 34 IPC i.e., defamation for disrupting the esteem of the first respondent on account of the act of the petitioners. Therefore, such act would *prima facie* fall within the definition of defamation as defined under Section 499 of IPC punishable under Section 500 of IPC.

10. The other contention raised before this Court is that there was no publication of any defamatory material. But in the absence of the statements recorded by the police filed along with the charge sheet, it is difficult to decide whether there was any defamatory publication to constitute the offence punishable under Section 500 of IPC. Obviously for different reasons, the evidence collected during investigation by the police, including the statements of the witnesses recorded by the police under Section 161 of Cr.P.C., were not placed on record enabling this Court to verify and to come to a just conclusion. In the absence of those statements, it is difficult to accept the contention of the petitioners that there was no publication, at this stage.

11. Viewed from any angle, the proceedings, if any, quashed against the petitioners for the offence punishable under Section 500

read with Section 34 IPC by exercising power under Section 482 of Cr.P.C., it would directly amount to review of the orders passed by the Magistrate and confirmed by the Sessions Judge and such power cannot be exercised circumventing the law. Hence, I find no ground to quash the proceedings, at this stage, as the petition is devoid of merits.

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.

20th December, 2017

sj



M. SATYANARAYANA MURTHY, J