

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.24662 OF 2017

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in Crime No.360 of 2017 of Chintalapudi Police Station, West Godavari District, for the offences punishable under Sections 417, 376(2)(n), 312 IPC and 3(1)(w), 3(2)(va) of SCs and STs (Prevention of Atrocities) Act, 1989 (for short 'the Act').

The facts, in brief, are that Smt. K.Ratna Kumari, the second respondent herein, lodged a report with the S.H.O., Chintalapudi, alleging that the petitioner wanted to marry her even though she had children and not obtained divorce from her husband, harassed her by saying that he likes her very much and he is going to die without her and finally, she started friendly talk with him and when she was closely moving, the petitioner had forcibly had sexual intercourse with her and due to that, she became pregnant. The said fact was intimated by her to the petitioner and the petitioner advised her to consume tablets for abortion, but she refused and thereupon, the petitioner abused her raising her caste name as she belongs to SC community. The petitioner belongs to Velama community. In the meantime, on 10.11.2017, when she went to the petitioner and requested him for the marriage, the petitioner said that there is a proposal for his marriage with another lady belonging to Eluru and that the marriage date was fixed on 29.11.2017 and when she questioned about the said marriage, the petitioner abused her raising her caste name while saying that he is a politically influenced person. Hence, she requested the police to take necessary action against the

petitioner, who had sexual intercourse with her forcibly on the false promise to marry her and thereafter, refused to marry her, as she belongs to SC community.

The petitioner/accused filed the present petition stating that though no such incident took place, respondent No.2 lodged the report with the police and that earlier also, she lodged complaints against various persons and thereafter, the police filed charge sheets, which are subject matters of C.C.No. - /2013 and C.C.No. - /2012 in PRC 19 of 2012 on the file of II Additional Judicial Magistrate of First Class, Eluru. By filing false cases, she is extracting money from various persons, who came from affluent families and if the conduct of 2nd respondent is taken into consideration, the incident has to be disbelieved on the basis of the allegations made in the FIR.

The learned counsel for the petitioner, while reiterating the said contentions, would draw the attention of this Court to the allegations made in Crime No.149 of 2013 of Chintalapudi Police Station filed by the second respondent against her husband, Jakkam Ramarao, for the offences punishable under Section 498(A) IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961. On the strength of the same, he contended that even before marrying Jakkam Ramarao, 2nd respondent lodged a complaint against him, based on which, Crime No.103 of 2012 was registered for the offences punishable under Sections 417, 376, 312 and 506 IPC and thereafter, 2nd respondent married him forcibly and later, lodged a report with the police who in turn registered the same as case in Crime No.149 of 2013 for the offences punishable under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act.

Similarly, she also filed another complaint with the police and after investigation, the police filed charge sheet before the police station, Eluru against P.Siva Sainadh and three others for the offences punishable under Sections 419, 363, 354, 323 read with Section 34 IPC. On the strength of these two complaints, he requested to quash the proceedings, as 2nd respondent is abusing process of law by lodging reports with the police against the persons from whom she likes to extract money.

The learned Additional Public Prosecutor contended that there are no grounds to quash the proceedings at this stage as the investigation is not yet completed and prayed to dismiss the petition.

Admittedly, the 2nd respondent lodged a report with the police on 24.11.2017 making serious allegations that the petitioner had sexual intercourse forcibly several times with her though she is married woman, even before obtaining divorce from her husband and that he also promised to marry her but he did not keep up his promise and that the marriage of the petitioner was fixed with another lady of Eluru, and when she questioned the same, he abused her by raising her caste name, as she belongs to SC community. If the complaint lodged by the 2nd respondent against the petitioner is accepted, the offences punishable under Sections 417, 376(2)(n), 312 IPC, prima facie. With regard to the other Section of law under which the FIR is issued, i.e., Sections 3(1)(w) and 3(2)(va) of SCs & STs (POA) Act, if a person who committed any offence punishable under Indian Penal Code is also liable to be punished under the provisions of the Act. Therefore, the offence under the Act depends upon the offence, if any, committed under

the provisions of Penal Code. In any view of the matter, the attitude and the conduct, which the petitioner pointed out against the 2nd respondent, are not relevant at this stage. Even otherwise, under the provisions of the Indian Evidence Act, in criminal cases, the conduct or bad character is irrelevant but good character is relevant under Section 52 of the Evidence Act. Therefore, the conduct and attitude pointed out by the learned counsel for the petitioner against the 2nd respondent is totally irrelevant, more particularly, at this stage, while deciding the petition under Section 482 Cr.P.C. to quash the proceedings in FIR.

At best, this Court has to verify the allegations and substance and if those allegations would constitute the offence alleged, this Court cannot exercise its discretion under Section 482 Cr.P.C. in view of the limited inherent powers conferred upon this Court to implement the orders passed by this Court or to prevent an abuse of process of law or to secure the ends of justice, keeping in view the guidelines laid down by the Apex Court in “**State of Haryana v. Bhajan Lal**”.

In “**State of Haryana v. Bhajan Lal**”¹ the Apex Court considered in detail the power of High Courts under Section 482 Cr.P.C. 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 or make out a case against the accused.

¹ 1992 Supp (1) SCC 335

(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.

Even as per the aforestated guidelines, if the allegations in the report are accepted on their face value, if it would not constitute an offence punishable under penal law, then the Court can exercise its inherent jurisdiction and quash the proceedings. But in the present facts and circumstances, the allegations made in the complaint, on its face value, would constitute a *prima facie* offence punishable under Sections 417, 376(2)(n), 312 IPC and therefore, this Court cannot exercise its inherent jurisdiction at this stage.

The Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**²”, while deciding the similar question 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.

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.”

In view of the law laid down by the Apex Court in the above two judgments, when the investigation is not yet commenced, the Court cannot exercise its inherent jurisdiction to quash the proceedings, more particularly, when serious allegations are made

² (2005) 13 SCC 540

³ AIR 1977 SC 2229

against the petitioner which would constitute an offence *prima facie* against him. Therefore, I find no grounds to quash the proceedings at this stage.

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

Miscellaneous petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 29.12.2017
ssp

