

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.150 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.254 of 2016 on the file of Women Police Station, Saroornagar, Ranga Reddy District, for the offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act.

The crime was registered by the police on the basis of report lodged by the second respondent on 24.12.2016 with the police. It is stated in the complaint that, marriage between the second respondent and the first petitioner was performed on 20.11.2017. The second respondent stated that, during her marital life, she was treated cruelly, humiliated and harassed by her husband.

Learned counsel for the petitioners contended that, on 30.08.2017, the II Additional Family Court at Chennai dissolved the marriage between the first petitioner and the second respondent and the date of incident of lodging report with the police was on 24.12.2016 i.e. almost 8 months after to dissolution of marriage and granting decree of divorce by the II Additional Family Court at Chennai. There are certain observations with regard to registration of crime by the police against the petitioners and obtaining anticipatory bail from this Court in CrI.P.no.1810 of 2017 dated 07.03.2017. A vague reference was made about the pendency of the proceedings with the Women Police Station, Saroornagar. But, the Judge, II Additional Family Court at

Chennai, while deciding O.P.No.180 of 2017, though made certain observations, they are not binding on these petitioners. When the crime is pending with the police for investigation, the incidental observations will have no bearing on the issue.

While deciding a petition under Section 482 Cr.P.C, the Court has to look into the allegations made in the complaint and the material, if any annexed to the complaint to find out whether the complainant made out any *prima facie* case to constitute an offence under the provisions of any penal law and this Court cannot appreciate the evidence but evaluate the material on record, in view of the limited scope and jurisdiction of this Court under Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In **State of Haryana v. Bhajan Lal**¹ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This 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

¹ 1992 Supp. (1) SCC 335

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.

Therefore, when the allegations made in the charge sheet *prima facie* disclosed commission of an offence punishable under the provisions of the Indian Penal Code, this Court cannot exercise its inherent power to quash the proceedings.

Though, the learned counsel for the petitioners raised several contentions with regard to the second respondent taking away her belongings and issuing an acknowledgment, they are not relevant at this stage, since the incident is reported to have taken place at Hyderabad, when the petitioner came to Hyderabad and enquired about payment of additional dowry and sale of property etc. Therefore, it will have no direct bearing on the issue. In any view of the matter, when the investigation is at the fetus stage, this Court cannot exercise its inherent jurisdiction.

In **State of Orissa v. Saroj Kumar Sahoo**², the Supreme Court had an occasion to deal with the scope of Section 482 and 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 Apex Court also held that 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. The Supreme Court also held that there is no hard and fast rule laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of

² (2005) 13 SCC 540

quashing the proceeding at any stage. Further, it was also held that while exercising jurisdiction under Section 482 of 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.

The Court can value the material and documents on record, but it cannot appreciate evidence. The Court can not record evidence to conclude whether the material produced is sufficient or not for convincing the accused. Therefore, the limited purpose of appreciating of facts is only to come to a conclusion, to proceeding against the accused for the alleged offence committed by the accused. Thus, the limited jurisdiction under Section 482 of Cr.P.C can be exercised only in exceptional circumstances.

In **Kurukshetra University And Anr. v. State Of Haryana And Anr³**, 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

³ AIR 1977 SC 2229

be exercised sparingly, with circumspection and in the rarest of rare cases.”

Applying the principles laid down in the above judgment, it is difficult for this Court to quash the proceedings at this stage.

In the recent past, the Apex Court in **Rajesh Sharma v. State of U.P.**⁴, formulated certain guidelines to be followed by this Court in matrimonial cases. Therefore, this Court is bound to follow the guidelines issued by then Apex Court in **Rajesh Sharma**⁴ case. Therefore, with a direction to the Court below, to refer the matter to the Committee, by following the guidelines issued by Apex Court in **Rajesh Sharma**⁴ case, the criminal petition is disposed of.

In the result, the criminal petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:05.01.2018

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⁴ 2017 (2) ALT (CrI.) 393 (SC)