

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.996 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the *de facto* complainant/revision petitioner challenging the order, dated 19.09.2017, in Criminal Revision Petition No.230 of 2017 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad whereby, the learned Metropolitan Sessions Judge dismissed the revision petition and affirmed the order, dated 17.04.2017, in CrI.M.P.No.844 of 2017 in Crime No.32 of 2016 of Banjara Hills Police Station by the learned IX Additional Chief Metropolitan Magistrate, Hyderabad.

2. The petitioner is the *de facto* complainant. Respondent No.2 is the accused. The petitioner lodged a written report with the Station House Officer, Banjara Hills Police Station against respondent No.2 herein and the same was registered as a case in Crime No.32 of 2016 on 11.01.2016 for the offences punishable under Sections 406, 420, 341 and 506 of the Indian Penal Code, 1860 (for short, "I.P.C.") and issued a First Information Report (F.I.R.) against respondent No.2 herein.

3. The allegations, in brief, made in the written report are that the accused is known to the petitioner and the petitioner lent a sum of Rs.1.65 crores to the accused/respondent No.2. He promised to repay the said amount, but he did not do so. Subsequently, he offered to sell his land to the petitioner and both

entered into an agreement, dated 16.02.2015, for sale of his land for a sale consideration of Rs.12.00 crores. The petitioner paid total amount of Rs.2.15 crores to the accused on 16.02.2015 under the said agreement of sale. Subsequently, the petitioner paid a sum of Rs.5.76 crores to respondent No.2/accused by way of cheques and the same were honoured. Thus, he paid total consideration of Rs.7.91 crores to the accused by way of cheques drawn on Axis Bank.

Instead of executing sale deed conveying the property, on 15.09.2015, respondent No.2 came to the petitioner's house along with his associates and demanded payment of higher amount as consideration for the transaction and snatched the papers from the hands of the petitioner and obtained signatures of the petitioner on two letters forcibly. They also threatened the petitioner with dire consequences and also threatened to cause harm to his daughter, who is studying in Australia, if the incident is reported to anybody. On 03.12.2015, respondent No.2 once again threatened the petitioner for disclosing the said acts to his family members and he also threw the photostat copies of the papers on his face at Okridge School, Nanakramguda. After the incident, a written report was lodged with the police, who registered the aforesaid crime and filed final report under Section 173 Cr.P.C. closing the case due to "lack of evidence," after serving notice on the petitioner herein. After receipt of notice, the petitioner herein filed a protest petition challenging the final report filed by the police reiterating the allegations made in the report lodged with the police, more

particularly, regarding payment of amount to a tune of Rs.7.91 crores and also alleged that respondent No.2 threw away the photostat copies of the documents, which he snatched away from the possession of the petitioner, and also threatened to take whatever action he likes and on the strength of those documents, the petitioner requested the Magistrate to take cognizance of the matter and to try the accused for the offences punishable under Sections 406, 420, 341 and 506 I.P.C.

4. Along with the protest petition, the petitioner produced 13 documents to establish the incident.

5. The Magistrate recorded the sworn statements of Y.Naga Satish and C.Vikas.

6. After hearing the learned counsel for the petitioner, the learned IX Additional Chief Metropolitan Magistrate, Hyderabad passed an order in Crl.M.P.No.844 of 2017 on 17.04.2017 dismissing the protest petition.

7. Aggrieved by the order passed by the learned Magistrate, a revision petition under Section 397 Cr.P.C. *vide* Criminal Revision Petition No.230 of 2017 is filed before the learned IV Additional Metropolitan Sessions Judge, Hyderabad.

8. Upon hearing argument of both the counsel, the learned Sessions Judge dismissed the revision petition affirming the order passed by the learned Magistrate. Aggrieved by the order passed by the learned Sessions Judge in Criminal Revision Petition No.230

of 2017, the present Criminal Petition is filed under Section 482 Cr.P.C. to quash the order, dated 19.09.2017, in Criminal Revision Petition No.230 of 2017 passed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad on the ground that the said order is contrary to the scope of Section 397 Cr.P.C.

9. Sri G.V.Sivaji, learned counsel for the petitioner, contended that the act of respondent No.2/accused demanding payment of amount and snatching away the documents from the possession of the petitioner while threatening with dire consequences and also threatening to cause harm to his daughter, who is studying at Australia, would constitute the offences punishable under Sections 406, 420, 341 and 506 I.P.C. and that the said fact was spoken by P.Ws.1 and 2 in their sworn statements recorded by the Magistrate during enquiry on the protest petition, but both the Courts below did not consider the specific contentions of the petitioner and erroneously dismissed the petition. It is also contended that failure to furnish C.C. T.V. camera footages and other documents before the police to proceed further is insufficient to file such a final report in view of referring the case due to "lack of evidence" and non-consideration of the material before the Court below by the learned Magistrate is a matter of serious concern and thus, both the Courts below committed grave error in dismissing the petition and hence, prayed to quash the impugned order directing the learned Magistrate to take cognizance of the offences punishable under Sections 406, 420, 341 and 506 I.P.C. against respondent No.2/accused.

10. Learned counsel for the petitioner further contended that when the allegations made in the complaint constitute the offences punishable under Sections 406, 420, 341 and 506 I.P.C., the learned Magistrate ought not to have dismissed the protest petition and passing such an order is manifest illegality; that when the petitioner produced certain documents before police and also before the Magistrate, non-consideration of the material produced before the Court including the sworn statements recorded by the Magistrate is *ex facie* erroneous and thereby, the order, dated 17.04.2017, passed by the learned Magistrate in Crl.M.P.No.844 of 2017 in Crime No.32 of 2016, which was affirmed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad in Criminal Revision Petition No.230 of 2017 is illegal and hence, prayed to set aside the same.

11. Sri M.V.Durga Prasad, learned counsel for respondent No.2, would submit that earlier, the petitioner filed Crl.P.No.10562 of 2017 under Section 482 Cr.P.C. to quash the order, dated 19.09.2017, passed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad in Criminal Revision Petition No.230 of 2017 affirming the orders of dismissal of protest petition in Crl.M.P.No.844 of 2017 in Crime No.32 of 2016 on the file of the learned IX Additional Chief Metropolitan Magistrate, Hyderabad and the same was dismissed as withdrawn with a liberty to renew the request of the petitioner by filing an appropriate application subject to permissibility. Taking advantage of granting leave by

this Court, the present petition is filed with the same allegations. Therefore, filing a second petition for the same relief questioning the order in revision is a serious illegality. He also contended that the allegations against the accused, at best, would constitute an offence of breach of contract, which is purely civil in nature, and when civil litigation is converted into criminal case for giving a flavour of criminal liability, the same is nothing but abuse of process of Court, hence, prayed to dismiss the petition.

12. Upon considering rival contentions and perusing the material available on record, the point that arises for consideration is:

“Whether the order, dated 19.09.2017, passed by the IV Additional Metropolitan Sessions Judge, Hyderabad in Criminal Revision Petition No.230 of 2017 affirming the order, dated 17.04.2017, in Crl.M.P.No.844 of 2017 in Crime No.32 of 2016 of Banjara Hills Police Station by the IX Additional Chief Metropolitan Magistrate, Hyderabad is vitiated by any illegality or irregularity?, if so, whether the order, dated 19.09.2017, passed by the IV Additional Metropolitan Sessions Judge, Hyderabad in Criminal Revision Petition No.230 of 2017 is liable to be quashed?”

13. **POINT:-** The basis for lodging the complaint is lending of amount to respondent No.2 by the petitioner and later, on the offer made by respondent No.2, allegedly to sell his land, the petitioner paid total amount of Rs.7.91 crores, but respondent No.2, instead of executing a registered sale deed on receipt of the total sale consideration, came along with his associates to the house of the petitioner on 15.09.2015, demanded him to pay higher amount of consideration than the agreed amount, snatched away the original

agreement from the possession of the petitioner, obtained his signatures on two letters by coercion and also threatened to cause harm to both the petitioner and his daughter, who is studying in Australia, and thereafter, threw the papers, which he snatched away, on the face of the petitioner while threatening to see his end, but the police, though registered a crime and took up investigation, issued notices to the petitioner to appear before the Investigating Officer and furnish the documents before the police by issuing a notice, dated 09.03.2016, under Section 91 Cr.P.C., but the petitioner, instead of appearing before the Investigating Officer, sent a reply that he is not well and sought time to produce documents and again, the police issued another notice, dated 18.03.2016, under Section 91 Cr.P.C. calling upon the petitioner to produce his watchman or any other person, who is available at the time of offence, for their examination, so also, to produce the photos, extracts of C.C. T.V. footages to know the visitors of the house of the petitioner on 15.09.2015 etc., but he did not appear before the Investigating Officer. Therefore, the police filed final report under Section 173 Cr.P.C. closing the complaint due to lack of evidence and issued notice to the petitioner herein. On receipt of notice, the petitioner filed the protest petition before the Magistrate, which ended in dismissal after recording sworn statements, marking documents and hearing the learned counsel for the petitioner. In the revision, the said order is confirmed. Therefore, the two Courts below concurrently held that there is no material to proceed against respondent No.2 for the various

offences referred above, and the allegations made in the protest petition, so also the documentary evidence produced before the Court including the sworn statements did not disclose commission of any offence with specific details. The present petition is filed only to quash the orders passed by both the Courts below, but the powers of this Court is limited under Section 482 Cr.P.C. and this Court can exercise such power under section 482 Cr.P.C. normally in exceptional circumstances to implement the orders passed by the Court, to prevent the abuse of process of Court or to meet the ends of justice.

14. In ***R.P. Kapur v. State of Punjab***¹, the Apex Court laid down the following principles:

- “(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;***
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;***
- (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and***
- (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”***

15. Section 482 Cr.P.C. empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. Any proceedings instituted on a complaint, exercise of the inherent

¹ AIR 1960 SC 866

power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 Cr.P.C. It is not, however, necessary that there should be a meticulous analysis of the case before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears, on a consideration of the allegations in the light of the statement on oath of the complainant, that the ingredients of the offence/offences are disclosed and there is no material to show that the complaint is *mala fide*, frivolous or vexatious, in that event, there would be no justification for interference by the High Court, as held by the Apex Court in ***Mrs.Dhanalakshmi v. R.Prasanna Kumar***².

16. In ***State of Haryana v. Bhajan Lal***,³ the Apex Court considered in detail the powers of High Court under Section 482 Cr.P.C. and the power of the High Court to quash the criminal proceedings or F.I.R. 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:

² AIR 1990 SC 494

³ 1992 Supp (1) SCC 335

“(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.

(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.”

17. In **Ghanshyam Sharma v. Surendra Kumar Sharma**⁴, the Apex Court held that the High Court cannot decide the provision under which the offence falls; it may be under the provisions cited in the impugned charge sheet or under the provision High Court felt was attracted, but it is for the trial Court to decide that on the evidence produced before it.

18. In another judgment in **Umesh Kumar v. State of Andhra Pradesh**⁵, the Apex Court is of the view that at the stage of exercising power under Section 482 Cr.P.C., the High Court could examine the charge sheet, case diary and other material in the charge sheet which by no means can be termed as substantive evidence. However, in exercise of power under Section 482 Cr.P.C., it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. By applying the principles laid down in the judgments referred supra, the Court has to examine the facts of the case and decide.

19. The basis for lodging the complaint is lending an amount of Rs.1.65 crores initially, but the factum of lending the said amount is not supported by any material, but the petitioner allegedly entered into an agreement of sale with respondent No.2 for

⁴ (2014) 13 SCC 401

⁵ (2013) 10 SCC 591

purchase of land admeasuring Ac.32-10.28 guntas situated at Randlagadda and Kolluru Villages and after negotiations, the bargain was settled for Rs.12.00 crores and entered into a written agreement of sale, dated 16.02.2015, incorporating the terms of sale and paid certain amount on subsequent dates. The total amount paid by him was Rs.7.91 crores, but respondent No.2 did not execute registered sale deed, as agreed, in terms of agreement of sale, dated 16.02.2015. When respondent No.2 did not execute registered sale deed on receipt of balance sale consideration, the remedy open to the petitioner is to approach the civil Court for specific performance of contract of sale, but instead of approaching the civil Court for the appropriate relief, a story of respondent No.2 approaching the petitioner along with his associates and demanding payment of higher consideration under a contract of sale and also snatching away the documents from his possession while threatening to see his end if he discloses the incident to anybody and to cause harm to his daughter, who is prosecuting her education at Australia, was created, but these allegations are not supported by any piece of paper and production of certain documents including agreement of sale marked before the Magistrate raises any amount of suspicion regarding commission of offence. No wise person will furnish the photostat copies of the documents to the petitioner/*de facto* complainant when the accused/respondent No.2 forcibly obtained signatures on few letters and snatched away the agreement of sale from the possession of the petitioner. This incident is improbable to the

natural conduct of a human being and this Court cannot appreciate the evidence except evaluate the same. Therefore, the probabilities cannot be considered at this stage. However, there must be some material to proceed against respondent No.2 under criminal law and merely because the complaint is made, straightaway, the Court cannot proceed to take cognizance and try the accused for various offences, as the issue of taking cognizance and issuance of summons will have its serious consequences.

20. Learned counsel for the petitioner placed reliance on “**Pepsi Foods Limited v. Special Judicial Magistrate**”⁶ and “**M.N.Ojha v. Alok Kumar Srivastav**”⁷.”

21. Before taking cognizance of any offence, the Court must consider the effect of issue of summons since issue of summons will have serious impact. In **Pepsi Foods Limited v. Special Judicial Magistrate** (referred supra), the Supreme Court held as under:

“Summoning of an accused in criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at

⁶ 1998 (5) SCC 749

⁷ 2009 (9) SCC 682

the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

22. In **M.N.Ojha v. Alok Kumar Srivastav** (referred supra), the Apex Court held as under:

“it is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If such power is not conceded, it may even lead to injustice". [Vide: State of Karnataka v. L. Muniswamy : (1977) 2 SCC 699]”.

In view of the law declared by the Apex Court in the above decisions, taking cognizance without any material and issuing summons against the accused for the various offences is a matter of serious nature. Therefore, both the Courts below declined to take cognizance of the offences against respondent No.2 as there was no *prima facie* material to proceed against respondent No.2 for various offences referred supra and even otherwise, in view of the limited jurisdiction that conferred on this Court, this Court cannot appreciate the evidence since the sworn statements recorded before the Court by the learned Magistrate are not substantive evidence in view of the law declared in **Umesh Kumar v. State of Andhra Pradesh** (referred supra). This Court cannot appreciate the evidence, but based on the material available on record, this Court can decide whether the allegations made in the complaint

would constitute the offences punishable under Sections 406, 420, 341 and 506 I.P.C., and whether the case is supported by *prima facie* evidence. Except the sworn statements of P.Ws.1 and 2 and the documents produced, there is absolutely nothing to proceed against respondent No.2 for various offences, as the allegations made against respondent No.2 are not based on *prima facie* material to constitute the offences punishable under Sections 406, 420, 341 and 506 I.P.C. Therefore, the learned Magistrate rightly held that there are no grounds to proceed against respondent No.2 for the alleged offences.

23. In the revision under Section 397 Cr.P.C., the Court cannot appreciate the evidence on record, as no piece of substantive evidence is available at the stage of taking cognizance. The learned Sessions Judge, after analyzing every aspect based on material, rightly concluded that the petitioner failed to establish *prima facie* that respondent No.2 committed the offences punishable under Sections 406, 420, 341 and 506 I.P.C. and consequently, affirmed the order passed by the Magistrate. As the well reasoned order cannot be reversed by exercising power under Section 482 Cr.P.C., the order passed by the Court below is upheld and this Court is not inclined to interfere with the said order, as this Court finds no legal infirmity warranting interference of this Court by exercising power under Section 482 Cr.P.C.

24. Yet another contention raised before this Court by Sri M.V.Durga Prasad, learned counsel for respondent No.2, is that

this Court cannot entertain the petition under Section 482 Cr.P.C. for the same relief, which was the subject matter of Criminal Petition No.10562 of 2017, which was dismissed as withdrawn by this Court on 12.12.2017 with a liberty to renew the request of the petitioner by filing an appropriate application subject to permissibility. Filing of an application on specific grounds withdrawing it for one reason or the other, more particularly, when the Court is not inclined to pass favourable order, and filing subsequent application is nothing but a Bench hunting, which is impermissible under law. Therefore, filing a subsequent application for the same relief on the same grounds while withdrawing an application when Bench is not favourable to the petitioner is nothing but Bench hunting. Thus, the present Criminal Petition filed by the petitioner for the same relief on the same grounds except changing paras is not maintainable when the petitioner himself has withdrawn when the Bench was not willing to interfere with the order passed by the learned Sessions Judge in the earlier round of litigation in Crl.P.No.10562 of 2017. On this ground also, the petition is liable to be dismissed.

25. In view of my foregoing discussion, I find no grounds to interfere with the order, dated 19.09.2017, in Criminal Revision Petition No.230 of 2017 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad affirming the order, dated 17.04.2017, in Crl.M.P.No.844 of 2017 in Crime No.32 of 2016 of Banjara Hills Police Station by the learned IX Additional Chief Metropolitan

Magistrate, Hyderabad and consequently, the criminal petition is liable to be dismissed.

26. In the result, the Criminal Petition is dismissed.

27. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date:06.07.2018
AMD



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION No.996 OF 2018

DATE:06.07.2018

AMD