

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

**CRIMINAL PETITION NO.1432 OF 2018**

**ORDER:**

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioners/A-2 to A-5 in C.C.No.295 of 2017 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad, registered for the offences punishable under Sections 448 & 506 IPC r/w 34 IPC.

The petitioners are Accused Nos.2 to 5 and they filed this petition to quash the proceedings in C.C.No.295 of 2017 on the ground that, there were no allegations to constitute an offence punishable under Sections 448 & 506 IPC r/w 34 IPC, whereas, the first respondent lodged report with the police alleging that, Ahmed Abdul Rasheed, Majida Nasreen, Sameena Yasmeen, Fouzia Farheem and Shaik Shamuddin, forcibly entered into the house of the defacto complainant and asked her to sign on paper which they brought with them. When the defacto complainant refused, all the above said persons beat her and Ahmed Abdul Rasheed pulled her saree thereby insulted and outraged her modesty and thereby, she lodged complaint with the police.

On the strength of the complaint lodged by the defacto complainant, the police registered Crime No.242 of 2016 and issued F.I.R.

The Investigating Agency took up investigation and examined seven witness and recorded the statements of witness which is the basis for filing final report under Section 173 Cr.P.C.

But, as seen from the allegations made in the complaint, all these petitioners trespassed into the house of defacto complainant with common intention to quarrel with her and threatened with her, demanding to withdraw the case which has been filed against them at C.C.S Police Station, Sanathnagar. The basis for filing of charge sheet is statement recorded during investigation under Section 161 Cr.P.C and the other material collected during investigation. But, the statements of witnesses are not placed on record for perusal of this Court to find out whether any of the witnesses stated about involvement of these petitioners whether directly or indirectly, though the statements are part and parcel of the charge sheet. Therefore, based on the proforma of charge sheet, it is difficult to conclude that these petitioners did commit no offence, muchless, an offence punishable under Sections 448 & 506 IPC r/w 34 IPC, as the allegations made in the charge-sheet are accepted on its face value, it constitute an offence punishable under Sections 448 & 506 IPC r/w 34 IPC.

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**<sup>1</sup> the Apex Court considered in detail the provisions of Section 482 and the power of

---

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

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 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, in view of guideline no.3 of **Bhajan Lal** case (referred supra), 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, on its face value, the Court can exercise power under Section 482 Cr.P.C and quash the proceedings. But, in this case, the allegations constitute an offence punishable under Sections 448 & 506 IPC. Therefore, I find no ground to quash the proceedings at this stage, as the statements of the witnesses were not placed on record for perusal of this Court, though those statements form part and parcel of the charge sheet.

At the end, learned counsel for the petitioners requested this Court to dispense with the appearance of these petitioners/A-2 to A-5. But, this Court while exercising power under Section 482 Cr.P.C cannot exercise power under Section 205 Cr.P.C, which is purely discretionary in nature.

However, the petitioners are at liberty to file appropriate application under Section 205 Cr.P.C or under Rule 37 of Criminal Rules of Practice to represent the other accused by one of the

accused, being a vakalat holder and by filing such application, after serving notice on the respondent(s), if any, the Magistrate is directed to dispose of the application within one week from the date of filing such application and pass appropriate order in accordance with law.

With the above direction, the criminal petition is dismissed.

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

---

**JUSTICE M. SATYANARAYANA MURTHY**

Date:20.07.2018

SP

