

THE HONORABLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.2148 of 2018

ORDER

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in C.C.No.64 of 2011 pending on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad, registered for the offences under Sections 365, 382 read with Section 34 IPC, against petitioners/A4 and A5.

2. The second respondent herein lodged a complaint on 11.07.2010 alleging that while he was residing along with his wife, by name Noorjahan Begum @ Nishat Begum, aged about 22 years, at H.No.13-6-431/C/47/1, Moghal Nagar, Ring Road, Langer House, on 10.07.2010 at 1315 hours, his wife left from his house along with 5½ tulas of gold and did not return. Immediately, he went to her parents' house and informed the incident and thereafter, all of them searched for her, but in vain. On the strength of the complaint, a case in Cr.No.222 of 2010 of Langer house Police Station, was registered under 'woman missing' and on the basis of information, the police examined the de-facto complainant on 11.07.2010 under Section 161(3) of Cr.P.C., wherein he reiterated the same. But, the victim, Smt Noorjahan Begum, stated as follows:

"I waited for some time there, but he did not turn up, on that I call my friend Faraz and explained the total version and asked him to show some way to leave her in laws and to stay at Bangalore. On that he came to me along with one Waheedulla and took me to Bangalore and accommodated me in a women hostel, situated at Saraki Vegetable Market, Bangalore. Later, I came to know through Faraz that Samiullah had phoned him and requested to provide accommodation to me at

Bangalore and told him that he will come later and requested him to accompany with me for 2 to 3 days at Bangalore. During my stay at Bangalore, Samiullah was in contact, he also told that a case was also registered at P.S.Langer House and police are suspecting him and his family members and Faraz and also searching for them. Then I realized that the Samiullah is having an evil eye on me and they are all deceitful means induced me to go from my in laws.

3. Based on that statement, the police filed a memo before the Magistrate for conversion of the offence from Section 174 IPC to Sections 365 and 382 read with Section 34 IPC and later, after examination of other witnesses under Section 161(3) of Cr.P.C., the police having satisfied that there is a *prima facie* material to proceed against petitioners filed charge sheet before the Court.

4. The petitioners filed the present petition on the ground that none of the allegations made in the charge sheet, including the statements recorded by police under Section 161 (3) of Cr.P.C., do not constitute any offence much less the offences under Sections 365, 382 read with Section 34 IPC and in the absence of any material to proceed against them, the proceedings are liable to be quashed and requested to quash the proceedings against them.

5. Learned Public Prosecutor for the State of Telangana has supported the case of the prosecution.

6. The basis for registration of the crime is the written report lodged by the husband of the victim on 11.07.2010, but it does not disclose any material against petitioners to proceed for the alleged offences or against any one. Therefore, the police registered the crime only under Section 174 Cr.P.C., i.e., woman missing. But

later, the statement of the de-facto complainant was recorded under Section 161(3) Cr.P.C. But, she did not state anything against petitioners to constitute the alleged offences. However, in the statement of the victim recorded on 22.07.2010, she made certain allegations as extracted above. Even if the allegations are accepted as true, they do not constitute the offences alleged. Similarly, the other witnesses also stated about her accommodating in women's hostel and later contacting Samiullah etc., and their statement is almost in the lines of the statement of the victim, except to the extent that Samiullah had an evil eye over her. The only allegation against A5-Shaik Faraz Ahmed, is that at the request of victim only, he came into contact with her and shifted her to Bangalore and accommodated in a women's hostel. The victim is major and married woman on the date of the complaint. Therefore, A5 was only accommodated her in a women's hostel shifting from Hyderabad to Bangalore. Similarly, the allegation made against A4-Shaik Waheedulla is that he aided to A5 and advanced money for shifting the victim.

7. The offences registered against petitioners are under Section 365 IPC i.e., whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. Therefore, to constitute the offence punishable under Section 365 IPC, kidnapping or abducting is of two grounds i.e., kidnapping from

India and kidnapping from lawful guardianship. In the present case, kidnapping from India, which is punishable under Section 360 IPC, does not arise, but kidnapping from lawful guardianship, which is punishable under Section 361 IPC would arise. According to Section 361 IPC, whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

8. In the present case, the victim girl was aged 22 years and married woman at the time of incident and the question of lawful guardianship by de-facto complainant would not arise and she is not a woman of any unsound mind. Therefore, enticing the de-facto complainant with A1 does not constitute the offence punishable under Section 361 IPC also. Therefore, the allegations made in the charge sheet coupled with the statements recorded under Section 161(3) Cr.P.C., do not constitute the offence punishable under Section 365 IPC.

9. The other offence allegedly committed by petitioner is under Section 382 IPC. According to Section 382 IPC, whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to committing of such theft, or in order to the effecting of his

escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Therefore, the allegations made in the charge sheet do not constitute the offence punishable under Section 382 IPC. Consequently, the proceedings are liable to be quashed against the petitioners for the alleged offences since this Court can exercise inherent jurisdiction to quash the proceedings under Section 482 of Cr.P.C. in order to prevent an abuse of process of the Court and to meet the ends of justice keeping in view the following 7 guidelines framed by the Apex Court in **State of Haryana v. Bhajanlal**¹;

- (a) 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;
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;
- (c) where the uncontroverted 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;
- (d) 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;
- (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

¹ 1992 Supp(1) SCC 335

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) 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;

(g) 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 according to guideline No.3, referred supra, when the allegations made in the complaint or charge sheet would not constitute any offence, the Court can quash the proceedings by exercising power under Section 482 of Cr.P.C. Keeping in view the law laid down by the Apex Court, I find that it is a fit case to quash the proceedings against the petitioners.

10. In the result, the Criminal Petition is allowed, quashing the proceedings in C.C.No.64 of 2011 on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad, against petitioners/A4 and A5. Miscellaneous petitions, if any, pending in this petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

21st August, 2018

sj