

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.4372 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in Crime No.33 of 2018 on the file of Manopad Police Station, Jogulamba Gadwal District, registered for the offences punishable under Sections 406, 420, 384 & 12-B IPC.

One Golla Maddileti s/o Lakshmanna lodged a report with the police alleging that the petitioner is a Veterinary Assistant Surgeon in Rajoli Mandal, Jogulamba Gadwal District. On 06.01.2018 around 05:00 P.M, one Golla Harikrishna who is acquainted to the defacto complainant was found transporting flock of sheep illegally by the RTA Authorities, which were meant to be distributed under subsidy by the Telangana Government. On receiving information that RTA Authorities registered case against him, he tried to manage the subject with the help of mediators Golla Venkatramudu who insisted for payment of Rs.2 lakhs. As per settlement, the mediator gave an amount of Rs.1,60,000/ to two reporters and Rs.25,000/- to the Assistant Sub Inspector. Further, on the following day, he and one Pedda Rangadu requested the veterinary doctor/the petitioner herein to check sheep and he told that he would check it only after meeting Venkataramulu, as directed met Venkataramulu, as such the defacto complainant gave an amount of Rs.80,000/- to petitioner. Further, out of 170 sheep, 96 sheep were given under subsidy by the Telangana Government and they have tag holes to their ears

and remaining sheep have no tag holes. The Veterinary Doctor issued certificate that 26 sheep having tags and sent remaining 144 sheep with them. Even though the defacto complainant paid the money, case was registered. He further came to know that the Veterinary Doctor/petitioner herein cheated him and hence, registered a case in Crime No.33 of 2018 of Manopad Police Station, Jogulamba Gadwal District, for the offences punishable under Sections 406, 420, 384, 120-B IPC and issued F.I.R.

The present petition is filed under Section 482 Cr.P.C on the ground that the petitioner is a Veterinary Doctor by profession and he was on leave on the date of incident. He placed on record, the leave sanctioned order to him to establish *prima facie* that he was on leave on the date of incident. Learned counsel also contended that there is a delay of 30 days in lodging report and none of the allegations would constitute *prima facie* any offences punishable under Sections 406, 420, 384, 120-B IPC. On the strength of these grounds, learned counsel for the petitioner requested to quash the proceedings in Crime No.33 of 2018 on the file of Manopad Police Station, Jogulamba Gadwal District.

Learned counsel for the petitioner placed reliance on the judgment in **M/s. Medchl Chemicals & Pharma P. Ltd. v. M/s. Biological E. Ltd & ors**¹ wherein, the Supreme Court held that, to exercise powers under Section 482 of the Code, the complaint in its entirety, shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the minute details or examine its correctness. Whatever appears on the face of the complaint

¹ AIR 2000 SC 1869

shall be taken into consideration without any critical examination of the same.

Whereas, learned Public Prosecutor for the State of Telangana contended that, there is material on record to constitute the offences stated supra and that too, when this Court dismissed Crl.P.No.3059 of 2018 on 23.03.2018, filed under Section 438 Cr.P.C to grant pre-arrest bail, having concluded that there is a *prima facie* material to proceed against this petitioner, this Court cannot exercise such power under Section 482 Cr.P.C at this stage and record a finding that there is no *prima facie* material against this petitioner to proceed and prayed for dismissal of the petition.

Admittedly, a crime was registered against this petitioner and the contention urged before this Court is that the petitioner was on leave on the date of alleged incident and produced copy of the leave letter dated 08.01.2018 and the same was sanctioned on 17.01.2018 for the period from 08.01.2018 to 10.01.2018. Therefore, question of his demanding any amount and receiving the same would not arise *prima facie* and on this ground alone, the proceedings against the petitioner are liable to be quashed.

As seen from the material on record produced before this Court, the petitioner also demanded for payment of amount and received Rs.80,000/- on the date of incident, as alleged in the complaint. But, whether the petitioner was on leave is another disputed question and even by proceeding on leave, the presence of this petitioner at the scene of offence and demanding amount cannot be ruled out. But, on the ground that, the petitioner was on leave on the date of incident, the proceedings cannot be quashed at the threshold of investigation in the above crime. At best, the Court

consider those questions only after completion of investigation and pass appropriate orders. But, at this stage, it is difficult to accept this contention.

The other contention raised before this Court is that, delay in lodging report with the police. Delay is only a ground to acquit the accused after full-fledged trial, if the complainant failed to explain the reasons for delay, sufficiently. Therefore, on the ground of delay, the proceedings at the threshold cannot be quashed.

The other ground is that, the allegations made in the complaint would not constitute any of the offences allegedly committed by this petitioner. When the investigation is at fetus stage, it is difficult to express any opinion whether the allegations would constitute offences punishable under any of the offences referred supra, since F.I.R is only an information of occurrence of offences and it is not an encyclopaedia of facts and need not contain minute details of facts. Thus, the language used under Section 482 Cr.P.C, though clear that, at any stage of the proceedings, the Court can exercise its inherent jurisdiction. In view of the judgment of the Supreme Court referred supra, it is difficult to quash the proceedings at crime stage by exercising power under Section 482 Cr.P.C.

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

² (2005) 13 SCC 540

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 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 evaluate the material and documents on record, but it cannot appreciate evidence. The Court can not record finding to conclude whether the material produced is sufficient or not for convicting the accused. Therefore, the limited purpose of appreciating of facts is only to come to a conclusion, that there is sufficient material to proceed against the petitioner/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.

Thus, it means that the Court cannot exercise its inherent jurisdiction to stifle the legitimate prosecution at the threshold.

In “**Amit Kapoor v. Ramesh Chander**³” the Apex Court summarized the principles to be considered for proper exercise of jurisdiction, particularly with regard to quashing of a charge either in exercise of jurisdiction under Section 397 or Section 482 of Cr.P.C. or together, as the case may be, they are as follows:

“1) Though there are no limits on the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

³ (2012) 9 SCC 460

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex

debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.”

In view of the issue involved in this petition, it is relevant to refer the law declared by the Apex Court in various judgments.

In “**Jehan Singh v. Delhi Administration**”⁴ it was held that where at the date of filing the petition under Section 561-A (old Code equivalent to Section 482 of the Code), no charge sheet has been laid and the matter is only at the stage of investigation by police, the court cannot, in exercise of its inherent jurisdiction under Section 561-A interfere with the statutory powers of the police to investigate into the alleged offence and quash the proceedings, Even assuming that the allegations in the F.I.R are correct and constitute an offence so as to remove the legal bar to institute proceedings the court cannot at that stage appraise the evidence collected by the police in their investigation. So any petition under Section 561-A at such a stage is premature and incompetent.

Earlier to the judgment rendered in “**Jehan Singh v. Delhi Administration**” (referred supra), in “**King Emperor v. Nazir Ahmad**”⁵ “**State of West Bengal v. S.N. Basak**”⁶ similar view was expressed.

In view of the law declared by various Courts, including the Apex Court, the Court cannot exercise its jurisdiction under Section 482 Cr.P.C at the threshold when the facts are hazy and incomplete and irrespective of the magnitude of the offence.

⁴ AIR 1974 SC 1146

⁵ AIR 1945 PC 18 : 58 L.W. 57

⁶ AIR 1963 SC 447

In **State of Haryana v. Bhajan Lal**⁷ 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 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.

⁷ 1992 Supp. (1) SCC 335

(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.

In view of the law declared by the Apex Court and other Courts in the judgments referred supra, I am not inclined to quash the proceedings at this stage, as the investigation is at fetus stage. Hence, I find no ground to quash the proceedings at this stage and the other grounds raised before this Court are not sufficient to quash the proceedings at this stage.

In the result, the criminal petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:30.04.2018

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