

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.4450 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in Crime No.120 of 2017 on the file of Peddapalli Police Station, Peddapalli District, for the offences punishable under Sections 457 & 380 IPC.

A complaint was lodged by the defacto complainant/ Smt. Etukala Uma Maheswari on 16.04.2017 alleging that on 16.04.2017 when the defacto complainant went to their relatives house, on 18.04.2017, she found that the lock was broke open and noticed that somebody committed theft. On verification, she found that jewellery worth Rs.28,000/- was stolen and requested to take necessary action. On the strength of the same, the police registered crime against some unknown culprits and issued F.I.R

During investigation, the police found that this petitioner/ A-2 committed offence punishable under Sections 457 & 380 IPC. The present criminal petition is filed on the ground that this petitioner did commit no offence and he was falsely implicated by the police without any basis and no evidence has been produced to array the petitioner as accused. Further, the petitioner is a resident of Maharashtra, doing business and hails from respectable family, thereby, question of his absconding would not arise and prayed to quash the proceedings against this petitioner.

Admittedly, a case was registered against unknown culprits and issued F.I.R.No. 120 of 2017 on the file of Peddapalli Police Station, Peddapalli District, for the offences punishable under Sections 457 & 380 IPC and the investigation is at fetus stage.

In **State of Orissa v. Saroj Kumar Sahoo**¹, 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 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

¹ (2005) 13 SCC 540

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**²” 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

² (2012) 9 SCC 460

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.

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**”³ 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**”⁴ “**State of West Bengal v. S.N. Basak**”⁵ similar view was expressed.

The main contention of the learned counsel for the petitioner is that, there is no allegation against this petitioner/A-2 in the entire complaint, muchless, specific allegation. Further, learned Public Prosecutor it is contended that F.I.R is only an information to the police about commission of a cognizable offence and it need

³ AIR 1974 SC 1146

⁴ AIR 1945 PC 18 : 58 L.W. 57

⁵ AIR 1963 SC 447

not contain minute details, since it is not an encyclopaedia of facts. Therefore, in the absence of any specific allegation against this petitioner, this Court cannot quash proceedings at this stage, more particularly, when the investigation is at fetus stage. Therefore, I am not in a position to exercise my inherent jurisdiction under Section 482 Cr.P.C at the threshold. That too, the recovery of the property stolen is to be effected. However, liberty is given to this petitioner to renew his request at appropriate stage.

With the above direction, the criminal petition is dismissed.

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

Date:30.04.2018
SP

JUSTICE M. SATYANARAYANA MURTHY

