

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6215 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.60 of 2018 on the file of Nizamabad Rural Police Station, Nizamabad District, registered for the offences punishable under Sections 468, 447 & 324 r/w 34 IPC.

The second respondent lodged a report with the police on 14.04.2017 alleging that, on 05.02.2017, the petitioners and other along with their henchmen have illegally trespassed into their property and the complainant protested against the alleged trespass of the petitioner and later on, upon verification, the complainant allegedly came to know that the petitioner herein was trying to trespass into the disputed property on the basis of the forged and fabricated documents. For confirming the same, the complainant allegedly made an application under RTI Act and the office of the Tahsildar, Nizamabad (South) Mandal issued information vide A3/RTI/280/2017 dated 14.03.2017 & 22.03.2017 allegedly stating that the documents are forged and fabricated and the said office did not issue any such family members certificate and that the pattedar passbook was issued for a limited extent but not for entire extent of land mentioned in the passbook. Thus the petitioner committed offences punishable under Sections 468, 447 & 324 r/w 34 IPC.

On the strength of the report dated 14.04.2017, the Station House Officer, Nizamabad Rural Police Station registered the above

crime and issued F.I.R. At that stage, the petitioner approached this Court to quash the proceedings against this petitioner on the ground that the petitioner is a bonafide purchaser for valuable consideration from Power of Attorney Holder and the complaint lodged after long lapse of delay is sufficient to conclude that the complainant has got malafide intention and moreover, registration of crime and issuance of F.I.R on 11.03.2018 on the basis of complaint date 14.04.2017 is suffice to conclude that there is a malafide intention to convert civil litigation into criminal. That apart, the petitioner filed a suit and obtained ad interim injunction against this petitioner in I.A.No.116 of 2018 in O.S.No.43 of 2018 from the file of Senior Civil Judge at Nizamabad, which is extended from time to time on filing a memo by the learned counsel for the petitioner. Therefore, the second respondent gave colour of criminality to civil litigation. At best, the petitioner is entitled to question the power of attorney only in the civil court and therefore, the petitioner is not entitled to prosecute the proceedings and lodging of report with the police against such an alleged incident dated 05.02.2017 is nothing but abuse of process of the Court and prayed to quash the proceedings.

During hearing, learned counsel for the petitioner would draw the attention of this Court to the allegations made in the complaint and summons copy in O.S.No.43 of 2018 and orders passed in I.A.no.116 of 2018, whereunder, the petitioner obtained an ad interim injunction restraining the second respondent and his men from interfering with petitioner possession and enjoyment of the suit scheduled property therein and his name was mutated in the revenue records, furnished Photostat copies of documents

along with this petition to establish that he is in possession and enjoyment of the property as on date and prayed to quash the proceedings in the above crime.

Learned Public Prosecutor for the State of Telangana opposed the petition on the ground that the proceedings cannot be quashed at this stage, as the investigation is not yet commenced.

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**¹ the Apex Court considered in detail the provisions of Section 482 and the power of 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.

¹ 1992 Supp. (1) SCC 335

(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.

In **(Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others**², the Supreme Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent 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. 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 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.

In **State of Orissa v. Saroj Kumar Sahoo**³, 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

² AIR 1990 SC 494

³ (2005) 13 SCC 540

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.

Similarly, in **Umesh Kumar v. State of Andhra Pradesh**⁵, the Supreme Court held that law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the Court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. Thus, the judgment of the Apex Court is clear that even if a petition for discharge is filed and pending, the High Court cannot reject the petition filed under Section 482 Cr.P.C. While discussing the facts of the above judgment, the Supreme Court held in paragraph 12 as follows:

“Once criminal law is put in motion and after investigation the charge sheet is filed, it requires scrutiny in the court of law. However, before the charges could be framed, Umesh Kumar, appellant, approached the High Court under Section 482 Cr.P.C. for quashing of the charge sheet. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, 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. Any document filed alongwith the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.”

In view of the judgments referred supra, this Court cannot appreciate the evidence at this stage while deciding an application under Section 482 Cr.P.C. At best, this Court can evaluate the evidence, but it is not competent to record a finding that the facts on hand, as they did not constitute an offence under given circumstance.

Keeping the law declared by the Apex Court in the various judgments referred supra, I would like to examine the present case.

The **first ground** raised by the learned counsel for the petitioner is that the incident allegedly occurred on 05.02.2017. But, the complaint was lodged on 01.04.2017 and the registered a case in Crime No.60 of 2018 on 11.03.2018. The delay was explained in the complaint itself and the cause for the delay was due to obtaining information under R.T.I Act, but not otherwise. Even otherwise, when there is a delay in lodging report, but if the delay is explained during trial satisfactorily, the Court can record conviction and in such case, the delay is negligible. Therefore, on the ground of delay in lodging report, the proceedings cannot be quashed.

The police registered the case and issued F.I.R in Crime No.60 of 2018 on 11.03.2018. In fact, it is not the fault of this petitioner and it is the fault of the Investigating Agency and the procedure adopted by the police is illegal, as keeping the complaint pending for more than 11 months is an illegality committed by the Investigating agency. For lapse on the part of the police, proceedings against this petitioner cannot be quashed.

The colour of criminal case was given to civil litigation, as the petitioner obtained an ad-interim injunction, having purchased the property under registered sale deed as bonafide purchaser and mutated his name in the revenue records by the revenue authorities. No doubt, a suit is filed and petitioner obtained interim injunction. But, filing of suit is subsequent to lodging a report. Merely because an ad-interim injunction was granted without notice to the second respondent, that will not come in the way of investigating into the offence. When the Tahsildar issued a certificate to some extent of the land, but not for the entire extent, the proceedings cannot be quashed. At this stage, learned counsel for the petitioner submitted that Ac.1-39 gts was acquired by the Government and certificate was issued only for the said extent. At this stage, all these aspects cannot be decided based on the material produced before this Court and I am sure that the Investigating Agency will look into the aspect of land acquired by the Government and the land purchased by this petitioner, which is supported by the certificate issued by the Tahsildar under R.T.I Act and file appropriate report before the Court in accordance with law. But, when the investigation is at fetus stage, this Court cannot exercise power under Section 482 Cr.P.C to stifle the

legitimate prosecution when the facts are incomplete and hazy before the Court.

In **Kurukshetra University And Anr. v. State Of Haryana And Anr**⁴, the Supreme Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C and observed as follows:

“It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the CrPC, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

If the principles laid down in the above judgment are applied to the present case, including the judgment of the Apex Court in **Bhajan Lal's** case, the allegations made in the complaint would disclose commission of an offence *prima facie* to proceed against this petitioner to investigate further. That apart, the investigation is not yet commenced. Therefore, it is not appropriate stage to quash the proceedings when the facts are incomplete and hazy before this Court. Hence, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:18.06.2018
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⁴ AIR 1977 SC 2229