

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.6328 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in FIR No.6 of 2018 of Lepakshi Police Station, Ananthapuram District, registered for the offences punishable under Sections 366, 376, 343, 323, 313, 420, 506 read with 34 IPC.

The petitioners are A1 to A6 in the above crime. The 1st respondent is the *de facto* complainant, who lodged written report with the police on 11.01.2018 alleging that she studied class X and doing labour work. Ananda, who is the resident of her village cheated i.e. having physical relationship by making her to believe that he will marry her. In those circumstances, she conceived and carrying 4th month pregnancy. Ananda, who resides opposite to her house, one month back without knowing to her parents, abducted her to Bangalore at night and against her wish he tied knot in maruthahalli Anjaneyaswamy temple forcibly, although she is not interested.

The main contention raised in the present petition by the petitioners is that the entire incident allegedly occurred outside the jurisdictional limits of the police station and outside the State. Therefore, the Lepakshi Police lacks territorial jurisdiction. The second ground urged before this Court is that the 1st respondent admitted the relationship between the 1st petitioner and herself that they are husband and wife and filed M.C.No.62 of 2017, pending on the file of Senior Civil Judge-JMFC, Gowribidanur claiming maintenance under Section 125 Cr.P.C. The third ground urged before this Court is that the police failed to take note of the allegations made in the complaint. If both the allegations are verified properly, the incident took place outside the territorial jurisdictional limits of

the Lepakshi Police Station. It is also contended that none of the allegations made in the complaint would constitute any offences referred above, even if they are accepted on its face value. In such a case, conducting investigation by the Lepakshi Police is nothing but abuse of process of law and prayed to quash the proceedings.

During the course of hearing, learned counsel for the petitioners would draw the attention of the Court that the 1st respondent filed M.C.No.62 of 2017 admitting the relationship between her and the 1st petitioner as wife and husband, as such the question of rape punishable under Section 376 Cr.P.C. does not arise, added to that the entire incident took place outside the State of A.P., Lepakshi police lacks territorial jurisdiction and the police while registering the crime did not advert to the allegations made in the complaint to find out where the incident occurred and registered the crime casually and issued FIR. Further, it is contended that there is abnormal delay in registration of crime against the petitioners that the delay also create suspension and prayed to quash the proceedings.

The written report was prepared on 05.01.2018 and the same was lodged on 11.01.2018. Thus, there is a delay of six days in registering the crime and issuing FIR. As seen from the Telugu type written complaint, it was signed by Ambika on 22.12.2017 and the same was received by police on 11.01.2018 as per the endorsement on the top of the complaint. Therefore, mere mention of date as 22.12.2017 under the signature of the *de facto* complainant, it is difficult to conclude that there is abnormal delay in registering the complaint, when the police received complaint on 11.01.2018 registered crime and issued FIR as per the guidelines issued by the Apex Court in ***Lalita Kumari v. Government of U.P.***¹. Hence, the alleged delay in registering the crime is not a ground to quash the proceedings.

¹ 2014 (1) ALD (CrL.) 159 (SC)

The prime ground raised before this Court is that the Station House Officer, Lepakshi Police Station lacks territorial jurisdiction as entire incident took place outside the State of A.P. As seen from the allegations made in the complaint, the 1st petitioner abducted the 1st respondent from her house, which is within the jurisdictional limits of the Lepakshi Police Station and other incidents took place outside the jurisdiction. Even assuming for a moment, the incident occurred outside the State of A.P. or the territorial jurisdiction of the Lepakshi Police Station and the police if for any reason concluded during investigation that no part of incident was occurred within the jurisdictional limits of Lepakshi Police Station, the course left open to the Lepakshi police is to transfer FIR to the concerned jurisdictional police station after making necessary enquiry, but till now, they did not proceed to investigation. Therefore, issue of direction to the Investigating Officer in Crime No.6 of 2018 to examine whether any part of incident took place within the jurisdictional limits of Lepakshi Police Station, if for any reason, the police concludes that the incident occurred beyond the jurisdictional limits of Lepakshi Police Station, the police are directed to transfer FIR to the concerned police station is suffice and on the ground of lack of territorial jurisdiction proceedings cannot be quashed.

The other contention raised by learned counsel for the petitioners is that the 1st respondent filed M.C.No.62 of 2017 claiming maintenance admitting the relationship of wife and husband. At best allegations in the M.C of accepted, the relationship between the 1st petitioner and the 1st respondent is husband and wife, but that would not absolve the liability of the 1st petitioner for various offences except for the offence punishable under Section 376 IPC.

The power of this Court under Section 482 Cr.P.C can be exercised sparingly in exceptional circumstances to give effect to any order under this

Code 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***², the 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.

(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.

² 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.

The Apex Court in **Mrs Dhanalakshmi vs. R. Prasanna Kumar & Others**³ held that the jurisdiction of this Court is limited and this Court cannot appreciate evidence available on record while exercising power under Section 482 Cr.P.C. The above principle is reiterated in **Umesh Kumar v. State of Andhra Pradesh and another**⁴. Therefore, at this stage, this Court cannot appreciate the material available on record, but can evaluate material in view of the limited scope of jurisdiction under Section 482 Cr.P.C.

Admittedly, this Court shall not exercise its inherent jurisdiction when the investigation is not yet commenced irrespective of the magnitude of facts and law. When the facts are incomplete and hazy before the Court, as held by the Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**”⁵ that the inherent powers under Section 482, Cr.P.C. should not be exercised by the High Court to stifle a legitimate prosecution. 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

³ AIR 1990 SC 494

⁴ 2013 (10) SCC 591

⁵ (2005) 13 SCC 540

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. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. While exercising jurisdiction under Section 482 of the 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. In earlier judgment of the Apex Court in ***Kurukshetra University v. State Of Haryana***⁶, the Apex 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 Cr.P.C, 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.”

Therefore, applying the above principles, this Court cannot exercise its jurisdiction under Section 482 Cr.P.C and quash the proceedings when the investigation is not yet commenced.

⁶ AIR 1977 SC 2229

The other contention raised by learned counsel for the petitioners that the allegations made in the written report lodged with the police would not constitute the offences, if they are accepted on its face value. But this contention is without any substance and the way in which she was got aborted when she become pregnant due to sexual intercourse with the 1st petitioner is clear and it would attract the offences. On close examination of the material allegations made in the written report lodged with the police discloses the commission of offences. Therefore, on this ground, the proceedings at this stage cannot be quashed.

Accordingly, the criminal petition is disposed of. However, the Investigating Officer in Crime No.6 of 2018 of Lepakshi Police Station, Ananthapuram District is directed to verify whether any part of offence took place within the territorial jurisdictional limits of it and if for any reason the Investigating Officer found that no part of incident took place within the territorial jurisdiction of Lepakshi Police Station, he is directed to transfer FIR to the Police Station having territorial jurisdiction to take appropriate action.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

20.06.2018
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