

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.6642 of 2018

ORDER

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in Crime No.86 of 2018 of II Town Police Station, Vizianagaram District, registered for the offence punishable under Section 420 IPC, on various grounds.

The main grievance of the 2nd respondent is that the petitioners collected Rs.5 lakhs to provide employment to his son in Bank of Baroda and similarly they collected huge amounts from different persons. Collection of Rs.5 lakhs from the 2nd respondent to provide employment in nationalised bank is nothing but promise and that the petitioners are not competent to provide such employment in the nationalized bank. On the basis of the complaint, the police registered the above crime and issued FIR.

The present petition is filed on the ground that there was earlier dispute between the parties and that previously when the complaint was lodged with the police to grab their house, Writ Petition No.17992 of 2014 was filed before this Court and obtained interim order on 03.07.2014 in W.P.M.P.No.22556 of 2014 directing the police not to interfere in any civil disputes of the petitioners and later this Court disposed of the writ petition making interim order as final order. Thus, there was a direction against the police not to interfere in any civil disputes. On false complaint filed by the 2nd respondent, without any material, the police proceeding to investigate into the allegations made in the complaint, which would cause serious prejudice to the petitioners. Therefore, prayed to quash the proceedings.

The crime was registered on 24.05.2018 as the petitioners allegedly collected Rs.5 lakhs making false promise to provide employment to the son of the 2nd respondent. If the allegations are

accepted on its face value, it would constitute an offence as the petitioners are incompetent to provide employment in Nationalized bank and collection of amount from various persons is nothing but cheating and dishonestly induced the 2nd respondent to part with huge amount and promised to provide employment in nationalized bank. These allegations are suffices to attract offence punishable under Section 420 IPC. However, this Court cannot express its opinion about the nature of offence the petitioner committed at this stage while disposing of application filed under Section 482 Cr.P.C.

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. in view of the law declared by the Apex Court in **Mrs Dhanalakshmi vs. R.Prasanna Kumar and others**¹. The above principle is reiterated in **Umesh Kumar v. State of Andhra Pradesh and another**². Hence, 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.

The investigation in this matter is not yet commenced and it is at foetus stage and when the facts are incomplete and hazy before the Court, as held by the Apex Court in **State of Orissa v. Saroj Kumar Sahoo**³ 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 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

¹ AIR 1990 SC 494

² 2013(10) SCC 591

³ (2005) 13 SCC 540

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 proceedings at any stage. While exercising jurisdiction under Section 482 Cr.P.C, it is not permissible for the Court to act as if it was a trial 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**⁴, 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.”

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 since the allegations made in the complaint make out *prima facie* case for the offence punishable under

⁴ AIR 1977 SC 2229

Section 420 IPC and consequently, the criminal petition is liable to be dismissed.

Accordingly, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

27.06.2018
kvrm

M. SATYANARAYANA MURTHY, J

