

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 6649 OF 2018

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") by accused Nos.1 to 3 in C.C.No.1363 of 2017 on the file of the VII Metropolitan Magistrate Court, Cyberabad at Hayathnagar, Ranga Reddy District, registered for the offence punishable under Section 506 IPC, to quash the proceedings in the said C.C.

2. Petitioners are accused and the 1st respondent is the de-facto complainant. The 1st respondent lodged report dated 17.06.2017 with the Police making serious allegations. One among them is that when the 1st respondent/de-facto complainant demanded for return of documents, ATM card, gold ornaments etc. petitioners informed that nothing was given to them and when she questioned the same, they demanded her to set up a separate family and only then they will return those items; otherwise, they will kill her and her husband and also made her to lodge complaint against her husband forcibly, which she had later withdrawn. Basing on the allegations, the complaint was registered as Cr.No.440 of 2017 on the file of P.S., Vanasthalipuram, for the offences punishable under Sections 420, 406 and 506 IPC.

3. On the basis of the FIR, investigation was taken up by the S.I. of Police, who examined two witnesses and recorded their statements under Section 161 Cr.P.C. Based on the material collected during investigation including the statements recorded under Section 161

Cr.P.C., charge sheet was filed against the petitioners for the offence punishable under Section 506 IPC only. Aggrieved by, taking cognizance of offence by the Magistrate in C.C.No.1363 of 2017, the present petition is filed under Section 482 Cr.P.C., to quash the proceedings mainly on the ground that, when the main allegation under Sections 406 and 420 IPC is disbelieved, filing charge sheet by the Police and taking cognizance by the Court is illegal and when the Police did not find any material against the petitioners for the offences under Sections 406 and 420 IPC, the question of filing charge sheet, which is a consequence of alleged misappropriation and cheating is nothing but an abuse of process of the Court and therefore the order passed by the trial Court is contrary to the law laid down by the Apex Court in “*State of Haryana v. Bhajan Lal*¹”.

4. Sri T. Pradyumna Kumar Reddy, learned counsel for the petitioners reiterated the said contentions and while drawing attention of this Court to the allegations made in the complaint dated 06.06.2017, so also the allegations made in the statement of the de-facto complainant recorded under Section 161(3) Cr.P.C. and L.W.2 Sri Yatharla Mallikarjuna Reddy, he would contend that those allegations do not constitute any offence, much less the offence punishable under Section 506 IPC, in view of the failure to produce any material by the de-facto complainant to prove the commission of offences punishable under Sections 406 and 420 IPC and prayed to quash the proceedings.

¹ 1992 Supp (1) SCC 335

5. On the other hand, learned Public Prosecutor opposed the petition on the ground that the allegations made in the charge sheet shall be taken into consideration to find out whether any prima facie case is made out against the petitioners and also the Court cannot go into the minute details at this stage and record a finding and prayed to dismiss the petition.

6. In view of the powers vested with this Court by Section 482 of Cr.P.C., it is apposite to advert to the law laid down by the Apex Court to exercise power to quash F.I.R. or any other proceedings.

7. In “*R.P. Kapur v. State of Punjab*²”, the Apex Court laid down the following principles:

(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

8. 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,

² AIR 1960 SC 866

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 as held by the Apex Court in “*Mrs.Dhanalakshmi v. R.Prasanna Kumar*”³”

9. In “*State of Haryana v. Bhajan Lal*”⁴ the Apex Court considered in detail the powers of High Court under 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.

³ AIR 1990 SC 494

⁴ 1992 Supp (1) SCC 335

(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.

(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.

10. Keeping in view the limited scope of powers conferred on this Court, this Court would like to examine the issue in this case.

11. The crime is registered basing on written report dated 06.06.2017 lodged by the de-facto complainant, where she made serious allegations that petitioners threatened to kill her and her

husband with the assistance of rowdy elements, besides making other allegations. The allegations leveled in the written report dated 06.06.2017, if accepted as they are, would constitute offence under Section 506 IPC. Similarly, in the statement of L.W.1, she has clearly stated that when she demanded the petitioners to return the ATM card, gold articles etc., they informed her that as long as she lives in her in-laws' house, they would not return those items and would return them only in the event of her setting up a separate house and if she fails to do so, they would kill either her or would do away with the life of her husband with the aid of rowdy elements. The said allegations are suffice to constitute offence under Section 506 IPC. The said fact is supported by L.W.2 Yarthala Mallikarjuna Reddy. The evidence collected during investigation, i.e. the statement recorded under Section 161 (3) Cr.P.C., though not substantial piece of evidence, at this stage, Court can evaluate such statements and other evidence collected. But the contention of the learned counsel for the petitioners is that the Police did not collect any material with regard to the misappropriation and cheating and dishonest inducement of the de-facto complainant to part with any property which is punishable under Section 420 IPC; therefore, proceedings against the petitioners for the offence punishable under Section 506 IPC cannot be continued since it amounts to abuse of process of Court. However, this contention cannot be accepted for the simple reason that the material collected during investigation by the Police disclosed commission of offence

punishable under Section 506 IPC. Section 506 IPC deals with punishment for criminal intimidation, which is defined as under:

“Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

12. As the petitioners have threatened the de-facto complainant with dire consequences to kill her or her husband with the aid of rowdy elements, the same would constitute the offence punishable under Section 506 IPC. Therefore, prima facie, I find no ground to quash the proceedings at this stage.

13. Criminal petition deserves to be dismissed and is accordingly dismissed.

As a sequel, miscellaneous petitions, if any pending, stand closed.

M.SATYANARAYANA MURTHY, J

July 24, 2018
MRR