

**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**Crl.P. No.6825 OF 2018**

**ORDER:**

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in P.R.C.No.37 of 2013 pending on the file of Judicial Magistrate of First Class, Jangareddigudem, West Godavari District, registered for the offences punishable under Sections 376, 417, 213, 313, 354,509 read with 34 IPC.

The petitioner is A5 in Crime No.172 of 2007, which is subject matter of P.R.C.No.37 of 2013.

Though charge sheet was filed before the Magistrate against the accused after completion of investigation, the case against the petitioner/A5 was separated and numbered as P.R.C.No.37 of 2013 and the case against the other accused was numbered as S.C.No.463 of 2013 before the Principal Assistant Sessions Judge, Kovvur. The accused in S.C.No.463 of 2013 were acquitted by order dated 04.05.2018. Based on the said acquittal order, the petitioner/A5 filed the present criminal petition contending that the case against the other accused was ended in acquittal; the petitioner is also entitled for acquittal. It is also contended that LW.2, the victim girl did not support the case of the prosecution before the Sessions Court in S.C.No.463 of 2013 and denied the very lodging of the report with the police and therefore, her evidence was not useful to substantiate the case of the prosecution as such the continuation of proceedings against the petitioner/A5 would amount to abuse of process of the Court and it may lead to unnecessary hardship and requested to quash the proceedings against the petitioner/A5.

During hearing, learned senior counsel Sri Veera Reddy represented on behalf of Sri Narasimha Rao Gudiseva, counsel for

petitioner submitted that when the other accused were acquitted in S.C.No.463 of 2013, the petitioner who is placed on similar lines is also entitled for acquittal and apart from that the deposition of PW.1 is suffice that she denied the very lodging of written report with the police. Therefore, based on such evidence, the Court cannot proceed against the petitioner/A5 and requested this Court to quash the proceedings. Learned senior counsel also placed on reliance of the apex Court in **Central Bureau of Investigation v Akhilesh Singh**<sup>1</sup> and another judgment of the Karnataka High Court in **Iqbal S/o J.P.Mohammed v State of Karnataka, by Women Police Station, Razia D/o Abdul Azeez**<sup>2</sup>. On the strength of the principles laid down, he contended that the proceedings against the petitioner/A5 in P.R.C.No.37 of 2013 are liable to be quashed.

Whereas, Sri I.B.V.Raju, learned counsel for the 2<sup>nd</sup> respondent contended that the observations in the judgment of the Sessions Court that PW.1 stated that some incriminating evidence against the petitioner/A5 is binding. As such the proceedings against the petitioner/A5 cannot be quashed and the deposition of PW.1, which was recorded in the absence of the petitioner/A5 cannot be considered at this stage since the Court is expected to appreciate the evidence except evaluation of the material on record in view of limited power conferred on the Court under Section 482 Cr.P.C. and prayed to dismiss the petition.

It is an undisputed fact that Crime No.172 of 2007 of Jangareddy Gudem Police Station was registered against the petitioner/A5 and others, for the offences punishable under Section 376, 417, 213, 313, 354, 509 read with 34 IPC. Later investigation was taken up by the Inspector of Police and in the investigation, the police examined witnesses and recorded their statements and after completion of entire evidence filed charge sheet

---

<sup>1</sup> AIR 2005 SC 268

<sup>2</sup> 2017 Law Suit (Kar) 952

before the Magistrate against all the accused including the petitioner/A5. As the petitioner/A5 successfully avoided facing the trial, having no other alternative, the Magistrate separated the case against the petitioner/A5 after following necessary procedure against the petitioner/A5. Since the case is triable by the Sessions Court, the case was committed to the Principal District and Sessions Court, Eluru, which was registered as S.C.No.463 of 2013 and ended in acquittal.

The main contention of the petitioner/A5 is that when the other accused were acquitted as the prosecution witnesses did not support the prosecution case, continuation of the proceedings against the petitioner/A5 would not serve any purpose, even if the trial is completed. Therefore, the proceedings cannot be continued against the petitioner/A5 as it would cause much inconvenience and social stigma.

The Sessions Court while appreciating the evidence made a serious observations in para 11 of its judgment and the same are extracted hereunder:

*“The evidence of PW.1 the victim was found to be incriminating against the accused No.5-Satyanarayana but as the case of the accused No.5-Satyanarayana stood separated, it would not be proper to examine whether the evidence of PW.1 the victim proved the guilt of the accused No.5-Satyanarayana. Admittedly, when the evidence of PW.1 to PW.5 did not prove the guilt of the other accused for the charged offences.”*

Those observations, though not based on any material, this Court cannot sit in appeal over the judgment of the Sessions Court while exercising power under Section 482 Cr.P.C. In view of limited jurisdiction that conferred on this Court though the Court made certain observations in the absence of the petitioner, still this Court cannot disturb such observation while exercising power under Section 482 Cr.P.C. In fact, the statement of

PW.1 recorded by the Assistant Sessions Judge is attributing incriminating material against the petitioner/A5. But in the first para of examination in chief, PW.1 denied at one stage the very lodging of the report, but later admitted that she lodged the report with the Superintendent of Police on 26.10.2007. The report dated 01.11.2007 contains her signature. LW4 Lakshmi prepared the report and she obtained signatures of PW.1 and the contents of report dated 01.11.2007 are not true and correct. She further stated that she did not make any such statement before the police as found in Section 161 Cr.P.C. statement. Therefore, the evidence of PW.1 is inconsistent from stage to stage. At one stage she admitted that she lodged report on 26.10.2007 and later she admitted that she signed on the report dated 01.11.2007 contains her signature. At this stage it is not proper to examine the probative value of the testimony of PW.1 since this Court cannot appreciate the evidence at this stage.

The Apex Court in **Akhil Singh's case** referred supra held that when the other co-accused were discharged, continuation of proceedings against the petitioner therein, who allegedly hatched the conspiracy would not serve any purpose even if the Court try the case for various offences. Similarly in **Iqbal s/o J.P.Mohammed's case** referred supra, the case was separated and the accused were acquitted, but the petitioner therein was not acquitted and filed petition for quashment of the proceedings, but the Karnataka High Court held that the petitioner is also entitled for the benefit of the judgment. There is no dispute about the law laid down in the judgment. This Court also took similar view in another judgment. However, in the present case, the Principal Assistant Sessions Judge made serious observation that there is incriminating material against the petitioner/A5. Though it is not based on material as contended by learned counsel for the petitioner/A5, in view of the limited jurisdiction that conferred on this Court, this Court cannot appreciate the evidence while exercising power under

Section 482 Cr.P.C. except evaluation of the material. In **Umesh Kumar v. State of Andhra Pradesh and another**<sup>3</sup>, the Apex Court expressed doubt about the maintainability of the petition filed under Section 482 Cr.P.C., when the proceedings are at committal stage and held that 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 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 along with 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. It is further held that proceedings at committal stage is like a still born child and cannot be quashed.

---

<sup>3</sup> 2013 (10) SCC 591

Similarly it was expressed by the Apex Court in **State of Orissa v. Saroj Kumar Sahoo**<sup>4</sup> 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 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. 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. 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 Apex Court in **Mrs Dhanalakshmi vs. R. Prasanna Kumar & Others**<sup>5</sup> 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.

In view of the law laid down by the Apex Court, I am not in a position to appreciate the evidence of PW.1 since it was recorded in the absence of the petitioner/A5, who did not face trial as on today. Therefore, I find that it is not a fit case to quash the proceedings against the petitioner/A5 because of observations recorded by the Sessions Judge

---

<sup>4</sup> (2005) 13 SCC 540

<sup>5</sup> AIR 1990 SC 494

against the petitioner/A5 and that the statement of PW.1 also cannot be taken into consideration at this stage.

Accordingly, the criminal petition is dismissed.

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

25.07.2018  
kvrm

**M.SATYANARAYANA MURTHY,J**

