

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.7329 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.332 of 2016, pending on the file of Judicial Magistrate of First Class, Ramannapeta, Nalgonda District, registered for the offence punishable under Section 324 read with 34 IPC.

The petitioners are A1 to A3 and the 2nd respondent is the *de facto* complainant and they are closely related to one another. The 2nd respondent lodged report with the police alleging that when she was returning from her elder sister's house at D.Nagaram Village after attending function on 21.03.2016 at about 23.45 PM along with his son Dayanand and her nephew Murali to Koyyalagudem and that when they reached Batasingaram village, petitioners stopped them and started quarreling for old grudge and abused the 2nd respondent in vulgar language and the 1st petitioner slapped on her cheek and petitioners 2 and 3 bet her with stones on head for which she fell down and caused bleeding injuries. Immediately, she was shifted to hospital for treatment. Based on the complaint, a crime was registered in FIR No.62 of 2016, for the above offences. During investigation the police examined as many as four witnesses and visited scene of offence and prepared rough sketch and drafted observation report. After completion of investigation, the police concluded that there is material to proceed against the accused and filed charge sheet.

As per the investigation report dated 21.03.2016, the 2nd respondent, her son and her nephew went to her elder sister's house to attend function and after attending the function, while they were proceeding to their house, at Koyyalagudem village, in the mean time, the petitioners came there and picked up quarrel due to previous enmity and abused in

filthy language and that the 1st petitioner slapped her on cheek, for which she fell down and immediately his son shifted her to hospital for treatment.

The petitioners sought quashment of calendar case on the following grounds:

The first ground is that there is a delay in lodging the complaint. The second ground is that no stones were recovered at the scene of offence as per panchanama. The third ground is that the allegations made in the complaint do not attract the offence punishable under Section 324 IPC and that too the medical certificate issued by the doctor concerned, does not disclose the actual examination of the injured after incident and thus there is a possibility of implication of petitioners and requested to quash the proceedings as it is an abuse of process of the law.

During hearing, learned counsel for the petitioners reiterated the above contentions and drawn the attention of the Court to various documents, so also to the statements recorded by the police and contended that the statements of witnesses are parrot type and those statements does not inspire confidence that the injuries sustained by the 2nd respondent at the hands of the petitioners, are with the dangerous weapon. This fact would not constitute the offence punishable under Section 324 IPC and requested to quash the proceedings.

Learned Public Prosecutor opposed the petition on the ground that these questions have to be decided only during trial and this Court cannot evaluate the evidence under Section 482 Cr.P.C.

Perusal of the material available on record, the point that arise for consideration is : whether the allegations made in the charge sheet constitute offence punishable under Section 324 read with 34 IPC, if not whether the proceedings in Calendar Case No.332 of 2016, pending on the

file of Judicial Magistrate of First Class, Ramannapeta are liable to be quashed.

POINT:

It is undisputed fact that the 2nd respondent lodged report with the police alleging that the 1st petitioner abused her in filthy language and slapped her and when she fell down, petitioners 2 and 3 caused injuries with stones. Time and date of incident are that 21.03.2016 at about 11.45 PM. The scene of offence is at the outskirts of Koyyalagudem. The 2nd respondent received bleeding injuries allegedly in the hands of the petitioners as she was beaten by petitioners 2 and 3 and that the 1st petitioner slapped her. The complaint was lodged on 22.03.2016 at about 14 hours i.e. 2 PM. Thus, there is delay of more than 12 hours in lodging the report.

Learned counsel for the petitioners contended that on the ground of delay alone the proceedings in calendar case against the petitioners are liable to be quashed. But this contention is without substantive force for the reason that the aspect of delay is to be explained during trial to the satisfaction of the Magistrate, which is in consequence of and the Court can record conviction of the accused for any of the offence under the provisions of the Code of Criminal Procedure. Therefore, on the ground of delay, the proceedings against the petitioners cannot be quashed by exercising power under Section 482 Cr.P.C.

The second ground raised before this Court is that no stones were recovered from the scene of offence as per panchanama, dated 22.03.2016. On the basis of the observation report, learned counsel for the petitioners contended that when no stones were recovered from the scene of offence, the question of causing injuries with dangerous weapon would not arise and on this ground, the proceedings against the petitioners are

liable to be quashed. But mere failure to find any stones at the scene of offence itself is not sufficient to conclude that the petitioners do not cause injuries with dangerous weapon. Even a stone is not a dangerous weapon, but it depends upon weight and size of the stone. Based on medical evidence and nature of injury, the Court can record its conclusion that those injuries were caused with dangerous weapon or by any other means. Therefore, based on the above contention, the proceedings against the petitioners cannot be quashed.

The third contention urged before this Court is that the doctor, who examine the 2nd respondent observed in the report that the injuries are simple in nature and that the injuries were already sutured indicates that she was treated by some other doctor by the date of her examination. The said question of fact to be decided during trial only as to whether she was treated by any other doctor or not before she was examined by the doctor, who issued wound certificate. In such a case, this Court cannot quash the proceedings based on such discrepancy with regard to the nature of injuries. Still it is to be established during trial whether the injuries are grievous or not as defined under Section 324 IPC. If for any reason, the Magistrate finds that the petitioners did commit any offence punishable under Section 324 read with 34 IPC can record a finding. Therefore, on this ground the proceedings against the petitioners cannot be quashed.

The other ground urged before this Court is that the statements of witnesses i.e. LWs.1 to 6 are of parrot type. The statements recorded by the police are not substantive piece of evidence and are only corroborative evidence under Section 154 of the Evidence Act. However, at this stage, deciding application under Section 482 Cr.P.C., this Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise power only to implement the order passed by this Court to prevent abuse of process of Court or to meet the ends of justice. The Apex Court in **State of Orissa v. Saroj Kumar Sahoo**¹ 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 Court cannot exercise power arbitrarily when the matter is pending at the stage of committal before the competent Court. In **Umesh Kumar v. State of Andhra Pradesh and another**², 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

¹ (2005) 13 SCC 540

² 2013 (10) SCC 591

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.

In view of the limited scope of powers under Section 482 Cr.P.C., at this stage, it is difficult to exercise to quash the proceedings, keeping in mind the guidelines issued by the Apex Court in **State of Haryana v Bhajanlal**³ laid down the following seven guidelines:

- “(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*

³ 1992 Supp(1) SCC 335

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."

Even if the allegations 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, then the proceedings can be quashed. Normally when there is any specific power to entertain such complaint to investigate into or when the complaint was lodged with a malafide intention to wreck vengeance, the Court can quash the proceedings.

In the present case, the allegations made in the charge sheet coupled with the material collected during investigation including the

statements recorded under Section 161 Cr.P.C. discloses *prima facie* evidence against the petitioners to proceed further. Therefore, I find that there are no grounds to exercise power under Section 482 Cr.P.C., hence, the criminal petition is liable to be dismissed. However, leaving it open to the Magistrate to frame appropriate charge by hearing both parties.

Accordingly, the criminal petition is dismissed.

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

16.07.2018
kvrm

M.SATYANARAYANA MURTHY,J

