

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.7333 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. by A2 to quash the proceedings in Crime No.197 of 2017 of Tandur Town Police Station, Vikarabad District, registered for the offences punishable under Section 409 and 420 IPC.

The 2nd respondent lodged written report with the police on 03.01.2014 alleging that an amount of Rs.141.11 lakhs Aasara Pension amount was misappropriated by the then Municipal Commissioner and Accountant for the period from December, 2014 to May, 2015 and further alleged that an enquiry was conducted by the Additional Project Director, DRDA, Ranga Reddy District and necessary disciplinary proceedings were initiated as well as the criminal prosecution against V.Gopaiah and P.Sudhathan Babu, petitioner herein. Basing on the complaint of the 2nd respondent, the police registered a case in Crime No.197 of 2017 for the above offences.

The petitioner is A2, accountant and his contention before this Court is that the allegations made in the complaint do not disclose commission of any offence and that the audit report submitted by the District Audit Officer (in-charge) is suffice to conclude that the petitioner did not misappropriate any amount and the finding recorded by the District Audit Officer (In-charge), State Audit, Vikarabad District in the special audit , the then accountant, petitioner herein has no part of involvement and it shows clear misappropriation by pension section and Data Entry Operator and Commissioner and no details received from ward wise acquaintances dairy in the course of Special Audit (due to non production of records).

When the audit report is clear that the petitioner committed no offence, the proceedings against the petitioner cannot be continued.

During hearing, learned counsel for the petitioner mostly relied on the special audit report submitted by the District Audit Officer (In-charge), State Audit, Vikarabad District where a finding is recorded that the petitioner did not involve in the said misappropriation etc. and that too the petitioner is no way concerned with the funds of Aashra Pensions. In such a case, the petitioner cannot be prosecuted and requested to quash the proceedings.

Whereas, learned Public Prosecutor contended that the audit report did not eliminate or exculpate the petitioner from the alleged misappropriation of funds and cheating and that the amount involved is Rs.141.11 lakhs i.e pension payable under Aashra scheme of Tandur Municipal area and that too the evidence collected during investigation discloses direct involvement of the petitioner in the alleged misappropriation of funds. The investigation is not yet commenced, this Court cannot quash the proceedings to stifle the legitimate prosecution when the facts are incomplete and hazy and requested to dismiss the petition and placed on record the Special Audit Report submitted by the District Auditor.

As seen from the allegations made in the complaint, the petitioner being the accountant in the Tandur Municipality along with the Commissioner, who is arrayed as A1 allegedly, misappropriated the amount of Aashra Pension to a tune of Rs.141.11 lakhs without paying to the real beneficiaries. But the record discloses that necessary departmental proceedings were initiated and it is not known whether the petitioner found guilty or not since no material is placed on record even otherwise termination of departmental proceedings in favour of the petitioner is not a ground to exercise power under Section 482 Cr.P.C. to quash the proceedings at the foetus stage. Moreover, the Special Audit Report

submitted by the District Audit Officer (In-charge), State Audit, Vikarabad District for the year 2014-15 and 2015-16. The auditor verified the records and found that the petitioner being the accountant of the Municipality did not involve in any commission of such offence of misappropriation and cheating or inducing to part with any property with dishonest intention. While finding the other persons i.e. data entry operator and commissioner allegedly committed the offence and an observation was also made that no details were received from the ward wise acquaintances dairy during the course of audit. If the said report is accepted by the Government, the petitioner's involvement can be ruled out, but at this stage, it is difficult to exercise power under Section 482 Cr.P.C. to quash the proceedings when investigation is not yet completed though it is a crime of 2014. So far, the investigating agency recorded the statements of witnesses i.e. LWs.1 to 18 under Section 161(3) Cr.P.C. and those statements disclose the involvement of the petitioner though the audit report exculpates the petitioner for the above offences. At this stage, when the investigation is not yet completed that the petitioner allegedly misappropriated huge amount of Rs.141.11 lakhs, it is difficult to exercise power under Section 482 Cr.P.C. The Apex Court in **State of Haryana v Bhajanlal**¹ 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 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*

¹ 1992 Supp(1) SCC 335

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.

According to Guideline No.3 of the above judgment, when the allegations made in the complaint or charge sheet discloses commission of offence, the Court cannot exercise power under Section 482 Cr.P.C. When the proceedings are at the stage of foetus, this Court cannot express any opinion as to the section of law, which attracts in view of the law declared by the Apex Court in **Mrs Dhanalakshmi vs. R. Prasanna Kumar & Others**². In **Umesh Kumar v. State of Andhra Pradesh and another**³, the Apex Court 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 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

² AIR 1990 SC 494

³ 2013 (10) SCC 591

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 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 law declared by the Apex Court in the above judgments, this Court need not appreciate the evidence on record and can evaluate evidence for limited purpose whether the allegations made in the complaint discloses any commission of offence *prima facie* or not to arrive at conclusion. The statements available on record are verified and the statements of LWs.1 and 2 disclose the involvement of the petitioner though the audit report eliminates his involvement in the above crime. Therefore, at this stage, it is improper to exercise power under Section 482 Cr.P.C. In **State of Orissa v. Saroj Kumar Sahoo**⁴ the Apex Court 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*

⁴ (2005) 13 SCC 540

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 record but it cannot appreciate evidence.

In “**Kurukshetra University v. State Of Haryana**⁵”, 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.”

In the present case also, the investigation is not yet completed, only 18 witnesses were examined recorded statements of witnesses by the police under Section 161(3) Cr.P.C to find out the involvement of the petitioner and other accused and that the statements of LWs.1 to 3, directly pointing out the complicity of the petitioner in the above crime. Therefore, at this stage, I am of the considered view that this Court cannot quash the

⁵ AIR 1977 SC 2229

proceedings against the petitioner. However, it is left open to the petitioner to renew his request at appropriate stage after completion of investigation.

With the above directions, the criminal petition is dismissed.

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

M.SATYANARAYANA MURTHY,J

17.09.2018
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