

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.7452 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in Crime No.121 of 2018, dated 12.06.2018, on the file of Gudivada II Town Police Station, registered for the offences punishable under Sections 427, 506 & 509 of Indian Penal Code (for short "I.P.C.").

2. Heard the learned counsel for the petitioner/accused and the learned Public Prosecutor for the State of Andhra Pradesh representing the 1st respondent-State. Perused the material on record.

3. The 2nd respondent, Dronadula Jayalakshmi, lodged a report alleging that the petitioner is the secretary of the Association, viz., Venkata Sai Plaza Apartments Association, situated at S.N.Puram, Gudivada, and that the petitioner is also owner of one of the flats and due to disputes, there were two associations. This Court granted an interim order, dated 20.12.2017, in W.P.M.P.No.49287 of 2017 in W.P.No.39758 of 2017, which reads as under:

"Since the 2nd respondent had no jurisdiction to register the 3rd respondent-Society, which has the same name as the petitioner-Association under Section 6(2)(a) of the A.P. Societies Registration Act, 2001, there shall be interim suspension as prayed for."

4. It is further alleged that though the period of office of the Association allegedly formed by this petitioner is over, the petitioner is demanding maintenance and creating a terror in the minds of the *de facto* complainant/2nd respondent herein and other occupiers of the flats and requested to take action against this petitioner. On

the strength of the same, the above crime was registered for the offences punishable under Sections 427, 506 & 509 of IPC.

5. The present petition is filed by the petitioner on the ground that one Kiran Kumar Bobba, who is the *de facto* complainant in CrI.P.No.7456 of 2018, is not entitled to constitute another Association for the same apartment in terms of the provisions of the A.P. Apartments (Promotion of Construction and Ownership) Act, 1987, and it is also contended that when there is suspension of the petitioner's functioning as a secretary to Venkata Sai Plaza Owners Association managing affairs and activities, and it is subsisting, the petitioner is not entitled to claim secretaryship in the same association and that filing of a complaint is nothing but abuse of process of the Court.

6. During hearing, learned counsel for the petitioner Sri D.Suresh Kumar contended that the allegations in the report lodged with the police by the second respondent does not disclose any of the ingredients to constitute the offences punishable under Sections 427, 506 & 509 IPC. It is further contended that the material produced along with the petition would show that the petitioner is the secretary of the association and the question of his terrorising the 2nd respondent and other occupiers of the flats is false on the face of record. Hence, the petitioner is requesting to quash the proceedings at the crime stage and at this stage, this Court cannot examine the evidence supplied by the petitioner since the investigation is at foetus stage.

7. The allegations pertaining to an offence punishable under Section 506 IPC are far from truth and imaginary and in the

absence of any details and based on the vague allegations made in the complaint, the first respondent cannot proceed to investigate against the petitioner for the offences punishable under Sections 427, 506 & 509 IPC and thereby requested this Court to quash the proceedings.

8. Section 506 IPC deals with punishment for Criminal Intimidation and Section 503 IPC defined criminal intimidation as follows:

“Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.”

9. The allegations made in the complaint that the petitioner is demanding maintenance and creating a terror in the minds of the *de facto* complainant/2nd respondent herein and other occupiers of the flats though the period of office of the Association allegedly formed by this petitioner is over would constitute *prima facie* offence punishable under Section 506 IPC against the petitioner. Similarly, the allegations made in the complaint would also attract an offence *prima facie* punishable under Section 509 IPC.

10. The contention of the learned counsel for the petitioner for the offence punishable under Section 506 IPC is non-cognizable and that the allegations would not constitute offences punishable under Sections 427 & 506 IPC, thereby, the offences allegedly committed by the petitioner punishable under Section 506 IPC cannot be investigated without permission of the Magistrate. But, this

contention cannot be accepted for the reason that there is sufficient material to attract an offence *prima facie*. Though the offences punishable under Section 509 IPC is cognizable, when the allegations made in the report lodged with the police disclosed commission of both cognizable and non-cognizable offences, the investigating agency is competent to investigate into both cognizable and non-cognizable offences, without permission of the magistrate, as per Section 155(4) of Cr.P.C, which permits the police to investigate into the cases relating to two or more offences, of which one is cognizable, the case shall be deemed to be cognizable case, notwithstanding that the other offences are non-cognizable. When the police are vested with the power to investigate into both cognizable and non-cognizable offences, when the allegations made disclosed atleast one cognizable offence, the investigation cannot be quashed on the same ground that the investigating officer is incompetent to investigate into an offence punishable under Section 509 IPC without obtaining permission of the Magistrate.

11. The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

12. In **State of Haryana v. Bhajan Lal**¹ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed

¹ 1992 Supp. (1) SCC 335

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.

(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.”

If these principles are applied to the present facts of the case, if the allegations made in the complaint on its face value constitute an offence, the Court cannot exercise power under Section 482 of Cr.P.C.

13. In **(Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others**², the Supreme Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

“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, 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.

14. The learned Public Prosecutor for the State of Andhra Pradesh contended that the investigation is not yet commenced and at this stage, when no investigation is commenced, the proceedings cannot be quashed, based on the allegations made in the report lodged with the police alone, since the parties may not be in a position to disclose minute details in the First Information Report in detail. That is the reason for treating the First Information Report as not substantive piece of evidence, while holding that then First Information Report is only an information to the police about commission of a cognizable offence to set the criminal law into motion and that the First Information Report need not disclose

² AIR 1990 SC 494

minute details and it is not an encyclopedia of facts. Hence, based on the allegations made in the report lodged, the Court cannot quash the proceedings when the investigation is not yet commenced, for the reason that the victim is not expected to give details to understand either in First Information Report.

15. In **R.P. Kapur v. State of Punjab**³, the Apex Court held as follows:

- (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.

16. In view of the guidelines laid down by the Apex Court in the judgments referred supra, if the facts on its face value are taken into consideration, it constitutes an offence, *prima facie* if proved. The Court cannot interfere, except when the Court comes to a conclusion that it is an outcome of abuse of process of law.

17. Therefore, when the allegations made in the FIR disclosed commission of an offence punishable under the provisions of the Indian Penal Code, this Court cannot exercise its inherent power to quash the proceedings.

³ AIR 1960 SC 866

18. In **State of Orissa v. Saroj Kumar Sahoo**⁴, the Supreme Court had an occasion to deal with the scope of Section 482 and 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 Apex Court also held that 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. The Supreme Court also held that there is no hard and fast rule laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Further, it was also held that while exercising jurisdiction under Section 482 of 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 is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

19. The Court can value the material and documents on record, but it cannot appreciate evidence. The Court cannot record evidence to conclude whether the material produced is sufficient or not for convincing the accused. Therefore, the limited purpose of

⁴ (2005) 13 SCC 540

appreciating of facts is only to come to a conclusion to proceed against the accused for the alleged offences committed by the accused. Thus, the limited jurisdiction under Section 482 of Cr.P.C can be exercised only in exceptional circumstances.

20. In **Kurukshetra University And Anr. v. State Of Haryana And Anr**⁵, the Supreme 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 CrPC, 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.”

21. In view of the law declared by Apex Court, when investigation was not commenced, the Court cannot quash the proceedings, since complete material is not before the Court. Hence, in view of the judgments in **Saroj Kumar Sahoo’s case (4 supra) & Kurukshetra University’s case (5 supra)**, the proceedings cannot be quashed at this stage.

22. In the present facts of the case, admittedly, investigation is not yet commenced, except registration of crime and issue of F.I.R against the petitioner. Therefore, applying the principles laid down in the above judgments, when the facts are incomplete and hazy,

⁵ AIR 1977 SC 2229

this Court cannot exercise power under Section 482 Cr.P.C and quash the proceedings. The questions raised before this Court by the petitioner need not be taken into consideration at this stage since the power of this Court is limited. Therefore, investigation in the present case is at foetus stage and the allegations i.e., causing terror in the minds of the *de facto* complainant and other occupiers of the flats would constitute the offences punishable under Sections 427, 506 & 509 of IPC. In view of my foregoing discussion, I find no ground to quash the proceedings at this stage.

23. In the result, the Criminal Petition is dismissed at the stage of admission. It is needless to issue a direction to the police concerned to complete the investigation, as expeditiously as possible, in accordance with law.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 18th July, 2018

KL

189

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION NO.7452 OF 2018

Date: 18th July, 2018

KL