

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.10092 OF 2015

ORDER

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings against the petitioner, who was arraigned as accused No.2 in C.C. No.538 of 2011 pending on the file of VI Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

The second respondent herein lodged a report with the police alleging that A.1 and A.2/ petitioner herein approached her for financial assistance, informing that A.1 is the owner of the land to an extent of Ac.9.53 cents situated in Tamil Nadu State, he will register the same in her name and also distribute the share in the profits earned in the production of movies. Based on the assurance of A.1, she paid a sum of Rs.7.62 crores to the accused. It is further alleged that after receiving the amount, A.1 avoided her and that on 29.09.2010 A.1 and A.2/petitioner executed GPA in favour of husband of the *de facto* complainant. Subsequently, on further verification with the sub-Registrar, she came to know that A.1 had taken money from number of persons by promising to register the said land and avoided them. It is further alleged that A.1 attempted to transfer the property without her knowledge with a view to cheat and to cause wrongful loss to her. While so, on 10.10.2010 she was invited to the office of A.1 and when she went there, A.1 introduced A.3 and one Maddalacheru Suri, there A.3 and the said Suri warned her to forget the amount, otherwise, they have power to eliminate them. Basing on these allegations, the police registered the crime for

the offence punishable under Sections 406, 420 and 506 read with 34 of the Indian Penal Code, 1860 (for short 'I.P.C.') and issued F.I.R.

The main contention of the counsel for the petitioner is that A.1 transferred three plots worth Rs.3 crores and paid balance amount and that the allegations made in the report would not constitute any offence much less an offence punishable under Sections 406, 420 and 506 I.P.C. It is also further contended that the petitioner only accompanied A.1 at the time of borrowing the amount and she did not borrow any amount from the *de facto* complainant and she was enroled with the offences punishable under Sections 406, 420 and 506 I.P.C. without any basis. Even if the allegations made in the charge sheet are taken on its face value coupled with the statements recorded by the police under Section 161(3) Cr.P.C., no allegation would constitute any offence and requested this Court to quash the proceedings.

Sri P.Nagendra Reddy, learned counsel for the petitioner mainly contended that the petitioner/A.2 is nothing to do with the land transaction except accompanying with her husband and that the petitioner did not receive any amount, and mere accompanying with her husband to make a request to lend amount would not constitute an offence and prayed to quash the proceedings against the petitioner/A.2.

He also brought to the notice of this Court to the Order dated 28.07.2014 in CrI.P. No.8206 of 2014, whereby this Court dismissed similar application filed for quashing the proceedings in C.C.No. 538 of 2011 on the same ground. But in the appeal, the Hon'ble Supreme Court granted liberty to take steps, if advised, while permitting the petitioner to withdraw and basing on the liberty given by the Hon'ble

Supreme Court, the petitioner renewed her request for the same relief, which she claimed in the earlier Criminal Petition and that filing of criminal petition is not barred by any law and prayed to quash the proceedings against the petitioner in C.C. No.538 of 2011.

Sri.M.S.Srinivasa Iyyangar, learned counsel for the second respondent contended that when the petitioner lost her claim in the earlier CrI.P.No.8206 of 2014, which is affirmed by the Hon'ble Supreme Court, while permitting to withdraw the petition, she is not entitled to renew the same request, granting liberty to take such steps, if advised, while dismissing the petition as withdrawn would not give rise to a fresh cause of action, and therefore, he is not entitled to file claim in this petition.

In view of rival contentions, the main point to be decided by this Court is, whether the petitioner is entitled to renew her request for the same relief when the earlier petition was dismissed by this Court in CrI.P. No.8206 of 2014, which was carried in appeal and withdrawn, before the Hon'ble Supreme Court.

It is an undisputed fact that CrI.P.No.8206 of 2014 filed by the petitioner was dismissed by this Court and the same was challenged before the Hon'ble Supreme Court, but it was dismissed as withdrawn with a liberty to take such steps, if so advised. But the relief claimed in the earlier criminal petition and the present petition are identical. When this Court once made it clear that the petitioner is not entitled to claim relief under Section 482 to quash the proceedings in C.C. No.538 of 2011, on the same ground the petitioner cannot renew her request. Though the Apex Court granted liberty to take such steps if so advised, that does not mean that the petitioner can renew her request by filing any number of applications.

Even though the principle of *res judicata* has no application to the criminal proceedings, when a petition is filed and failed to obtain favourable order, filing similar application on the same ground is barred.

In **State of Orissa v. Ram Chander Agarwala and Ors.**¹, the Apex Court held that filing of fresh petition amounts to review of the earlier order in view of bar under Section 362 Cr.P.C. In the facts of the above judgment, the accused was found guilty, convicted and sentenced to undergo imprisonment besides directing to pay fine amount, thereafter the accused filed a petition under Section 482 Cr.P.C. to quash the order, wherein the Apex Court held that it amounts to review of the order, which is barred under Section 362 Cr.P.C., which provides that save as otherwise provided by the Code or by any other law no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. If the principle is applied to the present facts of the case, the petitioner is not entitled to seek relief under Section 482 Cr.P.C. having lost his earlier round of litigation in CrI.P.No.8206 of 2014. Similarly, the Apex Court in **Hari Singh Mann v. Harbhajan Singh Bajwa and Ors.**² the Apex Court held that filing of criminal petition under Section 482 Cr.P.C. after dismissal of earlier application would amount to review of the order and the petition under Section 482 Cr.P.C. when finally disposed of by the High Court, no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. This principle is directly applicable to the present facts of the case.

¹ AIR 1979 SC 87

²2000(3) ACR 2678 (SC)

In **Girraj v. State of N.C.T. of Delhi & Ors.**,³ a similar question came up before the Delhi High Court, wherein the Delhi High Court also consistently held that second petition for the same relief under Section 482 Cr.P.C. is not maintainable.

In **P.Anji Babu v. Government of Andhra Pradesh and Ors.**,⁴ this Court had an occasion to deal with identical issue, where a petition was filed under Section 482 Cr.P.C. to quash the proceedings and invited adverse order to the petitioner therein and later filed a writ petition to quash the proceedings on the same grounds, but this Court took a view that when the petitioner lost his case under Section 482 Cr.P.C., he could not renew his request under Article 226 of the Constitution.

If these principles are applied to the present facts of the case, this Court cannot exercise power under Section 482 Cr.P.C. in the present petition, since it amounts to review of the order passed by this Court in the earlier petition.

Hence, I find that this petition is not maintainable at this stage, however the petitioner/A.2 is at liberty to raise the contentions before the trial court. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt.27.06.2018
BV

³ 2012(4) JCC 2292

⁴ 2013(2) ALD (Cri.) 919