

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

**Crl.P. No.7624 OF 2018**

**ORDER:**

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in Crime No.134 of 2018 of A.S.Nagar Police Station, Vijayawada City, Krishna District, registered for the offences punishable under Sections 376, 420, 323, 506 read with 34 IPC.

The 2<sup>nd</sup> respondent lodged written report with the police. The said written report is extracted as it is hereunder:

*"I resides above said address along with my family i.e. two children and husband. My husband is doing agriculture. I with the funds received from my parents doing finance business for my children education around two years back Pabbireddy Devendra took Rs.10,000/- loan and returned the same with that acquaintance he suggested me that this business is not fruitful and suggested me to invest on land I accepted for the same one day he showed me a plot which cost Rs.1 crore and ask me to give the money and gold which having with me I gave 70 sovereigns I gave the amount in the presence of Laxmi and Madhu whenever I am asking for registration he was postponing the same one day I was at home accused made her to believe that if she agrees to have sex with him he would return case and gold ornaments within 10 days in the month of September, 2016 he came to my place and committed rape on me it was repeated for five to six times since then he is postponing the issue where as this instance took place at Gulabi Thota where we resided till 2017 April I shifted to Andhra Prabha Colony where my parents resides on 18.02.2018 said Devendra when I questioned him seriously for the return of amounts and threatened with knife if I complaint before the police he will kill my children in the evening around 5.00 PM when I went to his place to ask the amount he threatened to kill me when I threatened I will complaint against you and came back to home said Devendra his sister Ramani wife Raji and his mother Nagamani followed me where as Shravani and Nagamani holded my hair and beat miserably where as Rajitha kicked me with legs.*

*Therefore, I request the concerned authority to take appropriate action against the accused for cheating me and taking Rs.40 lakhs and 70 sovereigns gold and for attempting rape on me and his family members sister Shravani wife Rajitha and mother Nagamani for the offence committed by them, I have life threat from them I request protection from*

*Devendra and also collect the amounts of Rs.40 lakhs and 70 sovereigns gold form him I beg your sincerely."*

On the strength of the written report, the police registered the above crime.

The present petition is filed to quash the proceedings on the ground that there is abnormal delay of 2 years after commission of alleged offence and no details were given in the written report lodged with the police and details of amount etc were also not disclosed in the complaint to attract the above offences and that it is nothing but abuse of process of law and requested to quash the proceedings.

During hearing, learned counsel for the petitioner vehemently contended that the allegation of enjoying the 2<sup>nd</sup> respondent sexually for five to six times in the month of September, 2016 do not constitute offence punishable under Section 376 IPC and this fact is not supported by any material and delay was not explained in the complaint.

Learned Public Prosecutor opposed the petition as the proceedings at this stage cannot be quashed when investigation is not yet commenced.

As seen from the allegations made in the complaint, the petitioner enjoyed sex with the 2<sup>nd</sup> respondent for six times against her consent in the month of September, 2016 and failed to pay the amount due to her and thereby the petitioner allegedly committed above offences. Undoubtedly, there is delay in lodging the report as the incident took place in the month of September, 2016, the complaint was lodged on 22.03.2018. Since the family prestige is involved in such crime, there is possibility of lodging the report with some delay and therefore, the delay itself is not a ground for quashing the complaint. If the delay is explained by the prosecution during trial, the same is of inconsequential, and the Court can record conviction of

the accused. Hence, the delay is absolutely nothing to do for quashment of the proceedings.

Enjoying sex for six times against the will of the petitioner would constitute offence punishable under Section 376 IPC and according to Section 114-A of the Indian Evidence Act presumption as to absence of consent in certain prosecutions for rape. In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. There is a presumption that the accused committed an offence when the victim women entered into witness box and testified that the accused committed rape on her or had sexual intercourse against her will. The presumption is rebuttable. However, at the stage of crime, the investigation is not yet commenced, the proceedings cannot be quashed.

The main contention of learned counsel for the petitioner is that there are no details in the complaint that enjoying sex for six times indicates that it is a consensual intercourse. But such question cannot be decided at this stage when the investigation is not yet commenced. Moreover, the allegations made in the report disclose that the petitioner enjoyed sex by using force and such act would fall within the definition of Section 375 IPC, *pima facie*.

The Apex Court **State of Haryana v Bhajanlal**<sup>1</sup> laid down the following seven guidelines:

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<sup>1</sup> 1992 Supp(1) SCC 335

*“(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.”*

Moreover, in the judgment of the Apex Court in **State of Orissa v. Saroj Kumar Sahoo**<sup>2</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

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<sup>2</sup> (2005) 13 SCC 540

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.

Similarly 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

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

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.

If the above principles are applied to the present facts of the case, when the investigation is not yet commenced after registration of crime, when the facts are incomplete and hazy, the Court cannot quash the proceedings. Hence, I find no ground to quash the proceedings and merely because the report lodged with the police do not contain minute details, this Court cannot exercise such power to set the criminal law into motion and it is not encyclopedia of facts.

Accordingly, the criminal petition is dismissed.

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

**M.SATYANARAYANA MURTHY,J**

23.07.2018  
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