

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.7714 OF 2018

ORDER:

This petition is filed, under Section 482 CrPC, to quash the proceedings against the petitioner, who is A2 in Crime No.108 of 2018 on the file of Bhattiprolu Police Station, Guntur District, registered for the offences punishable under Sections 363 and 511 r/w 34 IPC.

2. Respondent No.2 lodged a report alleging that the marriage of this petitioner with his daughter Puttagunta Deepthi was performed on 15.06.2015 and they lived happily for some time and blessed with a child, who is named as Sandesh Chowdary, who is now aged two years. A Divorce case was pending before the Court of Principal District Judge. It is also alleged that due to the harassment, she lodged a report with the police, which is pending for investigation. While all the cases are pending, the petitioner-son-in-law of the *de facto* complainant and his parents, at the instigation of this petitioner, tried to kidnap Sandesh Chowdarya and as a part of this conspiracy, Chilumuri Srilatha, W/o.Chilumuri Sivaiah came to the house on 14.06.2018 at about 12:00 PM and on the pretext of taking blood samples, though he was not suffering from any ailments and she came to the house only with an intention to kidnap the child and to handover the child to this petitioner.

3. Based on the above complaint, Crime No.108 of 2018 was registered for the offences punishable under Sections 363 and 511 r/w 34 IPC and issued FIR.

4. The present petition is filed on the ground that the petitioner is ex-servicemen, now working in Defence Research & Development Laboratory (DRDL), Kanchanbagh, Hyderabad. On the relevant date i.e., on 14.06.2018 at 12:00 Noon, he is working in the DRDL as a constable and his presence at the scene of offence can be ruled out and a certificate dated 18.07.2018 was issued by the competent authority. On the strength of this certificate, he contended that he was on duty on the relevant date and time of offence and, therefore, there cannot be any involvement in crime and the crime registered against this petitioner is an illegality and prayed to quash the proceedings against this petitioner.

5. Admittedly, the petitioner raised a plea of alibi and according to Section 11 of the Indian Evidence Act, 1872, the facts not otherwise relevant are relevant- (1) if they are inconsistent with any fact in issue or relevant fact; (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. Therefore, to improbabilise his presence at the scene of offence on the relevant date and time, he is entitled to adduce evidence though not relevant or inconsistent with the fact in issue to establish that he was away from the scene of offence and that he was not present at the

scene of offence on the relevant date and time of occurrence. Therefore, when the plea of alibi is raised, which is purely a question of fact, it has to be established either by eliciting any fact in the cross-examination of prosecution witnesses or by adducing independent evidence. Since it is a disputed question of fact and based on such plea, the proceedings against this petitioner cannot be quashed.

6. However, the allegation made in the complaint is very specific that at the instigation of this petitioner, his parents made an attempt to kidnap the son of the petitioner. It is not the case of the 2nd respondent that he was also present at the time of offence to kidnap the child i.e., Sandesh Chowdary. Therefore, the improbability of his presence at the time of occurrence on the relevant date and time is not relevant for the present in this case. Based on the plea of alibi, the court cannot quash the proceedings exercising power under Section 482 CrPC since it is a disputed question of fact. The power under Section 482 CrPC is limited and this court can exercise inherent power under Section 482 of Cr.P.C. only to give effect to the orders under this code, or to prevent abuse of process of the court or to secure the ends of justice and should not be exercised to stifle a legitimate prosecution.

7. The Apex Court has laid certain principles on the basis of which High Court has to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or

otherwise to secure the ends of justice and relied on “State of Orissa and anr. V. Saroj Kumar Sahoo¹” and “*Kurukshetra University v. State of Haryana*²”. At best, the court in a petition filed under Section 482 CrPC has to find out from the complaint or the charge sheet whether those allegations would constitute an offence punishable under any of the penal provisions. Similarly, the apex court in *Umesh Kumar vs. State of AP*³ has laid down a principle similar to the State of Orissa’s case.

8. In view of the law declared by the apex court in catina of judgments (supra), I find this is not a fit case to exercise inherent power under Section 482 CrPC, at this stage, since the facts are incomplete and hazy and the entire evidence is not collected. Even otherwise, the plea of alibi is a disputed question of fact that has to be proved by adducing evidence and such evidence is relevant under Section 11 of the Evidence Act.

9. In view of the foregoing discussion, I find no merits in the petition.

10. Accordingly, the Criminal Petition is dismissed at the stage of admission. As a sequel, the miscellaneous applications, if any, shall stand closed.

11. At this stage, Sri Solomon Raju Manchala, counsel for the petitioner, requests this court to issue a direction to follow the procedure under Section 41A Cr.P.C. and when this court refused

¹ (2005) 13 SCC 540

² (1977) 4 SCC 451

³ 2013(1) SCC 591

to issue such direction since it is the duty of police to follow the same in view of guidelines in “*Arnesh Kumar v. State of Bihar*⁴”, the counsel contended that the Judge has taken oath of office as per the Constitution of India and violating the oath and passed the order.

12. The aforesaid allegation made across the Bench directly constitutes contempt and, therefore the Registry is directed to issue contempt proceedings against Sri Solomon Raju Manchala, counsel for the petitioner.

13. At this stage, the counsel in the open court tendered unconditional apology orally. In view of the oral unconditional apology tendered by the counsel, the proceedings are withdrawn.



JUSTICE M.SATYANARAYANA MURTHY

July 24, 2018
LMV

⁴ (2014) 8 SCC 273