

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8071 of 2018

ORDER:

This petition is filed under section 482 Cr.P.C. to quash the proceedings in Cr.No.256 of 2017 of Malkajgiri Police Station, Rachakonda Commissionerate, registered for the offence punishable under section 420 IPC.

The petitioner is the sole accused. Respondent No.3 is the *de facto* complainant, who lodged a written report, dated 08.04.2017 with the Inspector of Police, Malkajgiri, alleging that while he was working in Lepra Society, he developed acquaintance with this petitioner, who is working along with him in the same society, and she made a promise that she will get allotment of house under Rajiv Gruha Kalpa Scheme and insisted him for payment of Rs.1,20,000/- and she also furnished a Photostat copy of allotment letter. Accordingly, the *de facto* complainant allegedly paid Rs.1,20,000/- to the petitioner, who is resident of House No.17-303/9, Flat No.3, Hill Top Colony, Mahendra Hills, Secunderabad on 10.01.2010. On receipt of the amount, the petitioner assured that she will handover the house patta within one month. She also handed over a Xerox copy of assignment to respondent No.3 on 08.04.2010. Thereafter, she resigned to her job and disappeared. But on enquiry, the *de facto* complainant came to know that the copies of documents furnished by the petitioner are fake documents. Based on the written report lodged by the *de facto* complainant, the police registered a case in Cr.No.256/2017 of Malkajgiri Police Station for the offence punishable under Section 420 IPC.

The present petition is filed to quash the proceedings on the ground that the petitioner has not committed any offence whatsoever and that the allegations made in the complaint do not constitute any offence punishable under Section 420 IPC, besides that the Station House Officer, Malkajgiri P.S had no territorial jurisdiction and that respondent No.3 did not produce any paper evidencing payment of Rs.1,20,000/- to the petitioner for allotment of house under Rajiv Gruhakalpa Scheme. In the absence of any material, based on fake material produced by the *de facto* complainant, the police cannot investigate the offence and prays to quash the proceedings.

During hearing, Sri G.Seshadri, learned counsel for the petitioner, reiterated the contentions, mainly stressing on the jurisdiction aspect of the Malkajgiri Police Station to investigate into the matter when the amount is allegedly paid at the residence of the petitioner in Mahendra Hills, within the jurisdiction limits of Tukaram Gate Police Station and for the lack of jurisdiction, the proceedings are liable to be quashed.

The Additional Public Prosecutor, representing the State of Telangana, supported the case of respondent No.3.

As seen from the material on record, more particularly the written report lodged with the police on 08.04.2017, the petitioner and respondent No.3 were working in Lepra society and they had acquaintance with each other and on the promise allegedly made by the petitioner to get allotment of a house under Rajiv Gruhakalpa Scheme, subject to payment of Rs.1,20,000/- for such allotment, the petitioner allegedly paid Rs.1,20,000/- to the petitioner on 10.01.2010 at her residence, House No.17-303/9, Flat No.3, Hill Top Colony, Mahendra Hills,

Secunderabad. Therefore, the petitioner allegedly paid Rs.1,20,000/- at Mahendra Hills, which is within the jurisdiction limits of Tukaramgate Police Station. But the report was lodged with Malkajgiri Police Station, where no part of cause of action for the offence occurred, in such a case, there is duty cast upon the Station House Officer, Malakajgiri to see as to whether any part of cause of action arose within the territorial jurisdiction limits of Malkajgiri P.S, and if no part of cause of action arose within the territorial jurisdiction of Malakajgiri Police Station limits, the course open to the Court to forward the report to the concerned police to investigate into. On the ground of lack of jurisdiction to investigate by the Malakajgiri Police, the proceedings against the petitioner cannot be quashed. Even assuming that entire cause of action arose within the territorial jurisdiction limits of Tukaram Gate Police Station and not within the jurisdiction of the Malakajgiri Police Station, on this ground also, the proceedings cannot be quashed against the petitioner.

Other contention raised before this court is that no piece of paper is produced to substantiate the claim of respondent No.3, evidencing receipt of the payment of Rs.1,20,000/- by the petitioner for getting allotment of house under Raviv Gruhakalpa Scheme. When the act of the petitioner itself is illegal act, as alleged by the *de facto* complainant, and in such circumstances, she is not supposed to pass any receipt acknowledging the receipt of amount towards bribe for allotment of house under Rajiv Gruhakalpa Scheme. Therefore, respondent No.3 is not expected to produce any documentary proof evidencing payment of Rs.1,20,000/- and it is for the police to investigate into. The complaint disclosed information about the commission of cognizable offence.

Therefore, on the ground of failure to produce any documentary proof along with the complaint, the proceedings cannot be quashed, since such evidence can be collected during investigation by the police after registration of crime. Hence on the ground of non-production of material along with complaint, the proceedings cannot be quashed.

The other contention raised by the learned counsel for the petitioner during the arguments that the incident took place in the year 2010 whereas the complaint is lodged in the year 2017 and there is substantial delay of more than 7 years from the alleged offence till the date of lodging the report. But on this ground of delay also, the proceedings cannot be quashed at this stage. Hence, none of the grounds alleged in the petition to exercise power under Section 482 Cr.P.C to quash the proceedings at the threshold.

First Information Report is only a information to the police about commission of cognizable of offence to set the criminal law into motion and need not contain minute details of the role played by the petitioner. Basing on the contention that the complaint is bereft of details, the proceedings cannot be quashed at the threshold when the investigation is at the fetus stage.

In *Kurukshetra University v. State of Haryana*¹, 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

¹ AIR 1977 SC 2229

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.”

The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise power only to implement the order passed by this Court to prevent abuse of process of Court or to meet the ends of justice. The Apex Court in *State of Orissa v. Saroj Kumar Sahoo*² 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 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.

In view of the law declared by the Apex Court, this Court cannot exercise its inherent jurisdiction to quash the proceedings to stifle the legitimate prosecution 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. Therefore, I have no hesitation to hold that

² (2005) 13 SCC 540

the criminal petition is devoid of merits and the same is liable to be dismissed at the stage of admission.

However, the Station House Officer, Malkajgiri is directed to investigate as to whether any part of cause of action arose within its territorial jurisdiction, if no part of cause of action arose within its territorial jurisdiction, the Station House Officer, Malkajgiri Police Station is directed to forward the report of the *de facto* complainant to the competent jurisdiction Police Station to investigate into the offence, in accordance with law.

With the above directions, the Criminal Petition is dismissed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 01.08.2018
Dsr

M.SATYANARAYANA MURTHY,J

