

THE HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.8159 of 2018

ORDER:

This Criminal Petition, under Section 482 of Cr.P.C., is filed to quash the proceedings against the petitioners – accused in C.C.No.368 of 2017 pending on the file of the Judicial Magistrate of First Class, Adoni, Kurnool District, registered for the offences punishable under Sections 363, 323 and 324 read with Section 34 of IPC, on various grounds.

2. The 2nd respondent lodged a report with the police alleging that on 09.04.2017 when he was waiting for an auto at Auto Stand near N.G.O's Colony, to go to a book stall near Municipal office to purchase note books to his younger daughter, accused Nos.2 to 4 kidnapped him in an auto by tying his legs and hands and gagging his mouth and shifted him to the house of accused No.1 in Bandimotu, Adoni Town, where accused No.1 beat him on his chest with an iron rod and accused Nos.2 to 4 beat him with hands and fisted blows indiscriminately, caused bleeding injuries. It is also alleged that the accused demanded the 2nd respondent to put his signature on the papers pertaining to house dispute of Devendramma, who is the wife of the 2nd respondent, and therefore requested to take necessary action against the accused. Based on the complaint, SHO of Adoni III Town Police Station registered a case in Crime No.39 of 2017 for the offences punishable under Sections 366, 323 and 324 read with Section 34 of IPC and issued FIR. Later, the Investigating Agency took up investigation, examined L.Ws.1 to 6 and recorded their statements, collected medical certificate from L.W.6 – Dr. B. Ibrahim, visited the scene of offence, prepared rough sketch and filed the charge sheet, having come to the conclusion that there is *prima facie* material to proceed against the

petitioners for the offences punishable under Sections 363, 324 and 324 read with Section 34 of IPC.

3. The petitioners filed this petition on the ground that the allegations made in the charge sheet do not constitute the offences alleged. They contend that on the date of the alleged incident, Accused No.4 appeared for Ph.D examination at Anantha Lakshmi Institute of Technology & Sciences near S.K. University, Itikalapalli, Anantapuram and, thereby, the question of his appearance at the time of incident is improbable. Similarly, accused No.3, who is a Drain Cleaner in Adoni Municipality, was on the duty on the date of the alleged incident on 09.04.2017. In support of their contention, the petitioners produced the result sheet of Phd.D examination of accused No.4 and also the certificate of attendance of accused No.3 to duty in Adoni Municipality as a drain cleaner on the alleged incident and, hence, requested this Court to quash the proceedings against the petitioners.

4. Accused Nos.3 and 4 set up a plea of alibi and the probability of their appearance at the time of commission of offence at a particular place and time of offence is a question of fact and the petitioners/ accused Nos.3 and 4 are entitled to adduce evidence admissible under Section 11 of the Indian Evidence Act, though, the facts about their appearance at a different place on the alleged date of incident are not consistent to the fact in issue. Therefore, the plea of alibi is a pure question of fact and it is for the petitioners/ accused Nos.3 and 4 to prove that there is no possibility of their commission of offence at a particular time in view of their engagement at different places. Hence, based on the plea of alibi, which is purely a question of fact, the proceedings against accused Nos.3 and 4 cannot be quashed.

5. It is contended by learned counsel for the petitioners that the auto driver was not examined as a witness and the auto was also not seized by the Investigating Officer during the course of investigation and the iron rod, which is used in the commission of offence by accused No.1 in beating the 2nd respondent on his chest, was also not seized thereby failure of the Investigating Officer to seize the auto and iron rod used in the commission of offence is fatal to the case of the prosecution.

6. But, at the stage of deciding an application under Section 482 of Cr.P.C, the jurisdiction of this Court is limited and this Court cannot examine the facts in detail in view of the law declared by the Apex Court in *Mrs. Dhanalakshmi vs. R. Prasanna Kumar & Ors.*¹ Similarly, in another judgment of the Apex Court in *Umesh Kumar v. State of Andhra Pradesh*², it was held by the Apex Court that the extraordinary power under Section 482 Cr.P.C 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 proceeding 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. In view of the law laid down by the Apex Court, this Court, while exercising power under Section 482 of Cr.P.C, cannot examine in detail the material produced before the Court and appreciate the evidence, but the Court can evaluate the material on record to come to a definite conclusion while exercising such power.

¹ AIR 1990 SC 494

² AIR 2014 SC 1106

7. The contention raised by the petitioners before this Court about the failure of the Investigating Officer to examine the auto driver and also failure to seize the auto and iron rod used in the commission of offence are questions depending upon appreciation of evidence, but not evaluation of material. Therefore, these aspects cannot be taken into consideration at this stage while deciding the petition under Section 482 of Cr.P.C.

8. The power of this Court under Section 482 of Cr.P.C is limited and this power can be exercised only to give effect to the orders passed by this Court to prevent the abuse of process of Court or to meet the ends of justice, notwithstanding anything contained in any of the provisions of Cr.P.C. The scope of Section 482 of Cr.P.C was time and again discussed in catena of perspective pronouncements of the Apex Court and in a classic judgment of the Apex Court in *State of Haryana v. Bhajan Lal*³, seven guidelines were laid down and they are as under:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) where the uncontroverted 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;

³ 1992 Supp. (1) SCC 335

(d) 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;

(e) 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;

(f) 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;

(g) where a criminal proceeding is manifestly attended with malafide 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. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justification and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished.

In view of the aforesaid guidelines, the Court can exercise power under Section 482 Cr.P.C and quash the proceedings only 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 cognizable offence or that the complaint or the charge sheet is mala fide and that the proceedings are initiated to wreck vengeance against the accused and with a view to spite him due to private and personal grudge. But, in the present case, the allegations made in the

charge sheet coupled with the statements recorded under Section 161 Cr.P.C recorded by the Investigating Officer during investigation *prima facie* disclosing material pointing out the complicity of the petitioners for the offences punishable under Sections 363, 323 and 324 read with Section 34 of IPC. Therefore, in such circumstances, the proceedings against the petitioners cannot be quashed. However, it is left open to the petitioners to raise plea of alibi during trial and these observations will have no bearing on the decision of the main case.

9. In the result, the Criminal Petition is dismissed.

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

02.08.2018
v v



M. SATYANARAYANA MURTHY, J