

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8729 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, is filed by the petitioners/A-1 to A-3 to quash the proceedings in C.C. No.311 of 2018, on the file of the Court of Judicial First Class Magistrate, Pithapuram, East Godavari District (For short, the trial Court'), registered for the offences punishable under Sections 448, 354, 323 and 506 R/w. 34 of I.P.C.

2. The allegations in the complaint are that on 06.05.2018 at 12:00 noon when the *de-facto* complainant is in her house at Yendapalli village, the petitioners came to her house in a Swift car, knocked the doors of the *de-facto* complainant forcibly and when she opened the doors, the petitioners trespassed into her house, picked up quarrel with her by raising loud cries and A-1 caught hold of tuft of hair of *de-facto* complainant and dragged her out, A-2 pushed her and kicked with legs and A-3 raised cries against her, pushed her aside and assaulted her with hands and legs and insulted her in public view and thereby outraged her modesty. On hearing the cries of *de-facto* complainant, one Vanka Padma, who is her daughter, and one Reddipalli Veerraju, her neighbour, rescued her. Thus, the petitioners allegedly committed the offences and on the basis of report given by *de-facto* complainant, a case in Crime No.71 of 2018 was registered by U.Kothapalli P.S., took up investigation, and recorded the statements of witnesses under Section 161 of Cr.P.C. and after collection of evidence concluded that there is *prima-facie* material to proceed against the petitioners for the aforesaid offences, filed charge sheet against the petitioners. At this stage, the petitioners filed this Petition to quash the proceedings in C.C. No.311 of 2018 on the ground that the 1st

respondent herein lodged the report with the Police as a precautionary measure in anticipation of lodging complaint by the petitioner/A-3 for the offences under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act. The son of the de-facto complainant married 3rd petitioner/A-3 and the allegations made in the charge sheet do not disclose the commission of any cognizable offence and prayed to quash the proceedings.

3. During course of hearing, learned counsel for the petitioners reiterated the grounds urged in the Petition and requested, at least, to dispense with the appearance of the petitioners 1 and 2, who are old age persons.

4. The allegations made in last Para of 1st page and 1st Para of 2nd page of the charge sheet discloses the role played by each petitioner and the allegations made against the petitioners would constitute the offences under Sections 448, 354, 323 and 506 R/w.34 of I.P.C.

5. The basis for making such allegations is the statements recorded by the Police under Section 161(3) of Cr.P.C. during investigation. The de-facto complainant in her 161 Cr.P.C. statement categorically narrated about the incidents and role played by each of the petitioner and the said fact is supported by the statements of Vanka Padma, who is her daughter, and also Reddipalli Veerraju, neighbour. Therefore, the allegations made in the charge sheet are based on the statements recorded by the Police during course of investigation under Section 161(3) Cr.P.C. Though the same is not a substantive piece of evidence, this Court has to consider whether the allegations made in the charge sheet constitute the offences under Sections 448, 354, 323 and 506 R/w.34 of I.P.C.

6. The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

7. The law is settled on the powers as to when such inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various perspective pronouncements of the Apex Court. The leading case on this aspect is ***State of Haryana Vs. Bhajanlal***¹, wherein the Apex Court laid down the following seven guidelines:

“(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

¹ 1992 Supp.(1) SCC 335

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.”

8. In ***R.P. Kapur Vs. State of Punjab***², this Court laid down the following principles:

“(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

9. In ***(Mrs.) Dhanalakshmi Vs. R. Prasanna Kumar and others***³, the Apex Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

² AIR 1960 SC 866

³ AIR 1990 SC 494

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is *mala fide*, frivolous or vexatious. in that event there would be no justification for interference by the High Court.”

10. In ***State of Karnataka Vs. L. Muniswamy and Others***⁴, the Apex Court while considering scope and jurisdiction of the High Courts, under Section 482 Cr.P.C, held as under:

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere

⁴ AIR 1977 SC 1489

law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

11. As per the guidelines laid down by the Apex Court in **Bhajanlal**¹, Where the allegations made in the first information report or the complaint, 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, the Court can exercise its inherent power under Section 482 Cr.P.C. to quash the proceedings.

12. Similarly, when the Court concluded that 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, the Court can exercise such power under Section 482 Cr.P.C.

13. In the present facts of the case, statements of 1st respondent-de-facto complainant, coupled with the statements of Vanka Padma and Reddipalli Veerraju - LWs.2 and 3, are sufficient to *prima-facie* conclude that the petitioners committed the aforesaid offences to proceed further.

14. Where the inherent power of this Court is limited, this Court need not minutely examine the case of the petitioners and decide whether they committed any offence while exercising power under Section 482 Cr.P.C. in view of the law declared by the Apex Court in **Dhanalakshmi**³, **State of**

Orissa Vs. Saroj Kumar Sahoo⁵ and ***Umesh Kumar Vs. State of Andhra Pradesh***⁶.

15. In view of the law declared by the Apex Court in ***Dhanalakshmi***³; ***Ganesh Narayan Hegde Vs. S. Bangarappa and others***⁷ and ***M/s.Zandu Pharmaceutical Works Limited and others Vs. Md. Sharaful Haque and others***⁸, this Court, while deciding a petition under Section 482 of Cr.P.C, need not meticulously go into the evidence available on record, collected during investigation by the Police and if the allegations made in the charge sheet on its face value would constitute an offence, can decline quashing the proceedings.

16. In view of the law declared by the Apex Court in the decisions referred *supra*, the Court has to verify from the charge sheet and the material annexed to it and if the said material did not disclose commission of any offence on its face value, this Court can quash proceedings under Section 482 Cr.P.C. But, in this case, the 161 Cr.P.C. statements clearly point out the complicity of each of the petitioner and, more particularly, the eye witnesses who are the neighbours supported the contentions of the 1st respondent and her family members about the commission of the offences.

17. Based on the contentions raised before this Court, it is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. Therefore, keeping in mind the law laid down by the Apex Court in the decisions referred *supra*, I am of the considered view that there are no merits in the Petition and it deserves to be dismissed.

⁵ (2005) 13 SCC 540

⁶ AIR 2014 SC 1106

⁷ (1995) 4 SCC 41

⁸ AIR 2005 SC 9

18. However, during course of hearing, learned counsel for the petitioners, requested this Court to at least dispense with personal appearance of the petitioners 1 and 2 before the trial Court in C.C. No.311 of 2018 except on the dates of adjournments whenever their personal appearance is required.

19. But, this Court cannot exercise the power under Section 205 of Cr.P.C. or Rule 37 of Criminal Rules of Practice, while exercising power under Section 482 of Cr.P.C. However, liberty is given to the petitioners to file appropriate application before the trial Court and, in the event of filing such application, and after service of notice on the respondents, the learned Magistrate is directed to dispose of such application, in accordance with law, within a period of one (1) week from the date of filing such application.

Accordingly, with the above observations, the Criminal Petition is dismissed.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 20.08.2018.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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