

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.8696 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in FIR No.628 of 2018 of Banjara Hills Police Station, Hyderabad, registered for the offences punishable under Sections 370, 370(a)(ii) IPC and Sections 3, 4 and 5 of the Prevention of Immoral Traffic.

The Sub-inspector of Police, Banjara Hills, Hyderabad lodged written report on 07.07.2018 with the Station House Officer alleging that on receipt of credible information at about 16 hours one previous offender by name Ambula Janardhan Rao is organizing prostitution business at Room No.518, Radisson Blue Plaza 5 Star Hotel at Road No.6, Banjara Hills, Hyderabad. Believing the information received to be true and authentic, as there is no time to obtain search warrant from the Court and if any delay is caused there is every possibility of disappearance of evidence, he secured the presence of two mediators vizz. N.Narsing Rao S/o N.Maraiah, aged 65 years, Occ: Retired Government Employee R/o H.No.8-2-460/7, Sukh Dev Nagar, Road No.4, Banjara Hills, Hyderabad and D.Yadagiri S/o D.Swamy, aged 40 years, Occ: Read Estate Consultant, R/o H.No.8-2-460/57, Sukh Dev Nagar, Road No.4, Banjara Hills, Hyderabad and drafted search proceedings under Section 165 Cr.P.C. and also placed the said information before ACP, Banjara Hills Division, Hyderabad, who gave memo and authorized him to raid the premises, arrest the accused and seize the material evidence. As such he secured presence of K.Srikanth-SI, Mohammed Mazhar- PC 3032, and Vivek, PC 3520 and K.Malleshwari of Commissioners Task Force, WHC 8712, North Zone Team to assist him to conduct raid and proceeded to Radisson Blue Plaza Hotel and reached about 1730 hours. On being shown by the informer, they apprehended the

organizer Ambula Janardhan Rao at the Hotel and upon enquiry he revealed his identity as Ambula Janardhan Rao @ Jony S/o late A.Rama Rao, aged 46 years, Occ: Brothel Organizer, R/o Padmarao Nagar, Chilkalaguda, Secunderabad N/o Ramachandrapuram (V&M), East Godavari District. Thereupon, the *de facto* complainant disclosed the identity and purpose of visit also, served copy of search proceedings on him and obtained acknowledgment. On enquiry he admitted that he committed the commission of offence i.e. running brothel in hotel room and admitted that he along with his assistant Banothu Prashanth (Sub-organizer), has taken Room No.518 and have been running prostitution business and at present one customer and female sex worker are in the same room. The said Janardhan lead the *de facto* complainant to Room No.518 and upon knocking the door one male person opened the door and upon enquiry, he revealed his name as Amit Mahendra Sharma. The Women Head Constable rescued the lady victim sex worker, who revealed her name as Deeksha Kushawah, D/o Sarovar Singh, aged 24 years, Occ: Actress in Mumbai. Then in the presence of panchas, he recorded confessional statement cum seizure panchanama of Ambula Janardhan Rao @ Johny in which he confessed that on previous day i.e. on 06.07.2018, he procured the film actress from Mumbai by luring her that he will give Rs.1 lakh per week and sent her flight ticket and he collect Rs.10,000/- to Rs.20,000/- per session from each customer and on his directions, his assistant Prashanth picked her at Airport on 06.07.2018 and took her to the Hotel room which was booked in both their names viz. Prashanth's name and told that a lady is visiting from Mumbai, who will be the guest in that room. At the instance of the Ambula Janardhan, the Inspector of Police seized one Samsung Mobile phone and 8 kama sutra condom packets and cash of Rs.31,900/- (including Rs.10,000/- paid by the customer) in the presence of panchas and pasted signed identification slips on them. On examining, Amit

Mahender Sharma, he voluntarily confessed that he came to contact with A1 Janardhan through mediators and paid Rs.10,000/- to A1 to have sex with the victim sex worker at Room No.518, Hotel Radisson Blue. On the strength of the written report lodged by the Inspector of Police along with material documents annexed to the report, registered the above crime for the above referred offences and issued FIR.

At this stage, the petitioner approached this Court to quash the proceedings for the above crime on the ground that the petitioner being an army personnel on training at Secunderabad went to the Hotel to enjoy holiday. But he was falsely implicated, taking advantage of the film actress Deeksha Kushawah, who came from Mumbai in another room and in fact the petitioner was not found in the company of the said Deeksha Kushawah, who was in the other room and that the statements recorded by the police under Section 161(3) Cr.P.C. and the statements recorded by the Magistrate are totally contrary to each other and that she did not state anything before the Magistrate that she was trafficked women and in the absence of any material to proceed against the petitioner it would seriously affect the carrier of the petitioner and requested to quash the proceedings.

During hearing learned counsel for the petitioner reiterated the contentions raised in the petition and drawn the attention of this Court to the statement of the victim women recorded by the police and also the statements of the witnesses recorded by the Magistrate including the search proceedings states that the victim women is not a trafficked women and when she was not trafficked women, finding the petitioner in her company does not constitute any offence and requested the Court to quash the proceedings.

Whereas learned Public Prosecutor opposed the petition on the ground that the investigation is at fetus stage and at this stage, this Court

cannot exercise power under Section 482 Cr.P.C. when the facts are incomplete and hazy and requested to dismiss the petition.

As seen from the allegations made in the written report lodged with the police that the petitioner found in the company of the Deeksha Kushawah, who came from Mumbai at the instance of A1 and A2, who are organizers of prostitution allegedly obtaining Room No.518, Radisson Blue Plaza 5 Star Hotel at Road No.6, Banjara Hills, Hyderabad and seized cash of Rs.31,900/- (including Rs.10,000/- paid by the customer) and kamasutra condom packets. If these allegations are accepted on face value, it would constitute the offences *prima facie*. But learned counsel for the petitioner mostly relied on the inconsistencies in the statement of Deeksha Kushawah, recorded by the police and by the Magistrate. In the statement recorded by the Inspector of Police dated 07.07.2018, Deeksha Kushawah narrated as to how she came to Hyderabad and purpose of coming to Hyderabad i.e. to participate in prostitution on payment of rupees one lakh per week by Ambula Janardhan Rao @ Johy and also stated about her participation in the prostitution. But in the statement of the Deeksha Kushawah recorded by the Metropolitan Magistrate, she did not disclose anything about her participation while admitting that she was taken to hotel and sent her to Prajwala Rescue Home. The statement is silent with regard to her participation in the prostitution at the instance of Janardhan Rao. At this stage, this Court cannot appreciate the evidence and at best this Court can evaluate the material on record while exercising power under Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise such power sparingly in exceptional circumstances to implement the order passed under the Court or to prevent the abuse of process of the Court or to secure the ends of justice. Keeping in mind this

Court cannot examine the material minutely and express its opinion whether those allegations constitute the offence or not, when the investigation is not yet commenced, in view of the law declared by the Apex Court in **Mrs Dhanalakshmi vs. R. Prasanna Kumar & Others**¹. In **Umesh Kumar v. State of Andhra Pradesh and another**², the Apex Court 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 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.

¹ AIR 1990 SC 494

² 2013 (10) SCC 591

Therefore, this Court cannot appreciate the statements placed on record along with the petition to conclude which of the statement is true, but the confessional statement and the other material including the search proceedings would show that the petitioner along with the victim women Deeksha Kushawah were found in the room and recovered cash besides kamasutra condom packets. If really Deeksha Kushawah came to the said hotel for any other purpose, finding such material with A1 or any other would not arise and the confessional statement of A1 including statement of Deeksha Kushawah recorded by the police under Section 161(3) Cr.P.C. would show *prima facie* that she is a sex worker, participating in sex at the instance of A1.

The Apex Court in **State of Orissa v. Saroj Kumar Sahoo**³ 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. 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 record but it cannot appreciate evidence.

³ (2005) 13 SCC 540

In “**Kurukshetra University v. State Of Haryana**”⁴, 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 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.”

In view of the law declared by the Apex Court in both the judgments referred supra and when investigation is at foetus stage, this Court cannot interfere with the process of investigation and quash the proceedings by exercising inherent power under Section 482 of Cr.P.C.

Keeping in view of the limited scope of jurisdiction under Section 482 Cr..P.C. the Apex Court in **State of Haryana v Bhajanlal**⁵ 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

⁴ AIR 1977 SC 2229

⁵ 1992 Supp(1) SCC 335

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.

According to Guideline No.3 of the above judgment, when the allegations made in the complaint or charge sheet discloses commission of offence, the Court cannot exercise power under Section 482 Cr.P.C. Therefore, I find no ground to quash the proceedings at this stage and consequently, the criminal petition is liable to be dismissed.

Accordingly, the criminal petition is dismissed. However, the petitioner is at liberty to renew his request at appropriate stage.

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

M.SATYANARAYANA MURTHY,J

23.08.2018
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