THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.9003 OF 2018

ORDER:

The present Criminal Petition is filed, under Section 482 of the Criminal Procedure Code (for brevity, 'Cr.P.C.'), to quash the proceedings against the petitioner herein-A10 in S.C.No.117 of 2018, pending on the file of the Additional Assistant Sessions Judge, Tirupathi, for the offences punishable under Sections 307, 120-B and 109 r/w 34 IPC.

A perusal of the material on record discloses that the *de facto* complainant-second respondent herein lodged a report before the police alleging that the petitioner, along with the other accused, conspired together to kill the second respondent and, in pursuance of the conspiracy, they attempted to commit the murder of the *de facto* complainant-second respondent herein and that the petitioner herein also aided the other accused to commit murder of the second respondent.

On the strength of the written report, police registered a crime against the petitioner and other accused for various offences, punishable under Sections 307, 120-B and 109 r/w 34 IPC, and issued First Information Report.

In pursuance of the First Information Report, the Inspector of Police took up investigation, and, during investigation, the Inspector of Police examined as many as nine witnesses, recorded their statements, under Section 161 (3) Cr.P.C., and, after collection of the entire evidence on record, including the medical certificate etc., having concluded that there is *prima facie* material to proceed against the petitioner for various offences, referred to supra, filed charge sheet before the IV Additional District Munsif Magistrate, Tirupathi.

The District Munsif Magistrate, having concluded that it is a case triable by the Court of Sessions, exclusively followed the procedure, under Section 207 Cr.P.C., committed the case to the Sessions Court by exercising the power under Section 209 Cr.P.C.

On committal, the Principal District and Sessions Judge registered the same as Sessions Case and made over to the Additional Assistant Sessions Judge, Tirupathi for trial and disposal of the case in accordance with law.

The present petition is filed by A10 on the ground that the allegations made in the charge sheet, filed before the Magistrate, do not constitute an offence punishable under Sections 307, 120-B and 109 r/w 34 IPC and that none of the allegations made in the complaint pointing out the complicity of the petitioner in the alleged crime, but with *mala fide* intention the petitioner was enroped with the offence. Because of the activities of the *de facto* complainant against the participation of piece-rate barbers as regular employees of TTD and current activities of the kalyanakatta employees, there was a threat to the *de facto* complainant's life and, therefore, he made a representation, dated 13.12.2012, to the Superintendent of Police and, on the basis of a minor incident about causing injuries on the body of two unknown persons on the road, the petitioner-A10 was unnecessarily enroped and charge sheet was filed against the petitioner and other accused and, in the absence of any material collected, directly pointing out the involvement of the petitioner-A10 and other accused in the above offences, the prosecution against the petitioner-A10 is liable to be quashed.

Sri S.Niranjan Reddy, learned Senior Counsel, representing learned counsel for the petitioner on record, contended that the allegations made in the complaint do not constitute an offence of criminal conspiracy punishable under Section 120-B IPC and to attract such an offence there must be specific allegation that they joined together and committed the illegal act or an act which is not legal by illegal means. In the absence of such an allegation to constitute an offence of criminal conspiracy, as defined under Section 120-A IPC, petitioner herein cannot be prosecuted for the offence punishable under Section 120-B IPC.

Section 109 IPC, on the other hand, may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission.

Section 307 IPC deals with attempt to commit murder. In the entire charge sheet or during the investigation there is absolutely no allegation that the petitioner made an attempt to murder the *de facto* complainant either conspiring with the other accused or by the other accused and, in the absence of such allegation, petitioner herein cannot be prosecuted for the grave offence, punishable under Section 307 IPC, and requested to quash the proceedings against the petitioner herein.

The learned Public Prosecutor for the State of A.P. opposed the petition on the ground that the material on record is suffice to conclude that the petitioner also participated and that too, under Section 482 Cr.P.C., this Court can exercise such an inherent jurisdiction only in case when the Court finds that there is material to constitute any of the offences allegedly committed by the petitioner *prima facie* and when the Court finds specific allegation against the petitioner and the evidence collected by the investigating agency, during the investigation, directly pointing out the complicity of the petitioner, and requested to dismiss the petition at the stage of admission.

First Information Report was lodge with the police alleging that on the date of the incident i.e. on 22.08.2012 at about 3.10 p.m. near medical college playground, near BIRRD hospital, Tirupathi, A1 to A10, who are in enmical terms with the *de facto* complainant-Enukonda Subrahmanyam, beat him with hands, iron rods, wickets, indiscriminately with an intention to kill him. The accused, on receipt of credible information that the *de facto* complainant was going to meet Dr.G.Jagadeesh, Director of BIRRD hospital, at the said hospital at about 3.00 p.m., on 22.08.2012, as per the directions of A1, A4 and A11 to A15 went to the playground of S.V. Medical College near BIRRD hospital, Tirupathi at about 2.40 p.m. and waited for arrival of the *de facto* complainant. At about 3.10 p.m., A4 and A12, who are well known to the *de facto* complainant, on noticing the *de facto* complainant proceeding on his scooter towards the hospital, shown the *de facto* complainant to A13 to 15 and, accordingly, A13 to A15, who are armed with cricket stumps, taking advantage of the situation that the *de facto* complainant was alone proceeding in an isolated place, attacked the *de facto* complainant, beat him with cricket stumps indiscriminately with an intention to kill him and caused severe bleeding injuries due to the enmity regarding the recruitment of barbers at Kalyanakatta, Tirupathi.

The specific allegations made against the accused in the charge sheet are clear that A1 to A9, A11 and A12 waited for an opportunity to get rid of the *de facto* complainant, by watching his movements, and, on 22.08.2012, the accused, on receipt of credible information that the *de facto* complainant was going to meet Dr.G.Jagadeesh, Director of BIRRD hospital, at the said hospital at about 3.00 p.m., on 22.08.2012, as per the directions of A1, A4 and A11 to A15 went to the playground of S.V. Medical College near BIRRD hospital, Tirupathi at about 2.40 p.m. and waited for arrival of the *de facto* complainant and at about 3.10 p.m., A4 and A12, who are well known to the *de facto* complainant, on noticing the *de facto* complainant proceeding on his scooter towards the hospital, shown the *de facto* complainant to A13 to 15 and, accordingly, A13 to A15, who are armed with cricket stumps, taking advantage of the situation that the *de facto* complainant was alone proceeding in an isolated place attacked the *de facto* complainant, beat him with cricket stumps indiscriminately with an intention to kill him, as a result the *de facto* complainant sustained bleeding injuries on his head and fell down on the ground. Immediately he raised cries and A13 to A15 escaped from the place. The charge sheet further discloses the role played by A4 and A11 to A15 in commission of the offence.

Based on the allegations and the material collected during investigation, though no offence was made out by the prosecution, the police filed the charge sheet before the Magistrate for various offences referred to supra.

The main endeavour of the learned counsel for the petitioner is that there is absolutely no allegation to constitute the offence punishable under Section 120-B IPC so also under Sections 109 IPC and 307 IPC. Obviously, it is clear, as per the allegations made in the charge sheet, that A13 to A15, with the aid of A1, A11, A4 and A12, caused injuries on the body of the second respondent-*de facto* complainant with cricket stumps. The participation of this petitioner-A10 was not stated in the entire charge sheet except making an allegation that he conspired. Even to accept this contention, in the second part of the charge sheet, a specific allegation is made that A1 to A9 and A11 and A12 conspired together and decided to get rid of the *de facto* complainant-second respondent. Accordingly, as per the directions of A11, A13, brother-in-law of A11, arranged A14 and A15 to eliminate the *de facto* complainant-second respondent herein. If this allegation is accepted, there is nothing to conclude that this petitioner also conspired with the other accused. More curiously, in the first paragraph of page No.6 of the charge sheet i.e. continuation of page No.6, it is clear that A4, A12 to A15 escaped from the place. Since all the accused are absconding, but the alleged 10th accused-Balaji, indulged in the offence, police filed the charge sheet against this petitioner for various offences though the charge sheet itself discloses that he did not participate in commission of the offence.

When I advert to the statement of the *de facto* complainant, recorded under Section 161 (3) Cr.P.C., he stated that, as he approached the High Court contending that this petitioner and other persons, belonging to Piece-Cut barbers, Barber employees, ex-leaders, were committing illegal acts, they hatched a plan to kill him, but at the end of the statement, it is stated that only three persons participated in causing injuries near medical college playground but he suspected that the petitioner herein-Dy.E.O., Kalyanakatta conspired together to commit murder of the *de facto* complainant–second respondent. Similarly, L.W.2, the driver of the auto, stated to the Investigating Officer that three persons attacked the second respondent and caused injuries with cricket stumps both on the head and other parts of the body. L.W.3 did not state anything against the petitioner but L.W.4 stated that he heard sounds from the road side and noticed an auto reaching the scene of offence and found the second respondent with bleeding injuries over the body and later, he came to know that due to enmity three persons caused injuries with cricket stumps. L.W.5-Sri G.Jagdish stated that he came to know about the incident.

Except the statement of L.W.1-the second respondent, no other witnesses stated about the participation of this petitioner, directly or indirectly. Even if the allegations made in the charge sheet, coupled with the statements recorded by the police, are accepted, petitioner did not involve in the commission of an offence punishable under Section 307 IPC, but the contention of the learned Public Prosecutor is that the petitioner-A10 instigated or conspired with the other accused to commit murder of the *de facto* complainant.

In the charge sheet, it is clearly stated that A1 to A9, A11 and A12 conspired together and decided to get rid of the *de facto* complainant. This allegation is suffice to conclude that the petitioner-A10 did not participate in the conspiracy but this allegation is contrary to the statement of P.W.1, recorded under Section 161(3) Cr.P.C. Though the second respondent-*de facto* complainant stated to the police that the petitioner-A10 and others decided to do away with his life, but he did not state anything about the conspiracy to commit such an offence. Therefore, except the statement of L.W.1, no other material is available to conclude, at this stage, that this petitioner is also a part of the criminal conspiracy.

Criminal conspiracy is defined under Section 120-A Cr.P.C. as follows:

> *"When two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy, provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy*

> *unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof"*.

But such an offence can be proved based on the previous and subsequent conduct, after commission of the offence by the accused and no direct evidence can be expected to prove criminal conspiracy, since it is a secret act.

Thus, the most important ingredient of the offence 'criminal conspiracy' is the agreement between two or more persons to do an illegal act or an act not illegal by illegal means *(**Kehar Singh and others v. State (Delhi Admin.)**[1]*. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence, in which case no overt act need be established *(**Lennart Schussler and another v. Director of Enforcement and another**[2])*.

The basic ingredient to constitute an offence punishable under Section 120-B IPC is that there must be an agreement between the accused to do an act by illegal means or to do an act, which is not illegal by illegal means.

In ***Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra***[3], an identical issue came up for consideration before the Honourable Apex Court and the

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[1] AIR 1988 SC 1883
[2] AIR 1970 SC 549
[3] AIR 1971 SC 885

Honourable Apex Court clearly laid down distinction between Section 34, Section 109 and Section 120-B IPC and held that Section 34 IPC embodies the principle of joint liability in doing a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109 IPC on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120-B IPC, criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107 IPC. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto. As seen from the principle laid down by the Honourable Apex Court in the above judgment, there must be two or more persons agree to do an unlawful act by illegal means to constitute an offence punishable under Section 120-B IPC.

In ***Ram Narayan Popli v. CBI*** [4]**,** when a similar question came up for consideration with regard to the offence punishable under Section 120-B IPC, wherein, the Supreme Court held in various paragraphs as follows:

[4] (2003) 3 Supreme Court Cases 641

"It was observed by this Court in State of Kerala v. P. Sugathan and Anr., [2000] 8 SCC 203, it would be extremely difficult to find direct evidence in case of criminal conspiracy. The circumstances and surrounding factors have to be taken note of. In the instant case, the accused 1, 2 and 5 have submitted that the role of PW-5 as described is that he did not want to be directly shown in the picture. In fact, A-l wanted that MUL did not want to involve brokers and did not want to deal with them This itself deals of fatal blow to the stand taken by the accused that there was no prohibition of acting through brokers and the intention was that dealing would be directly with the bank and not through any broker or intermediary. Much has been made out of use of the word 'through' in the resolution. If the clear understanding of A-l was that the deal should not be dealt with or involved any broker then the question of A-5 acting as broker does not arise. Use of the expression "through" is indicative of the fact that emphasis was on securities being not purchased in the open market, but "through" named PSU. These PSU were admittedly not brokers. They were either Banks or financial institutions. Evidence clearly shows that A-5 wanted that he will not directly come to the picture, and would not appear in the books of accounts of MUL; but would stand to gain by way of commission and as a brokerage from the Bank. The statement of A-l that he would look into any good proposals if A-5 does not come to the picture shows that the actual state of affairs was intended to be hidden from the MUL authorities and a totally distorted picture was sought to be given. These are factors which does not go in favour of the accused as contended, and on the contrary clearly proves conspiracy.

Much has also been submitted that repayment has been made. That itself is not an indication of lack of dishonest intention. Some times, it so happens that with a view to create confidence the repayments are made so that for the future transactions the money can be dishonestly misappropriated. This is a part of the scheme and the factum of repayment cannot be considered in isolation. The repayment as has been rightly contended by the Solicitor General can be a factor to be considered while awarding sentence, but cannot be a ground for proving innocence of the accused.

The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, the; become definitely committed to co-operate for the *accomplishment of the object by the means embodied in the agreement. or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence Vol.11 See 23, p. 559). For an offence punishable under Section 120-B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.*

No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

In view of the law declared by the Apex Court, referred supra, the Court cannot expect direct evidence to establish the guilt of the accused for the offence punishable under Section 120-B IPC fixing the liability of this petitioner with the other accused to do away the life of the second respondent as he approached this Court in connection with regularization of piece-cut barbers. The Court can draw inference on the basis of the circumstances like the conduct of the accused and other circumstances stated above. The offence punishable under Section 120-B IPC can be inferred and the Court cannot except any direct evidence to establish the offence punishable under Section 120-B IPC.

Turning to the material placed on record, the statement of P.W.1 is only in support of the prosecution case where he categorically stated to the Investigating Officer that this petitioner conspired along with the other accused to do away with the life of the second respondent and hatched a plan and, in pursuance of this plan, A13 to A15 caused injuries on the body of the *de facto* complainant with cricket stumps and made an attempt to kill him. The seriousness of the injuries of the *de facto* complainant-second respondent is supported by the statement of the other witnesses but so far as the conspiracy is concerned, except the statement of L.W.1 and allegations made in the written report, lodged with the police, no other material is available but for one reason or the other, the Investigating Agency did not advert to the statement of L.W.1 and did not narrate the facts with regard to the offence punishable under Section 120-B IPC. Adverting to the statement recorded by the second respondent, recorded under Section 161 Cr.P.C., more particularly at page No.3 of the statement, if the allegations made in the first ten lines of the statement of the second respondent, at page No.3 of the statement, are taken into consideration, it is suffice to conclude that this petitioner also conspired with the other accused to do away with the life of the *de facto* complainant and hatched a plan i.e. commission of a crime. Therefore, the material on record is suffice to conclude *prima facie* that this petitioner also conspired with the other accused to do away with the life of the *de facto* complainant-second respondent.

Coming to the other offence punishable under Section 109 IPC, there is no direct material but the petitioner allegedly committed the offence punishable under Section 120-B IPC. The question of commission of an offence under Section 109 IPC does not arise and, apart from that, Section 109 IPC is not a substantive offence whereas Section 120-B IPC is a substantive offence. Therefore, I find *prima facie* material against the petitioner to proceed further for the offence punishable under Sections 120-B IPC and 307 IPC, since the alleged offence under Section 307 IPC is the consequence of an alleged agreement between the petitioner-A10 and other accused.

Section 482 of Cr.P.C. deals with inherent powers of High Court, which reads as follows:

> ***482. Saving of inherent power of High Court****- Nothing in this Code shall 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 this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*

In view of the powers vested with this Court by Section 482 of Cr.P.C., it is apposite to advert to the law laid down by the Apex Court to exercise power to quash F.I.R. or any other proceedings.

In "***R.P. Kapur v. State of Punjab***[1]", the Apex 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;*
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> *(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;*
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> *(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*
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> *(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.*

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

[1] AIR 1960 SC 866

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 as held by the Apex Court in ***"Mrs.Dhanalakshmi v. R.Prasanna Kumar***[7] ***"***

In "***State of Haryana v. Bhajan Lal***[7] ***"*** the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

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[7] AIR 1990 SC 494
[7] 1992 Supp (1) SCC 335

(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 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.

In ***State of Haryana v. Bhajan Lal*** (referred supra) the Apex Court considered in detail the scope of provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint which are mentioned supra.

In ***Umesh Kumar v. State of Andhra Pradesh***[8], the Supreme Court held that 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. Thus, the judgment of the Apex Court is clear that even if a petition for discharge is filed and pending, the High Court cannot reject the petition filed under Section 482 Cr.P.C. While discussing the facts of the above judgment, the Supreme Court held in paragraph 12 as follows:

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[8] AIR 2014 SC 1106

> *"Once criminal law is put in motion and after investigation the charge sheet is filed, it requires scrutiny in the court of law. However, before the charges could be framed, Umesh Kumar, appellant, approached the High Court under Section 482 Cr.P.C. for quashing of the charge sheet. 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 the 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 alongwith 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."*

In "***M/s. Medchl Chemicals and Pharma Private Limited v. M/s. Biological E. Limited***[7]" the Apex Court held that the power under Section 482 Cr.P.C has to be exercised with care and sparingly, High Court has only to see whether allegations in complaint make out *prima facie* case. It has no power to examine truth and correctness of allegations. Exercise of jurisdiction under the inherent power as envisaged in Section 482 Cr.P.C to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. To exercise powers under Section 482 of Cr.P.C. the complaint in

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[7] AIR 2000 SC 1869

its entirety shall have to be examined on the basis of the allegations made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same, but the offence ought to appear ex facie on the complaint.

As narrated above, *prima facie* the power of this Court, under Section 482 Cr.P.C., is inherent.

In view of the law declared by the Apex Court in various judgments referred supra, the Court can exercise its power in rarest of rare cases, and it cannot be used to stifle the legitimate prosecution, the only requirement is verification of the allegations made in the charge sheet to find out whether the allegations on their face value would constitute offence punishable under the penal provisions of any Act.

In view of my above discussions, I find that it is not a fit case to quash the proceedings against the petitioner, in view of the statement of the *de facto* complainant-second respondent, recorded under Section161 Cr.P.C., during the investigation directly pointing out the complicity of this petitioner for the offence punishable under Sections 120-B IPC and 307 IPC.

In the result, the Criminal Petition is dismissed at the stage of admission.

Miscellaneous Petitions pending, if any, in this Criminal Petition shall stand closed.

M.SATYANARAYANA MURTHY,J

24th October, 2018.
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