

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.10766 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. by the sole accused to quash the proceedings in C.C.No.20 of 2015 pending on the file of the Chief Metropolitan Magistrate, Hyderabad, registered for the offence punishable under Section 332 IPC.

The 2nd respondent – C.Narsimha lodged report with the police alleging that while he was on duty at FOC Control, APCPDCL, Chatrinaka, Hyderabad along with Rafiq, they received phone call from caller bearing No.9700347202 complaining that there was no power supply in their area and he informed that he will send the staff to check it out, suddenly the said person abused him in most filthy language, then he disconnected the phone. At about 14 hours, the above said consumer along with the other came to Fuse Call Office on his vehicle bearing No. AP AS 6578 and started shouting enquiring as to who talked to him over phone and started abusing in filthy language and beat him and Mr Narshima with his hands and kicked with legs and they received injuries. Then the 2nd respondent instructed Narsimha to take the keys and handed over to Rafiq, who is the Bill Collector in the office. But the Rafiq returned the key to them. Thus, the petitioner allegedly caused hurt voluntarily with a view to deter public servant from his duty. On the basis of the report, Crime No.107 of 2014 was registered for the above offence and issued FIR.

On the basis of FIR, Sub-Inspector of Police, Chatrinaka Police Station, Hyderabad took up investigation and examined as many as six witnesses and recorded their statements under Section 161(3) Cr.P.C. On the basis of the evidence collected including the statements of witnesses

recorded under Section 161(3) Cr.P.C., the Sub-Inspector of Police filed charge sheet against the petitioner for the above offence.

The sole accused filed the present petition on the ground that his vehicle was taken away by some of his neighbour, though he is the owner of the vehicle bearing No.AP 11 AS 6578, he was not present at the time of alleged occurrence in place of offence. When he was not present at the place of offence, enroping the petitioner with the offence punishable under Section 332 IPC is nothing but abuse of process of the Court. The petitioner also contended that none of the witnesses identified the petitioner either at the time of lodging the report or during examination under Section 161(3) Cr.P.C. In the absence of any identification finding the vehicle at the scene of offence is not an offence punishable under Section 332 Cr.P.C.

Yet, another contention urged before this Court is that the wound certificates discloses that some unknown person beat him at 3.30 PM at Chatrinaka and found no external injuries on both the persons examined. The doctor certified that there are no external injuries on the body, but complained body pain. Therefore, in the absence of disclosure of name of assailants at the time when the doctor examined the injured persons, there is any amount of suspicion about the participation of the petitioner in the alleged incident. In the absence of any material, *prima facie* the proceedings against the petitioner cannot be continued and prayed to quash the proceedings.

During hearing, learned counsel for the petitioner while reiterating the contentions raised by the petitioner, drew the attention of this Court to the statements recorded under Section 161(3) Cr.P.C. including the wound certificates issued by Dr B.Shankar, Casualty Medical Officer, Osmania General Hospital, Hyderabad to demonstrate that some unknown persons beat them and not the petitioner and merely because the *de facto*

complainant received injury on body of the injured persons, when no evidence is found to proceed against the petitioner, *prima facie* for the offence punishable under Section 332 IPC, the proceedings against the petitioner are liable to be quashed.

Learned Public Prosecutor opposed the petition on the ground that the evidence collected during investigation by the Sub-Inspector of Police coupled with the statement of witnesses recorded under Section 161(3) Cr.P.C. would suffice *prima facie* to point out the complicity of the petitioner and requested to dismiss the petition.

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 Code 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 any specific offence or not, 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

¹ AIR 1990 SC 494

² 2013 (10) SCC 591

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.

Keeping in mind the limited jurisdiction of this Court, I would like to advert to the material available on record including the allegations made in the charge sheet. As per the allegations made in the charge sheet, a telephone call was received by C.Narsimha consumer from mobile bearing No.9700347202 whereby informing that there was no power supply in their area. Then, he responded to the call and said that he will sent the staff to check it out. The telephone call was disconnected. Suddenly the petitioner allegedly came to the office and abused Narshima and another person in filthy language and beat him with hands and kicked with legs and that they sustained injuries in the said incident. More curiously the vehicle bearing No.AP 11 AS 6578 admittedly belongs to the petitioner was found at the scene of offence. But the case of the petitioner is that some of his neighbour took away the vehicle to the scene of offence. But it was not borne out from the record and this explanation cannot be accepted at this stage except as defence during trial. Basing on this contention the proceedings cannot be quashed.

The other ground raised before this Court is that when the injured were examined by the doctor, they informed that some unknown persons caused injuries on their body at 03.00 or 03.30 PM at Chatrinaka. The injured persons are employees in the electricity department having control over the area and they are not supposed to have acquaintance with the consumer in the area and normally they cannot identify the consumer unless they closely acquainted with the consumer, for one reason or the other. Therefore, failure to disclose the name of the assailant to the doctor is not a ground to disbelieve the case of the prosecution to exculpate the petitioner.

The other contention raised before this Court is that there was no physical presence of the petitioner at the incident and no injuries were found in the body of the injured person. No doubt, as per the wound certificate, no external injuries were found, but they complained bodily pain. Hurt is defined under Section 319 IPC and according to it, whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. According to the wound certificate, the injured persons suffering from bodily pains, which amounts to hurt and when the petitioner allegedly caused bodily hurt, it fall within Section 323 IPC. However, injured persons were discharging their duties as public servant as defined under Section 21 IPC. Therefore, mere failure to identify the assailants after the incident till they were examined as witnesses during investigation under Section 161(3) Cr.P.C. itself is not a ground to quash the proceedings. Identification parade though relevant under Section 9 of the Evidence Act, but that by itself is not a substantive proof of incident. Merely because, no identification parade was held, the proceedings against the petitioner cannot be quashed at this stage. Identification of the accused in the Court may also form a ground for recording conviction, if the prosecution is able to prove the incident of causing injuries.

In view of the limited scope of jurisdiction of this Court, when the Court is bound to verify the allegations made in the charge sheet including the material produced along with it to come to an independent conclusion whether the charge sheet discloses commission of offence. In **State of H.P v Pirthi Chand**³ the Apex Court held that the power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the FIR/charge sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter and decide whether the allegations constitute the offence. It must be remembered the FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 Cr.P.C. in support of the charge sheet. At that stage it is not the function of the Court to weight the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to *prima facie* consider from the averments in the charge sheet and the statements of witnesses on the record in support thereof whether the Court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of *mala fide* initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence, the Court may embark upon the consideration thereof and exercise the power.

³ 1996(2) SCC 37

But in the present case on hand, though the injured person did not identify the petitioner initially and even at the time of examination under Section 161(3) Cr.P.C that itself is not a ground to quash the proceedings. Moreover, the duty of the Court is to find out whether there is *prima facie* material for the offence allegedly committed by the accused based on the allegations made in the complaint or in the statements recorded under Section 161(3) Cr.P.C. Therefore, the allegations made in the charge sheet including the statements recorded under Section 161(3) Cr.P.C. *prima facie* disclose *prima facie* material that the petitioner committed the offence punishable under Section 332 IPC. When the Court found *prima facie* material to proceed against the petitioner for such offence, the Court cannot exercise its inherent jurisdiction under Section 482 Cr.P.C. to stifle the legitimate prosecution at this stage and that too the calendar case is of the year 2015 and consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed. However, the Chief Metropolitan Magistrate, Hyderabad is directed to dispose of C.C.No.20 of 2015 independently uninfluenced by the observations or findings, if any, made by this Court herein above.

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

M.SATYANARAYANA MURTHY,J

10.10.2018
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