

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10076 OF 2017

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.'), is filed by the petitioner/A-1 to quash the proceedings in C.C. No.97 of 2017, pending on the file of IV Additional Judicial First Class Magistrate, Warangal (for short, 'the trial Court').

2. Heard, the learned counsel for the petitioner, learned Public Prosecutor appearing for the 1st respondent-State, and Sri P.Raja Sripathi Rao, learned counsel appearing for the 2nd respondent, and perused the record.

3. The 2nd respondent herein lodged a report with the police alleging that while he along with his wife and son were in occupation of Room Nos.201 and 202 of Warangal Club, to attend the marriage of their nephew, on 07.08.2016, the petitioner (cell No.9849058014) herein along with his friends, four in number, during the intervening night of 04/05-08-2016 at 12:00 mid night, entered into their rooms in an inebriated condition, created nuisance for about one hour, misbehaved with the wife of 2nd respondent and on noticing the same, someone telephoned to 108 and patrolling vehicle came there and found the occupants are husband, wife and son in Room Nos.201 and 202 respectively and requested to take action against the petitioner and other accused.

4. On the basis of the said report, the Police registered a case in Crime No.257 of 2016 and issued F.I.R. against the petitioner and others, took up investigation, examined witnesses LWs.1 to 7 and after completion of investigation, filed charge sheet before the concerned

Magistrate for the offences punishable under Sections 452, 290 and 509 R/w.34 of I.P.C.

5. Aggrieved by the Order of taking cognizance of the offences referred *supra*, the instant Petition is filed by the Petitioner/A-1 on the ground that the petitioner himself gave a complaint being a Member of the Club and, on the basis of the complaint, the Police went to the Club and obtained complaint from the *de-facto* complainant, 2nd respondent herein, and registered the Crime against the petitioner, who is the complainant, and others but the petitioner did commit no offence. It is also contended that the case was falsely foisted against the petitioner at the instance of some other members who are inimical to him and apart from that the allegations made in the complaint do not constitute any offence much less the offences under Sections under Sections 452, 290 and 509 R/w.34 of I.P.C. and finally prayed to quash the proceedings.

6. During course of hearing, learned counsel for the petitioner/A-1, reiterated the said contentions and requested to quash the proceedings against the petitioner/A-1.

7. As seen from the material available on record, the allegations made in the complaint coupled with the statements recorded by the Police under Sections 161 Cr.P.C., it is clear that LW.1 lodged a written report with the Police against the victims including this petitioner. LW.1 is the complainant, LW.2 is his wife, LW.3 is his son and LWs.4 and 5 are the workers in the Warangal Club. 161 Cr.P.C. statements of LWs.1 to 5 discloses that while the petitioner along with other accused in inebriated condition misbehaved with LWs.1 to 3 viz., Balamuri Rajender, Balamuri Anuradha and Balamuri Srikar, who were in occupation of Room Nos.201 and 202 of the Club.

8. From a perusal of 161 Cr.P.C. statements recorded by the Police during investigation, it is clear that LW.1 requested one M.Venkateshwar Rao, resident of Advocates Colony, Warangal, to arrange accommodation; accordingly, he arranged Room No.201 for LWs.1 and 2 being husband and wife and Room No.202 for LW.3, son of LWs.1 and 2 and accordingly, they occupied the same on the night of 04.08.2016 in Warangal Club to attend the marriage of their nephew, on 07.08.2016. They occupied the room on 04.08.2016 at about 09:30 P.M. On the same day night the petitioner herein along with his four friends came to their room in inebriated condition giving descriptive particulars of the persons who came there, caused inconvenience to them and also abused them in filthy language and infringed the right of their privacy. LWs.2 and 3 being wife and son of LW.1 also supported the version of LW.1. Similarly, this fact is also supported by the statements of LWs.4 and 5 viz., Anumala Hemanth Kumar, Club Room Boy, and Gundu Naveen Kumar, Gym Coach, about the acts committed by this petitioner along with others.

9. On the strength of the 161 Cr.P.C. statements of LWs.1 to 4, the Investigation Officer concluded that the petitioner along with others *prima-facie* committed the aforesaid offences but the story narrated by this petitioner is totally different and the version of the petitioner is that himself gave a complaint and telephoned to Police and on receipt of the said call only the Police party, who are on night patrolling duty, came there and found the incident but A-1 visited the Club before the Police or not is irrelevant and what is relevant is whether the petitioner along with others misbehaved with the 2nd respondent, during his stay along with his family members in Room Nos.201 and 202 of the Warangal Club, and committed such offences is the question to be decided.

10. 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.

11. 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.

¹ 1992 Supp.(1) SCC 335

(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.”

12. 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.”

13. 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

“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.”

14. 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

³ AIR 1990 SC 494

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.”

15. 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.

16. 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.

17. In the present facts of the case, the 161 Cr.P.C. statements of 2nd respondent-complainant, coupled with the statements of LWs.4 and 5, who are workers in the Warangal Club, are sufficient to *prima-facie* conclude that the petitioner and other accused committed the aforesaid offences *prima-facie* to proceed further.

18. Where the inherent power of this Court is limited, this Court need not minutely examine the case of the petitioner and decide whether he 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.

19. 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, the Court can decline quashing the proceedings.

20. 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 this petitioner and, more particularly, the eye witnesses who are the workers of the Warangal Club, supporting the contentions of the 2nd respondent and his family members about the commission of the offences.

21. Therefore, based on the present contentions raised before this Court, the petitioner/A-1 himself telephoned to the Police is irrelevant now and such fact is relevant only during trial since it is a disputed question of fact. 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

⁵ (2005) 13 SCC 540

⁶ AIR 2014 SC 1106

⁷ (1995) 4 SCC 41

⁸ AIR 2005 SC 9

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.

22. In the result, the Criminal Petition is dismissed. However, it is left open to the petitioner/A-1 to raise all the defences before the trial Court, un-influenced by any of the observations made hereinabove.

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

Date: 26.07.2018.
Dsh

M.SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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