

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12218 OF 2017

ORDER:

This criminal petition is filed by the petitioner/accused under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in Crime No.303 of 2017 on the file of the Chinnachowk U/G Police Station, YSR Kadapa District, registered for the offence punishable under Sections 465, 471, 193 of Indian Penal Code (for short "I.P.C.") and under Section 156 (3) of Cr.P.C.

The petitioner Nos.1 and 2 are son and father, whereas respondent No.2 is the defacto complainant and father-in-law of accused No.1. The respondent No.2 is the complainant, who filed a private complaint under Section 190 of Cr.P.C. before the II Additional Judicial Magistrate of First Class, Kadapa alleging that he is working as Secretary in Agricultural Market Committee, Madanapalli and her daughter K.Alekya was married to the petitioner No.1 herein/accused No.1 on 05.12.2015 at Kadapa. At the time of marriage, on the demand made by accused Nos.1 and 2 and their family members, he gave dowry and other valuables. After the marriage, his daughter lived in her in-laws house bearing D.No.38-29,60/20 at Plot No.128-A, Telephone Colony, Sainikpuri, Secunderabad. Later, for sometime she joined her husband in America in November, 2015. After sometime, as she was unable to bear the harassment of her husband and her in-laws, came back to India. Some panchayats were held and in the panchayat, accused No.2 and other attacked her. Therefore, daughter of

complainant gave complaint in Mahila Police Station, Kadapa, and the same was registered as Crime No.18 of 2016.

It is also contended that in the name of accused No.1 several petitions were sent against the name of the complainant to the Chief Vigilance Officer, Income Tax Officer and also to the superiors of complainant showing the Hyderabad address i.e. parental home of accused No.1 whereas accused No.1 admittedly residing in America. Complainant further alleged that the accused No.2, father of accused No.1 forged and fabricated all the petitions because accused No.1 was not physically present in India for filing the petitions and complaint and he is evading due process of law in subjects matter of Crime No.18 of 2016 of Mahila Police Station. Therefore, the question of accused No.1 sending the petitions against the name of the complainant does not arise. Thus, accused Nos.1 and 2 conspired and misused the petitions in order to harass the complainant, his daughter to bring pressure on them for withdrawing the case in Crime No.18 of 2016 of Women Police Station. These false and vexatious petitions and resorting to blackmailing tactics clearly attract criminal law. The respondent No.2 submitted representation to Superintendent of Police and the same was also forwarded to Station House Officer, Chinnachowk Police Station, but they did not initiate any action as the accused are influential. Hence, he requested the trial Court to take necessary action.

The II Additional Judicial Magistrate of First Class, Kadapa referred the said complaint to the police under Section 156 (3) of Cr.P.C. for investigation and report. On receipt of the same, police registered a case in Crime No.303 of 2017 of Chinnachowk U/G

Police Station, Kadapa for the offences punishable under Sections 465, 471, 193 of I.P.C.

The present petition is filed under Section 482 of Cr.P.C. by accused Nos.1 and 2 on the ground that none of the allegations made against the petitioners do not attract the offences punishable under Sections 465, 471 and 193 of I.P.C. and filing of private complaint, which was referred to police by exercising power under Section 156 (3) of Cr.P.C. is a serious illegality and that in view of bar under Section 23 of Right to Information Act (for short "RTI Act") filing of private complaint and reference to the police under Section 156 (3) of Cr.P.C. and taking up investigation by the police is an illegality and sought to quash the proceedings against the petitioners.

During hearing, Sri Challa Ajay Kumar, learned counsel for the petitioners mainly contended that in view of bar under Section 23 of RTI Act no prosecution would lie and requested to quash the proceedings.

Sri P.V.Ramana, learned counsel for the respondent No.2, supported the case of the prosecution.

Considering rival contentions and perusing the material on record, the point that arises for consideration is:

- (1) ***Whether Section 23 of Right to Information Act bars taking cognizance of the offence punishable under Sections 465, 471 and 193 of I.P.C.? If so, the proceedings against the petitioners in Crime NO.303 of 2017 of Chinnachowk U/G Police***

***Station, YSR Kadapa District, are liable to be
quashed?***

P O I N T:

The basis for filing the complaint before the Magistrate is the information collected by the respondent No.2 – defacto complainant under RTI Act. According to the submission made by the learned counsel for the petitioners, as the information collected under RTI Act cannot be used as evidence in the proceedings and no person can be tried for any offence based on such evidence collected under RTI Act.

Though the petitioners raised several other grounds in the petition, the learned counsel for the petitioners limited his argument to the bar under Section 23 of RTI Act.

The petitioners also filed W.P.No.27452 of 2017 and this Court by order dated 18.08.2017 disposed the petition directing the investigating agency to file final report under Section 173 (2) of Cr.P.C. at the earliest, but no positive direction was given in the writ petition by this Court.

Section 23 of RTI Act deals with Bar of jurisdiction of the Courts.

According to Section 23 of RTI Act, no Court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

The bar under Section 23 of RTI Act is only to question the orders passed under the Act by the authorities concerned. But the contention urged by the learned counsel for the petitioners did not find place in any of the provisions of the RTI Act and no bar is created from using such information collected under RTI Act in criminal prosecution. In the absence of any bar against using of information collected under RTI Act as evidence in prosecution, the contention of the learned counsel for the petitioners cannot be upheld. The provision, he referred during argument i.e. Section 23 of RTI Act, has no application to the present facts of the case and since the bar is only against entertaining any suit, application or other proceeding in respect of any order made under the RTI Act. Therefore, the contention of the learned counsel for the petitioners is turned down and the proceedings against the petitioners cannot be quashed.

Though the petitioners raised several contentions in the petition, the learned counsel for the petitioners did not address those contentions.

However, the investigating agency did not commence investigation and it is at the stage of registration of crime only. At this stage, it is the duty of the Court to verify the allegations made in the complaint to find out whether those allegations constitute an offence or not and if the allegations do not constitute an offence, the Court can quash the proceedings by exercising power under Section 482 of Cr.P.C.

Time and again, the scope of powers of this Court under Section 482 of Cr.P.C. was highlighted by the Apex Court in long

line of perspective pronouncements, which are as follows:

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;
- (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.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power 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

¹ AIR 1960 SC 866

there would be no justification for interference by the High Court as held by the Apex Court in ***“Mrs.Dhanalakshmi v. R.Prasanna Kumar²”***

In ***“State of Haryana v. Bhajan Lal³”*** 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:

- (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.

² AIR 1990 SC 494

³ 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.

The powers of this Court at the stage of F.I.R. are limited and this Court can verify the F.I.R. and other material, if any, produced before the Court and decide whether such allegations would constitute any offence, but this Court cannot appreciate the evidence and cannot record whether the allegations would constitute any specific offence or not.

At this stage, this Court cannot express any opinion since the F.I.R. is only intimation to the police to set the criminal law into motion.

Undisputedly, investigation in the present case is at the fetus stage, in such case, it is difficult to quash the proceedings as held in “**State of Orissa v. Saroj Kumar Sahoo**”⁴, wherein the Apex Court held that the inherent powers under Section 482 of

⁴ (2005) 13 SCC 540

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 proceeding at any stage. While exercising jurisdiction under Section 482 of 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 records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

In “***Kurukshetra University v. State Of Haryana***⁵”, the Supreme 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 CrPC, 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

⁵ AIR 1977 SC 2229

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 “**State of Orissa v. Saroj Kumar Sahoo**” and “**Kurukshetra University v. State Of Haryana**” (referred supra) when the investigation is at fetus stage, this Court cannot interfere with the process of investigation and quash the proceedings by exercising power under Section 482 of Cr.P.C.

In “**Tilly Gifford v. Michael Floyd Eshwar**”⁶ the Apex Court held that the power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a court of law.

If these principles are applied to the present facts of the case, this Court cannot exercise such power under Section 482 of Cr.P.C. and quash the proceedings at this stage. Consequently, the petition is liable to be dismissed. The point is answered accordingly.

In the result, the petition is dismissed. No costs. However, it is left open to the petitioners to renew their request at appropriate stage after completion of investigation.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

06.11.2018
Ksp

⁶ AIR 2017 SC 3823