

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12381 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in C.C.No.1387 of 2015 on the file of the VIII Metropolitan Magistrate at Cyberabad at Rajendranagar, registered for the offences punishable under Sections 420 and 468 of the Indian Penal Code (IPC).

According to the allegations made in the charge sheet, the complainant by name R.Balamani made serious allegations against the petitioner-A2 for the abovementioned offences. The main contention before this Court is that the said Balamani is no more and she died on 25.01.2010. She allegedly lodged report with the police in the year 2014 and the complaint was registered in Crime No.576 of 2014 on the file of P.S. Mailardevpally, Cyberabad. FIR was issued and statement of the said Balamani allegedly recorded on 02.10.2014. Now, the contention before this Court is that complaint of a person, who died four years prior to lodging complaint, cannot be registered as crime. In support of his contention, counsel for the petitioner relied on death certificate issued by GHMC to establish that R.Balamani, W/o. Late R.Ramdas died on 25.01.2010. According to the counsel for the petitioner, the certificate was issued under the provisions of the Registration of Births and Deaths Act and it is a public document. Therefore, the Court has to look into the certificate and decide the absurdity in the allegations made in the charge sheet and in support of the same, he relied on the judgment of the Apex Court

in **Anita Malhotra v. Apparel Export Promotion Council**¹ and drew the attention of this Court to paragraph Nos.19 and 20, which read as under.

“In **Harshendra Kumar D. v. Rebatilata Koley**², while considering the very same provisions coupled with the power of the High Court under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the criminal proceedings, this Court held:

In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents which are beyond suspicion or doubt placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial Court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have a significant bearing on the matter at prima facie stage.

As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent

¹ (2012)1 SCC 520

² (2011)3 SCC 351

on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code.”

Even according to the judgment of the Apex Court in **Harshendra Kumar D** (2 supra), when the trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstances, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. Therefore, the principle laid down in **Harshendra Kumar D** (2 supra) is not helpful and on the contrary, it is against the contention of the counsel for the petitioner. But in **Anita Malhotra** (1 supra), the Supreme Court held that it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents which are beyond suspicion or doubt placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial Court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have a significant bearing on the matter at initial stage by exercise of jurisdiction under Section 482 Cr.P.C. The Apex Court in **Anita Malhotra** (1 supra) did not discuss anything about the nature of the documents.

However, it is general principle that if the Court finds that lodging of complaint and filing of charge sheet as an abuse of process of Court, the Court can quash the proceedings.

However, the disputed question is that whether R.Balamani is alive or not as on the alleged date of giving report and recording her statement on 02.10.2014. Admittedly, the petitioner did not implead the *de facto* complainant as respondent in the present petition only on the ground that she is no more and as the disputed fact about death based on the death certificate issued by the Municipal Corporation cannot be decided while exercising power under Section 482 Cr.P.C. Since the *de facto* complainant is required to be examined before the Magistrate when she is cited as L.W.1 and the genuineness of the Certificate of the Registrar of Births and Deaths is also to be decided only during trial. Therefore, based on the Death Certificate issued, the proceedings cannot be quashed at this stage. Hence, I find no ground to quash the proceedings in C.C.No.1387 of 2015 on the file of the VIII Metropolitan Magistrate at Cyberabad at Rajendranagar.

In the result, the Criminal Petition is dismissed at the stage of admission. However, in view of the request made by the counsel for the petitioner, the Magistrate concerned is directed to dispose of C.C.No.1387 of 2015 as expeditiously as possible, in any event within six (6) months from the date of receipt of a copy of this order, as the petitioner is aged about 74 years as on today. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

2nd January 2018
RRB