



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.8013 of 2014

and

M.P. (MD) No.1 of 2014

Pushparaj Imanuvel

... Petitioner/Sole Accused

Vs

1.The State rep. by
The Inspector of Police,
All Woman Police Station,
Fort, Trichy City.

:1st Respondent/Complainant

2.Mary

: 2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the proceedings in P.R.C.No.24 of 2013 on the file of the Judicial Magistrate No.V, Trichy and quash the same as illegal.

For Petitioner : Mr.K.Sivabalan

For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

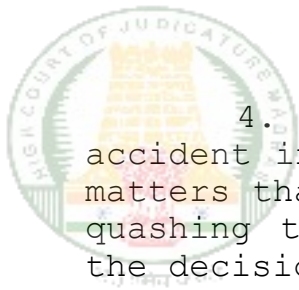
For R2 : Mr.T.Senthil Kumar

ORDER

The petitioner has come to this Court at the committal stage. The deceased is the petitioner's wife. The petitioner's wife died on 24.06.2013. On her dying declaration, the victim has made it appear as if it is a case of stove accident in the kitchen. Actually, it appears to be a case of self immolation. That is why, notwithstanding the dying declaration of the victim, the police have filed final report under Section 306 of IPC.

2. The petitioner's counsel would claim that the victim has not implicated him in the dying declaration.

3. However, the learned counsel appearing for the defacto complainant would point out that even as per the Observation Mahazer, the stove is intact and therefore, it is not a case of an accident. The victim probably under mental stress wanted to save her husband.



4. Even though the victim has stated that it was a case of accident involving stove burst, I am of the view that these are not matters that can be appreciated while exercising my jurisdiction for quashing the criminal proceedings. The Hon'ble Supreme Court, in the decision reported in **CDJ 2019 SC 855**, held as follows:-

"15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceedings against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

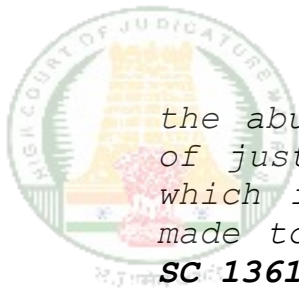
16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the Judgment of this Court in **Zandu Pharmaceutical Works Ltd. And Ors. V. Mohd. Sharful Haque and Another ((2005) 1 SCC 122)**.

17. The High Court may have an obligation to intervene under Section 482 of the Code in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not all constitute offences. References may be made to **S.W. Palanitkar and Ors. V. State of Bihar and Another ((2002) 1 SCC 241)**. However, it is important to remember that while exercising powers under this Section, the High Court does not function as a Court of appeal or revision.

18. The power under Section 482 of Cr.P.C should not be exercised to stifle legitimate prosecution. At the same time, if the basic ingredients of the offence alleged are altogether absent, the criminal proceedings may be quashed under Section 482 of Cr.P.C.

19. It is well settled that where the allegations set out in the complaint or the charge sheet do not constitute any offence, it is open to the High Court, exercising its inherent jurisdiction under Section 482 of the Code, to quash the order passed by the Magistrate taking cognizance of the offence. Reference may be made to **M.A.A. Annamalai V. State of Karnataka and Another ((2010) (8) SCC 524)**, **Sharda Prasad Sinha V. State of Bihar (AIR 1977 SC 1754)** and **smt. Nagawwa V. Veeranna Shivlingappa Konjalgi and Ors. (AIR 1976 SC 1947)**.

The inherent power under Section 482 is intended to prevent



the abuse of the process of the Court and to secure the ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. Reference may be made to **Dharampal and Ors. v. Smt.Ramshri and Ors. (AIR 1993 SC 1361)**.

20. In rejecting the application, the High Court relied upon the Judgment of this Court in the **State of Haryana V. Bhajanlal (1992 Supp(1) SCC 335)** where this Court laid down the following guidelines for exercise of power under Section 482:-

"(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 uncontroverted 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 proceedings 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.

21. In **Dhanalakshmi v. R. Prasanna Kumar and Others (1990 Supp SCC 686)**, cited by the High Court, this Court held



that:-

"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.

22.The High Court also relied on **State of Karnataka V. L.Muniswamy and Others (1977) 2 SCC 699**, where this Court considered the scope of jurisdiction of the High Court under Section 482 Cr.P.C. and held:-

"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 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 proceedings in the interest of justice. The ends of justice are higher than the ends of mere 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." "



5. Applying the aforesaid yardstick, I am of the view that the petitioner has not made out a case for invoking the inherent jurisdiction of this Court under Section 482 of Cr.P.C., The petitioner has to necessarily establish his innocence only in the regular trial. The criminal original petition stands dismissed. It is made clear that this Court has not gone into the merits of the matter. The defences of the petitioner are absolutely left open. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.V, Trichy.

2.The Inspector of Police,
All Woman Police Station,
Fort, Trichy City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T.SENTHIL KUMAR, Advocate SR-86971.

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CS(30.09.2019) 5P 5C