

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9991 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings in crime No. 279 of 2017 of RIMS U/G Police Station, Kadapa District, registered for the offence under Sections 498-A, 307 and 420 read with Section 34 IPC, on various grounds.

2. Respondent No. 2 filed a complaint against her husband-accused No. 1 and the petitioners-accused Nos. 2 and 3 alleging that her marriage with accused No. 1 was performed and they lived happily for sometime. Accused No. 1 used to take medicines regularly. In order to prevent respondent No. 2 from identifying the medicines, accused No. 1 used to remove the labels. While the matter stood thus, it was noticed that accused No. 1 was suffering from H.I.V. Positive and he used to administer medicines to prevent further aggravation. While so, with intention to kill her, accused Nos. 2 and 3 brought respondent No. 2 to live with accused No. 1, so that she will also be contacted with AIDS and succumb to it. Therefore, she requested the police to register a case against the petitioners.

3. The main contention of the petitioners before this Court is that the petitioners filed W.P.No. 31865 seeking a direction against the police not to harass the petitioners and this Court by order dated 21-09-2017 issued a direction to the police concerned to follow the guidelines in ***Rajesh Sharma and others Vs. State of U.P. and another***¹ but the complaint was registered just one day before passing the order. It is also contended that the allegations made in the complaint would not attract the offence punishable under Section 307 I.P.C.

¹ SLP (CrI.) No. 2013 OF 2017

At best, respondent No. 1 is directed to follow the guidelines issued in **Rajesh Sharma** (*supra*) and requested this Court to quash the proceedings the above crime.

4. During hearing, learned counsel for the petitioners reiterated the said contentions while drawing attention of this Court to the order dated 09-10-2016 in O.P.No. 928 of 2015 on the file of the learned Judge, Family Court – cum – IV Additional District & Sessions Judge, Vijayawada, whereby the learned Judge allowed the petition filed under Section 32 of Indian Divorce Act and directed respondent No. 2 to join accused No. 1 but respondent No. 2 did not join accused No. 1 and thereby question of the alleged attempt to kill her would not arise and therefore requested to quash the proceedings at the crime stage.

5. Learned Public Prosecutor (A.P.) submitted that investigation is not yet commenced and at this stage, this Court cannot exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings. The allegations made in the complaint are suffice to *prima facie* conclude that the petitioners made an attempt to kill respondent No. 2 by a different mode of forcing her to lead marital life with accused No. 1, so that she will be contacted with AIDS and die in due course.

6. Admittedly, the investigation in this case is not yet commenced and at this stage, it is difficult for this Court to decide whether the petitioner committed any offence *prima facie* or not. No doubt, there are allegations in the report lodged with the police by respondent No. 2 about cruelty of the petitioners for various reasons including payment of additional dowry and forcing her to lead marital life with her husband who was suffering from AIDS. Therefore, the allegations made in the police report are only to set the criminal law into motion by giving information to the police about occurrence of a cognizable offence and it is not a

substantive piece of evidence and it can be used only for limited purpose of contradicting witnesses under Section 154 of the Indian Evidence Act, 1872. On the strength of the said report, the petitioners cannot claim quashment of the proceedings at this stage. As the investigation is not yet commenced, this Court cannot quash the proceedings by exercising power under Section 482 Cr.P.C. as held by the Apex Court in **Kurukshetra University Vs. State Of Haryana**², wherein the Supreme Court opined as under:

"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 according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

In the later judgment of the Apex Court in **State of Orissa Vs. Saroj Kumar Sahoo**³, it was made clear that the inherent powers under Section 482 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 the Cr. P.C., it is not permissible for the Court to act as if it was a trial court. Even when charge is

² AIR 1977 SC 2229

³ (2005) 13 SCC 540

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. Thus, it is clear from the law declared by the Apex Court in the above two judgments that when investigation is not yet commenced or in the middle, this Court cannot quash the proceedings. Merely because the allegations in the FIR are vague or incomplete, this Court cannot exercise power to quash the proceedings as the FIR is not a substantive piece of evidence. Hence, I find no ground to quash the proceedings at this stage and consequently, the petition is liable to dismissed.

7. In the result, the petition is dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 31-10-2017.

JSK

M.SATYANARAYANA MURTHY, J.