

CHILAKAMARTHI VENKATESWARLU & ANR.

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v.

STATE OF ANDHRA PRADESH & ANR.

(Criminal Appeal No. 1082 of 2019)

JULY 31, 2019

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**[DR. DHANANJAYA Y. CHANDRACHUD AND
INDIRA BANERJEE, JJ.]**

Code of Criminal Procedure, 1973 – s.482 – Jurisdiction of High Court – Scope of – Appellants and the Respondent No.2-de facto complainant are apparently close relatives and embroiled in a partition suit filed by the Appellant No.2 – Appellant No.2 also filed criminal complaint against the de facto complainant – Criminal proceedings being PRC No.2 of 2018 filed against the appellants u/ss.307, 323, 427, 447 and 506(2) r/w s.34, IPC – As per the appellants, the respondent no.2 falsely implicated them as counter blast to the criminal complaint filed by the Appellant No.2 – Petition u/s.482 filed by the appellants for quashing the proceedings in PRC No.2 of 2018 – Dismissed – On appeal, held: Plenary inherent jurisdiction of the Court u/s.482 of CrPC may be exercised to give effect to an order under the Code; to prevent abuse of the process of the Court; and to otherwise secure the ends of justice – However, while exercising such powers, the High Court does not function as a Court of appeal or revision – Power u/s.482 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 u/s.482 – Power to quash the proceedings is generally exercised when there is no material to proceed against the Petitioners even if the allegations in the complaint are prima facie accepted as true – In the instant case, the High Court rightly found that the allegations in the complaint coupled with the statements recorded by the Magistrate had the necessary ingredients of offences u/ss.307, 323, 427, 447 and 506(2) r/w s.34, IPC– High Court rightly refused to quash the criminal complaint, observing that it can exercise power u/s.482 only in rare cases – Not fit case to quash the criminal proceedings – Penal Code,

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- A 1860 – ss.307, 323, 427, 447, 506(2) r/w s.34 and ss.120B, 420, 463, 464, 466, 467, 468, 469, 470 and 471.

Dismissing the appeal, the Court

- B **HELD : 1.1** The High Court concluded, and rightly, that it was open to the Appellants to adduce evidence to show that the Appellants and/or one of the them was not present at the time of the alleged offence. The plenary inherent jurisdiction of the Court under Section 482 of CrPC may be exercised to give effect to an order under the Code; to prevent abuse of the process of the Court; and to otherwise secure the ends of justice. [Paras 11, 12]
- C [806-D-E]

- D **1.2** The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court or to otherwise secure the ends of justice. For interference under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision
- E of law by which the party aggrieved could have sought relief. 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 proceeding against the accused. For that limited purpose, the
- F 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. 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
- G the allegations are not sustainable, for this is the function of the trial Judge. [Paras 13-16] [806-E-H; 807-A-B]

- H **1.3** 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 at all constitute offences. However, while exercising powers under this Section, the High Court does not function as a Court of appeal or revision. The power under Section 482 of CrPC 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 CrPC. 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. 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. [Paras 17-19] [807-C-G]

1.4 In this case, the High Court rightly refused to quash the criminal complaint, observing that it can exercise power under Section 482 of the CrPC only in rare cases. The power to quash the proceedings is generally exercised when there is no material to proceed against the Petitioners even if the allegations in the complaint are *prima facie* accepted as true. The High Court in effect found, and rightly, that the allegations in the complaint coupled with the statements recorded by the Magistrate had the necessary ingredients of offences under Sections 307, 323, 427, 447 and 506(2) read with Section 34 of the IPC. This is not a fit case to quash the criminal proceedings. [Paras 23, 24] [810-C-E]

S.W. Palanitkar and Ors. v. State of Bihar and Another (2002) 1 SCC 241 : [2001] 4 Suppl. SCR 397 ; *S.W. Palanitkar and Ors. v. M.A.A. Annamali v. State of Karnataka and Another* (2010) 8 SCC 524 : [2010] 9 SCR 1124 ; *Sharda Prasad Sinha v. State of Bihar* AIR 1977 SC 1754 : [1977] 2 SCR 357 ; *Smt. Nagawwa v. Veeranna Shivlingappa Konjalgi and Ors.* AIR 1976 SC 1947 : [1976] Suppl. SCR 123 ; *Dharampal and Ors. v. Smt. Ramshri and Ors.* AIR 1993 SC 1361 : [1993] 1 SCR 1 – referred to.

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- A *Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharful Haque and Another* (2005) 1 SCC 122 : [2004] 5 Suppl. SCR 790 ; *State of Haryana v. Bhajanlal* (1992) Supp (1) SCC 335 : [1990] 3 Suppl. SCR 259 ; *Dhanalakshmi v. R. Prasanna Kumar and Others* (1990) Supp SCC 686 : [1989] Suppl. SCR 165 ; *State of Karnataka v. L. Muniswamy and Others* (1977) 2 SCC 699 : [1977] 3 SCR 113 – relied on.
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Case Law Reference

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| | [2004] 5 Suppl. SCR 790 | relied on | Para 16 |
| C | [2001] 4 Suppl. SCR 397 | referred to | Para 17 |
| | [2010] 9 SCR 1124 | referred to | Para 19 |
| | [1977] 2 SCR 357 | referred to | Para 19 |
| | [1976] Suppl. SCR 123 | referred to | Para 19 |
| | [1993] 1 SCR 1 | referred to | Para 19 |
| D | [1990] 3 Suppl. SCR 259 | relied on | Para 20 |
| | [1989] Suppl. SCR 165 | relied on | Para 21 |
| | [1977] 3 SCR 113 | relied on | Para 22 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal

- E No. 1082 of 2019.

From the Judgment and Order dated 30.08.2018 of the High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh in CRLP No. 9225 of 2018.

- F K. L. Sastry, K. Srivarshini, I. V. Kashyap, Dr. A. M. Krishna and Ms. Aswathi M. K., Advs. for the Appellants.

Guntur Prabhakar, R. Chandrachud, Allanki Ramesh, Ms. Aruna Gupta, Syed Ahmad Naqvi, Mahfooz A. Nazki, Polanki Gowtham, Zain Maqbool and Avinash Tripathi, Advs. for the Respondents.

- G The Judgment of the Court was delivered by
INDIRA BANERJEE, J.

1. This appeal is against a judgment and order dated 30th August, 2018 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dismissing Criminal

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Petition No.9225 of 2018 filed by the appellant under Section 482 of the Criminal Procedure Code (Cr.PC) to quash the criminal proceedings being PRC No.2 of 2018 pending against the Appellants in the Court of the Additional Judicial First Class Magistrate, Narsapur, West Godavari District for offences punishable under Sections 307, 323, 427, 447 and 506(2) read with Section 34 of the Indian Penal Code (IPC).

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2. The Appellants and the Respondent No.2, being the *de facto* complainant, are apparently close relatives and are embroiled in a partition suit being OS No.92 of 2012 filed by the Appellant No.2 in the Court of Additional District Judge, Narsapur, West Godavari District of Andhra Pradesh.

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3. The Appellant No.2 had also filed a criminal complaint being Criminal Complaint No.518 of 2012 against the *de facto* complainant and others in the Court of the First Class Judicial Magistrate, Narsapur, West Godavari District under Sections 120B, 420, 463, 464, 466, 467, 468, 469, 470 and 471 of the IPC.

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4. It is the case of the appellants that the *de facto* complainant has falsely implicated the Appellants as a counter blast to the Criminal Complaint No. 518 of 2012 filed by the Appellant No.2.

5. The Appellants filed the Criminal Petition No. 9225 of 2018 in the High Court under Section 482 of the Cr.PC for quashing the proceedings in PRC No.2 of 2018 on the allegation that there were civil disputes pending between the Appellants and the Respondents.

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6. The Appellant also contended that an earlier application in the High Court under Section 482 of the CrPC being Criminal Petition No.13272 of 2014 for quashing CC No.508 of 2012 filed by the appellants, had been allowed by the High Court by an order dated 23rd July, 2018.

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7. In the complaint filed in the instant case, it is, *inter alia*, alleged that the Appellants caused injuries on the body of the *de facto* complainant and made attempts to hit the *de facto* complainant on the head and hit him with an iron rod. It is further alleged that the Appellants openly threatened to kill the *de facto* complainant.

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8. It is the case of the *de facto* complainant that the attempt to cause injuries on the head, which is a vital organ, could have resulted in the death of the *de facto* complainant. The High Court found in effect

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- A that the allegations in the complaint attracted the offences, punishable under Sections mentioned in the complaint.

9. The High Court rejected the contention of the Appellants that the complaint was lodged as a counter blast, observing that the complaint of the Second Appellant was filed on 28th September, 2012 whereas the
B instant complaint was filed on 21st July, 2015 that is after almost three years.

10. It is the case of the Appellants that the Appellant No.1, who is working as Lecturer at Hyderabad has falsely been implicated. Whether the Appellant No.1 was at Hyderabad when the alleged incident took
C place, or whether the Appellants have falsely been implicated are questions of fact which have to be decided in the trial by adducing evidence.

11. The High Court concluded, and rightly, that it was open to the Appellants to adduce evidence to show that the Appellants and/or one
D of the them was not present at the time of the alleged offence.

12. The plenary inherent jurisdiction of the Court under Section 482 of CrPC may be exercised to give effect to an order under the Code; to prevent abuse of the process of the Court; and to otherwise secure the ends of justice.

13. The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court
E or to otherwise secure the ends of justice.
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14. For interference under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief.
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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 proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence
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to conclude whether the materials produced are sufficient or not for convicting the accused. A

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. B
This proposition finds support from the judgment of this Court in **Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharful Haque and Another**¹.

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 at all constitute offences. Reference may be made to **S.W. Palanikar and Ors. v. State of Bihar and Another**². 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. C
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18. The power under Section 482 of CrPC 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 CrPC.

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. Annamali v. State of Karnataka and Another**³, **Sharda Prasad Sinha v. State of Bihar**⁴ and **Smt. Nagawwa v. Veeranna Shivlingappa Konjalgi and Ors.**⁵. E
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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.**⁶. G

¹ (2005) 1 SCC 122

² (2002) 1 SCC 241

³ 2010 (8) SCC 524

⁴ AIR 1977 SC 1754

⁵ AIR 1976 SC 1947

⁶ AIR 1993 SC 1361

A 20. In rejecting the application, the High Court relied upon the judgment of this Court in the *State of Haryana v. Bhajanlal*⁷ where this Court laid down the following guidelines for exercise of power under Section 482:-

B “(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.

C (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.

D (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.

E (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.

F (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.

G (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.

H (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.”

H ⁷ 1992 Supp (1) SCC 335

21. In ***Dhanalakshmi v. R. Prasanna Kumar and Others***⁸, cited A
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.” B C D

22. The High Court also relied on ***State of Karnataka v. L. Muniswamy and Others***⁹, (1977) 2 SCC 699, where this Court considered the scope of jurisdiction of the High Court under Section 482 Cr.PC and held:- E

“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 F G

⁸ 1990 Supp SCC 686

⁹ (1977) 2 SCC 699

A *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 law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these*
B *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.”*

C 23. In this case, the High Court rightly refused to quash the criminal complaint, observing that it can exercise power under Section 482 of the CrPC only in rare cases. The power to quash the proceedings is generally exercised when there is no material to proceed against the Petitioners even if the allegations in the complaint are *prima facie* accepted as true. The High Court in effect found, and rightly, that the allegations in
D the complaint coupled with the statements recorded by the learned Magistrate had the necessary ingredients of offences under Sections 307, 323, 427, 447 and 506(2) read with Section 34 of the IPC.

24. We agree with the High Court that this is not a fit case to quash the criminal proceedings for the reasons discussed above.

E 25. The appeal is, accordingly, dismissed.