

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.895 OF 2021

ORDER:

The present Criminal Petition is filed under Section - 482 of the Code of Criminal Procedure, 1973, to quash the proceedings against the petitioner in Crime No.16 of 2021 of Langer House Police Station, Hyderabad.

2. The petitioner herein is sole accused in the aforesaid Crime. The offences alleged against him are under Sections - 377 and 506 of IPC.

3. Heard Mr. K. Ramakanth Reddy, learned counsel for the petitioner and Mr. C. Hari Preeth, learned counsel for respondent No.2 and also learned Assistant Public Prosecutor appearing on behalf of respondent No.1 - State.

4. **PROSECUTION CASE:**

As per the complaint, allegations against the petitioner herein are as follows:

- (i) respondent No.2, *de facto* complainant, is brother of Akshay Reddy, while Sateesh is friend of Akshay Reddy;
- (ii) the petitioner herein is being called as Kaplapuri Bhavani Temple Mataj @ Pujari @ Jayanth Rao and has been running an Ashram at Kapilapur Village, Bhalki Taluka, Bidar District of Karnataka State;

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- (iii) brother of respondent No.2 and his friend, Sateesh since incurred losses in their business, they approached the petitioner and sought for his blessings to earn profits in their business;
- (iv) on which, the petitioner told them to do service every day in his Ashram and give donations to him, so that they would get good profits;
- (v) accordingly, they used to serve in the Ashram and give donations;
- (vi) while so, one day the petitioner called them to his personal rest Room and forced them to do sex with him, for which they disagreed, then the petitioner would curse them to get paralysis and also threatened them to kill by his devotees;
- (vii) under such threat, they have accepted to do sex with the petitioner and accordingly, the petitioner had sex with them frequently at his Ashram and also taken them several times to Bangalore and Hyderabad and had sex with them in Hotel Rooms;
- (viii) on 17.01.2021, the petitioner booked a room in Hotel at Bangalore and forced them to have sex with him, but they did not accept for the same;
- (ix) while the petitioner and brother of respondent No.2 and his friend were returning to Kalilapuram and when they reached Hyderabad, the petitioner told them that he was

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suffering from chest pain and accordingly, they admitted him in Premier Hospital, Langer House, Hyderabad;

- (x) after some time thereafter, 500 devotees came to hospital and tried to beat his brother and friend of his brother, but both of them escaped from there; and
- (xi) due to life threat to them, respondent No.2 lodged the present complaint against the petitioner.

5. Pursuant to the complaint lodged by respondent No.2 against the petitioner herein, the police registered a case in Crime No.16 of 2021 and took up for investigation.

6. The petitioner herein has filed the present petition seeking to quash the proceedings against him in the aforesaid crime.

7. CONTENTIONS OF THE PETITIONER:

i) Mr. K. Ramakanth Reddy, learned counsel for the petitioner, would submit that the petitioner is innocent of the offences alleged against and that he did not commit any offences, much less the aforesaid offences.

ii) The petitioner is a Hindu and professes his religion within the four walls for the well-being of mankind. He was implicated in the above crime. The FIR is bereft of relevant details. The petitioner neither forced the aforesaid persons to do sex with him, nor have had sex with them as alleged by respondent No.2.

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iii) Learned counsel would further submit that on 18.01.2021 the brother of respondent No.2 and his friend kidnapped the petitioner and took him to Bangalore in a Car and confined him in a Lodge and demanded to pay Rs.5.00 Crores, otherwise, threatened him to kill. At about 18:20 hours, the petitioner made a call to his devotee, Mr. K. Sandeep Kumar, and informed about his kidnap by the aforesaid persons. When the petitioner complained of chest pain, they brought the petitioner and got admitted in Premier Hospital. Mr. K. Sandeep Kumar and his friend reached the Hospital and on seeing them, the aforesaid persons fled away. He would further submit that Mr. K. Sandeep Kumar, also lodged a complaint with Langer House Police Station at 12:00 hours and the same was registered as Crime No.15 of 2021 against brother of respondent No.2 and his friend for the offences under Sections - 342, 385, 506 and 365 of IPC.

iv) Learned counsel referring to Crime No.15 of 2021, would submit that the present crime is nothing but a counter complaint lodged by respondent No.2 as there was a gap of about seven hours between the two complaints. He would further submit that the contention of respondent No.2 that the petitioner insisted his brother and friend of his brother to do sex with him is totally false for the reason that there is no medical evidence. There are contradictions and improvements in the statements of witnesses recorded under Section – 161 of Cr.P.C. Further respondent No.2 filed counter affidavit duly notarized stating that he gave a complaint in a fit of anger on account

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of filing complaint in Crime No.15 of 2021 and there was miscommunication. Even, respondent No.2 as well as his brother filed affidavits duly notarizing that there was no forcible act of sex on the part of the petitioner and that respondent No.2 filed the present complaint as a counter to the complaint in Crime No.15 of 2021 and, therefore, they also requested to quash the proceedings against the petitioner herein. Referring to the said counter as well as affidavits, learned counsel would submit that the present complaint is nothing but false one and it lacks the ingredients of offences alleged against the petitioner.

v) In support of the aforesaid contentions, the learned counsel has relied on the decision rendered by the Hon'ble Supreme Court in **Navtej Singh Johar v. Union of India¹**.

vi) With the aforesaid submissions, learned counsel sought to quash the proceedings against the petitioner herein in the present petition.

8. **CONTENTIONS OF RESPONDENT No.2:**

i) Learned counsel for respondent No.2 would contend that respondent No.2 has filed the present complaint in a fit of anger as one of the devotees filed complaint against the brother of respondent No.2 and his friend which was registered as Crime No.15 of 2021 and due

¹. AIR 2018 SC 4321

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to communication gap and, therefore, he requested to quash the proceedings against the petitioner herein.

9. CONTENTIONS OF PROSECUTION:

i) On the other hand, learned Assistant Public Prosecutor would submit that after registration of crime, the police have been investigating the matter and it is under progress. So far, the Investigating Officer has examined three witnesses and yet to examine some more witnesses and he has to collect the evidence also. There are serious allegations against the petitioners which are factual aspects to be investigated by the Investigating Officer as the contents of the complaint would show that there was no consensual sex. If the petitioner is innocent and did not commit any offence, he can prove his innocence during investigation, but not at the crime stage.

ii) With the above submissions, learned Assistant Public Prosecutor sought to dismiss the present criminal petition.

10. FINDING OF THE COURT:

i) As mentioned above, respondent No.2, accused Nos.1 and 2 in Crime No.15 of 2021 have filed counter affidavit and third party affidavits duly notarized respectively before this Court requesting to allow the present criminal petition by quashing the proceedings against the petitioner herein.

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ii) In view of the above, now, it has to be seen whether the proceedings can be quashed against the petitioner in the present crime basing on the said counter affidavit and third party affidavits reporting no objection.

iii) As stated above, *prima facie*, there are serious allegations against the petitioner herein. The offence under Section - 377 of IPC is an offence against society. In this regard, it is relevant to mention the parameters laid down by the Hon'ble Supreme Court in **the State of Madhya Pradesh v. Laxmi Narayan**² which are as under:

“i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) x x x x;

iv) x x x x;

² 2019 (5) SCC 403

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v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

iv) In view of the above principle, it is for the Investigating Officer to investigate into the aspect that the circumstances under which, respondent No.2 herein and accused Nos. 1 and 2 in Crime No.15 of 2021 filed counter affidavit and third party affidavits reporting no objection in quashing the proceedings against the petitioner herein in Crime No.16 of 2021 and the allegations made by respondent No.2 in the complaint dated 23.01.2021 in the present crime. Admittedly, the matter is at crime stage. Therefore, this Court is not inclined to quash the proceedings against the petitioner herein merely because respondent No.2 and accused Nos.1 and 2 in Crime No.15 of 2021 reported no objection by way of counter affidavit and third party affidavits.

v) With regard to the offence under Section - 377 of IPC, *vires* of Section - 377 of IPC was under challenge before the Hon'ble

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Supreme Court. A Constitution Bench of the Apex Court has struck down the said Section partially on the ground that the said section abridges both human dignity, right to privacy and choice of the citizenry, and that sexual orientation is an essential and innate facet of privacy. Consensual private acts of adults neither cause disturbance to public order nor injurious to public morality or decency. Therefore, the section held violative of right of freedom of expression and struck down the same partially.

vi) The Apex Court further held that Section - 377 of IPC in so far as it criminalises consensual sexual conduct between adults of the same sex, is unconstitutional. Members of the LGBT community are entitled, as all other citizens, to the full range of constitutional rights including the liberties protected by the Constitution. The choice of whom to partner, the ability to find fulfillment in sexual intimacies and the right not to be subjected to discriminatory behaviour are intrinsic to the constitutional protection of sexual orientation. Members of the LGBT community are entitled to the benefit of an equal citizenship, without discrimination, and to the equal protection of law.

vii) As stated above, the allegations against the petitioner are that he has called the brother of respondent No.2 and his friend to his personal rest room, forced them to do sex with him, for which they have disagreed. Thereafter, they have agreed for the same on the threat given by the petitioner that he would curse them to get paralysis

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and that he would ask his devotees to kill them. Thus, under the said threat, the petitioner had participated in sexual acts with the brother of respondent No.2 and his friend, Sateesh, on several occasions, both at Bangalore and Hyderabad.

viii) In the present case, as per the contents of the complaint, there was sex between two adults of same sex. Both the petitioner and brother of respondent No.2 and his friend are male members. Now, in view of the law laid down by the Apex Court in **Navtej Singh Johar¹**, the only point for consideration by this Court is whether there was consensual sex or not? As stated above, there is specific allegation that brother of respondent No.2 and his friend have disagreed to participate in sexual act with the petitioner, to which the petitioner herein threatened them that he would curse them to get paralysis and also threatened that he would ask his devotees to kill them. Under the said threat, brother of respondent No.2 and his friend have participated in sexual acts with petitioners. It is a factual aspect to be investigated into. Whether brother of respondent No.2 and his friend have participated in sexual acts with petitioner voluntarily or forcibly and whether there was consensual participation is also a factual aspect to be investigated into by the Investigating Officer during the course of investigation.

ix) As stated above, the circumstances which respondent No.2 and accused Nos.1 and 2 in Crime No.15 of 2021 filed counter affidavit and third party affidavits duly notarized stating that they do

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not have objection to quash the proceedings against the petitioner herein in the present crime is also a matter to be investigated into by the Investigating Officer. Thus, there are several factual aspects to be investigated into by the Investigating Officer during the course of investigation.

x) As discussed above, the Apex Court has struck down Section - 377 of IPC in so far as it criminalises consensual sexual conduct between adults of the same sex by declaring it as unconstitutional. Therefore, the contention of the petitioner that the Apex Court has struck down Section - 377 of IPC by declaring it as unconstitutional and, therefore, the proceedings in Crime No.16 of 2021 against the petitioner herein for the offence under Section - 377 of IPC is unsustainable.

xi) It is also relevant to note that another offence registered against the petitioner is under Section - 506 of IPC. It deals with punishment for criminal intimidation, and as per Section - 503 of IPC, whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. In view of the same, as discussed above, there is a specific allegation that the petitioner herein has threatened the brother

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of respondent No.2 and his friend that if they do not participate in sexual acts with him, he would curse them to get paralysis and also threatened them that he would ask his devotees to kill them. Thus, *prima facie*, the contents of complaint dated 23.01.2021 constitutes the ingredients of the said section.

xii) The Apex Court in **Kamal Shivaji Pokarnekar v. The State of Maharashtra**³ has categorically held that quashing criminal proceedings was called for only in a case where complaint did not disclose any offence, or was frivolous, vexatious, or oppressive. If allegations set out in complaint did not constitute offence of which cognizance had been taken by Magistrate, it was open to High Court to quash same. It was not necessary that, a meticulous analysis of case should be done before trial to find out whether case would end in conviction or acquittal. If it appeared on a reading of complaint and consideration of allegations therein, in light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for High Court to interfere. The defences that might be available, or facts/aspects which when established during trial, might lead to acquittal, were not grounds for quashing complaint at threshold. At that stage, only question relevant was whether averments in complaint spell out ingredients of a criminal offence or not. The Court has to consider whether complaint discloses that *prima facie*, offences that were alleged against Respondents. Correctness or

³. AIR 2019 SC 847

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otherwise of said allegations had to be decided only in trial. At initial stage of issuance of process, it was not open to Courts to stifle proceedings by entering into merits of the contentions made on behalf of Accused. Criminal complaints could not be quashed only on ground that, allegations made therein appear to be of a civil nature. If ingredients of offence alleged against Accused were *prima facie* made out in complaint, criminal proceeding shall not be interdicted.

xiii) In **Skoda Auto Volkswagen India Private Limited v. The State of Uttar Pradesh**⁴, the Apex Court referring to the earlier judgments rendered by it has categorically held that the High Courts in exercise of its inherent powers under Section - 482 of Cr.P.C has to quash the proceedings in criminal cases in rarest of rare cases with extreme caution.

xiv) In **M/s. Neeharika Infrastructure Private Limited v. State of Maharashtra**⁵, a Three-judge Bench of the Apex Court laid certain conclusions, for the purpose of exercising powers by High Courts under Section - 482 of Cr.P.C and also Article - 226 of the Constitution of India, which are as under:

“....

iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been

⁴. AIR 2021 SC 931

⁵. AIR 2021 SC 1918

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formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the

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investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

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xv) As discussed supra, *prima facie*, there are specific allegations against the petitioner herein and there are several factual aspects to be investigated into by the Investigating Officer. Therefore, this Court is not inclined to interdict the investigation in the present crime.

11. **CONCLUSION:**

i) In view of the above authoritative pronouncement of law, according to this Court, the petitioners failed to make out any ground to quash the proceedings in Crime No.16 of 2021 and, therefore, the petition is liable to be dismissed.

ii) The present Criminal Petition is, accordingly, dismissed.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

26th July, 2021
Mgr

K. LAKSHMAN, J