THE HIGH COURT OF MADHYA PRADESH
MCRC 48584/2018
Mukesh Singh & Others vs. Smt. Rajni Chauhan & Others

Gwalior, dtd. 03/12/2018

Shri A.S. Bhadoriya, Counsel for the applicants.

Shri R.K. Awasthy, Public Prosecutor for the State

Heard on the question of admission.

This application under Section 482 of Cr.P.C. has been filed for the quashment of M.J.C. No. 169/2018 pending in the Court of J.M.F.C., Lahar, Distt. Bhind with cost of Rs. 1 lac.

The necessary facts for the disposal of the present application in short are that the respondent no.1 has filed a complaint under Section 12 of Protection of Women from Domestic Violence Act, 2005 (In short ''Act of 2005'') on the allegations, that the applicant no.1 is the husband of the complainant, whereas the remaining applicants are the relatives of applicant no.1. On 29-8-2018 at about 9 P.M., all the applicants went to the parental house of the respondent no.1/complainant and were armed with deadly weapons and demanded a Bolero Jeep in Dowry and also threatened that in case their demand is not fulfilled, then the applicant no.1 would perform second marriage. Thus, it was prayed that the applicant(s) be directed to pay Rs.10,000 per month by way of monetary relief and should either make arrangement for house or should pay Rs.5000/- per month by way of rent.

The Magistrate, by order dated 17-9-2018, took cognizance of the complaint and issued notices to the applicants.

Challenging the proceedings under Section 12 of Act, 2005, it is submitted by the Counsel for the applicants, that the respondent no.1 has also lodged a police report for offence under Section 498-A of I.P.C. in which, she had alleged that the applicant(s) were demanding Rs.20,000/-. In fact, the applicant(s) were beaten by the respondent no.1 and her relatives and accordingly, a F.I.R. was also lodged by the applicants for offence under Section 294, 323, 506, 34

of I.P.C. The applicants no.1, 3 and 5 had sustained injuries and the photographs of the applicants no. 1, 3, and 5 in an injured condition have also been placed on record. It is further submitted that the Magistrate, has directly took cognizance of the complaint without adhering to the mandatory provisions of Section 12 of Act, 2005. It is further submitted that the respondent no. 1 has suppressed the fact of lodging of F.I.R. by her against the applicant(s) for offence under Section 498-A of I.P.C., otherwise, the Magistrate could have applied his mind to the allegations, because in the F.I.R., the allegations are that the applicant(s) were harassing her for demand of Rs. 20,000/- whereas in the complaint, the respondent no.1 has alleged that a Bolero jeep was demanded.

Heard the learned Counsel for the applicants.

So far as the submission made by the Counsel for the applicant, that the application/complaint was filed directly before the Trial Court and the respondent No.1 did not approach the Protection Officer is concerned, a co-ordinate bench of this Court in the case of **Arif Ahmad Quraishi (Dr.) Vs. Smt. Shajia Quraishi,** reported in **2010 (II) MPJR 284** has held as under :

> *"**9.** The proviso to Section 12 of the Act provides that before passing any order on the application filed under Section 12(1) of the Act, the Magistrate shall take into consideration any domestic incident report received by him from the protection officer. In this case, admittedly, the Protection order has not so far been passed and it is yet to be passed. The contention of the learned Counsel for the petitioner is that the application itself should not have beeen taken cognizance in absence of the domestic indicent report from the Protection Officer. A reading of Section 12 of the Act doesnot warrant such an interpretation. Nowhere, it is provided in the Act, that even for taking cognizance of the application filed by the aggrieved person, the receipt of the domestic incident report from the Protection Officer is a condition precedent. Therefore, the contention of the learned Counsel for the petitioner is untenable and doesnot merit acceptance.*
> *9. As stated above, this Act, being a beneficent*

> *piece of legislation enacted for providing minimum relief to an aggrieved person affected by domestic violence, even if there is any minor procedural deviation, such minor procedural deviation being technical in nature, need not be taken serious note off and on that ground, the proceedings pending under the Act cannot be quashed.*

In the present case, admittedly, no protection order has been passed so far, therefore, the proceedings cannot be quashed on the ground that the report of the Protection Officer has not been considered.

It is next contended by the Counsel for the applicants, that the complaint under Section 12 of Act, 2005 has been filed with mala fide intentions.

The Supreme Court in the case of **Renu Kumari v. Sanjay Kumar & Ors.,** reported in **(2008) 12 SCC 346** has held as under:-

> "8. Exercise of power under Section 482 Cr.P.C. in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under Cr.P.C., (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of "quando lex aliquid alicui concedit, concedere

videtur id sine quo res ipsa esse non potest" (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, 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. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In R.P. Kapur v. State of Punjab (1960 (3) SCR 388) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

> (i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
>
> (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
>
> (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (SCR p.393)

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal

evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335). A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp.378-79, para 102)

> '(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 proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, 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."

11. As noted above, the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised 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. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be

> sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar (1990 Supp SCC 686), State of Bihar v. P.P. Sharma (1992 Supp (1) SCC 222), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995(6) SCC 194) , State of Kerala v. O.C. Kuttan (1999(2) SCC 651), State of U.P. v. O.P. Sharma (1996 (7) SCC 705), Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) (1999 (8) SCC 728) and Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259)]The above position was again reiterated in State of Karnataka v. M.Devendrappa (2002(3) SCC 89), State of M.P. v. Awadh Kishore Gupta (2004(2) SCC 691) and State of Orissa v. Saroj Kr. Sahoo (2005(13) SCC 540)."
> 12.

Thus, the allegations of mala fides cannot be considered at this stage, when the allegations made in the complaint, *prima facie* make out a case of Domestic Violence.

It is next contended by the Counsel for the applicants, that in the F.I.R. lodged for offence under Section 498-A of I.P.C., the allegations were that the applicant(s) were harassing the respondent no.1 for demand of Rs.20,000/- whereas in the complaint under Section 12 of Act, 2005, the allegations are that of demand of Bolero, therefore, the allegations are false. The contentions of the applicants, cannot be accepted. The F.I.R. was lodged prior to 19-8-2018 i.e., on 9-6-2018 and the allegations were made that the respondent no.1 was being harassed and treated with cruelty for non-fulfillment of demand Rs.20,000/-, whereas the complaint under Section 12 of Act, 2005 has been filed on the basis of Domestic Violence committed by

the applicants on 29-8-2018. Thus, there is no discrepancy in the allegations made by the respondent no.1.

Thus, considering the submissions made by the Counsel for the applicants, this Court is of the considered opinion, that the complaint filed by the respondent no.1, under Section 12 of Act, 2005 against the applicants cannot be quashed.

Accordingly, this application fails and is hereby **Dismissed.**

(G. S. Ahluwalia)
Judge

MKB *