

(2019) 09 MP CK 0101

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 40255 Of 2018

Chetram Sanodiya

APPELLANT

Vs

State Of Madhya Pradesh And Another

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 164, 482
Indian Penal Code, 1860 — Section 354D
Protection Of Children From Sexual Offences Act, 2012 — Section 11(iv), 12
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(b), 3(2)(va)

Citation : (2019) 09 MP CK 0101

Hon'ble Judges : Vishnu Pratap Singh Chauhan, J

Bench : Single Bench

Advocate : Vishal Daniel, S.S. Thakur, K.N. Fakhruddin

Final Decision : Dismissed

Judgement

1. The applicant has filed this petition under Section 482 of the Code of Criminal Procedure for quashing of FIR registered as Crime No.05/2018 at Police Station, Kurai, Distt. Seoni for the offences punishable under Section 354D of IPC, under Section 11(iv) read with Section 12 of the Protection of Children from Sexual Offences Act, 2012 and under Section 3(1)(b) 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 1989.

2. The facts giving rise to this petition, in short, are that respondent No.2 who is minor girl submitted a hand written report on the letter pad of Paramparik Gram Sabha, Distt. Seoni to Police Station, Kurai alleging therein that the applicant was posted as a teacher in Middle School Paraspani where prosecutrix, who was minor at that time, was studying in 8th standard belonging to Schedule Caste community. The applicant put love letter beneath the bag of the prosecutrix. The prosecutrix pick up that bag and found that letter in which the applicant wrote the word 'I love you'. The prosecutrix being a student of that school felt harass

and insult herself and avoid to attend the school. When this matter came in the knowledge of the family members of the prosecutrix, they complaint it to Gram Pradhan of Paramparik Gram Sabha, Distt. Seoni. Prosecutrix wrote a complaint on the letter pad provided by Paramparik Gram Sabha, Distt. Seoni and submitted the same to Police Station, Kurai. After lodging the FIR, registered Crime No.05/2018 against the applicant for the offence punishable under Section 354D of IPC, under Section 11(iv) read with Section 12 of the Protection of Children from Sexual Offences Act, 2012 and under Section 3(1)(b) 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 1989.

3. Being aggrieved by the registration of Crime No.05/2018 against the applicant, the applicant has filed this petition under Section 482 of Cr.P.C. on the ground that no material is available against the applicant in the said letter. The said letter has not been written by the applicant. Paramparik Gram Sabha, Distt. Seoni is a political organization. The applicant was having some dispute with the brother of the friends of the prosecutrix. Prosecutrix found the note of 20/12/2017 and when her uncle came down to Village on 28/12/2017 thereafter a meeting was convened and after that on 30/12/2017 a complaint, written on the letter head of Paramprik Gram Sabha, Distt. Seoni, was submitted to Police Station, Kurai and FIR registered on 03/01/2018 against the applicant. There is no acceptable explanation of her with respect to delay. The letter was neither signed by the applicant nor in his own hand writing having no connection with the prosecutrix and during investigation, this fact has not been investigated. On the basis of fabricated letter, the applicant has falsely been implicated by using the prosecutrix as a tool. No offence under Section 354D of IPC, under any offence of POCSO Act and SC/ST (PoA) Act are made out, therefore, prays to quash FIR as well as Crime No.05/2018 registered at Police Station, Kurai, Distt. Seoni.

4. Learned Panel Lawyer appearing on behalf of respondent No.1/State submits that there are sufficient materials available on record against the applicant. There is oral evidence of prosecutrix as well as her friends recorded under Section 161 of Cr.P.C. The applicant knew that prosecutrix belonged to the cast of Schedule Cast. This petition has been filed on wrong grounds, therefore, prays for dismissal of the petition.

5. Learned counsel for respondent No.2, who is prosecutrix, submits that when prosecutrix went to attend the school, the applicant oftenly stared badly on her but she avoided as the applicant was a teacher in that school and when ultimately she found love letter given by the applicant, then she felt harass and also felt insult of her modesty, then she avoided to attend the school. On asking that why she was avoiding to go school, she naratted the whole story to her friends and family members. Paramprik Gram Sabha called the applicant there, however, the applicant did not appear before the Gram Sabha, then prosecutrix was advised to lodge complaint against the applicant. She wrote complaint in the letter pad of Paramprik Gram Sabha and submitted in the concerned Police

Station. There are sufficient material available against the applicant to proceed for the offence. The applicant has filed this petition on wrong grounds, therefore, prays for dismissal of the petition.

6. Having heard learned counsel for the parties. The applicant has filed copy of FIR (Annexure-A/1), written complaint (Annexure-A/2), statement of prosecutrix recorded under Section 161 of Cr.P.C. (Annexure-A/3) and the questioned letter (Annexure-A/4) and also filed copy of charge sheet and documents filed along with the charge sheet. Perused the documents as well as case diary of Crime No.05/2018.

7. Perused the statement of prosecutrix recorded under Section 161 of Cr.P.C. as well as 164 of Cr.P.C. This witness categorically stated that in recess, prosecutrix went out side. Her bag and guide was there. When she came back, she found a letter beneath guide in which the applicant wrote 'I love you'. Prosecutrix immediately showed this letter to her friend Rubina. When she came back at her home, she showed that letter to Kapit. Kapil went to school and scolded the applicant, then applicant made an excuse to the prosecutrix She categorically further stated that before this incident, applicant handed over same type of letter to the prosecutrix and tried to kiss her. Thereafter she reported the matter to her father.

8. Perused the questioned letter. As per prosecutrix, it has been written in the hand writing of the applicant. However after perusal of this letter there is no signature of any one found on this questioned letter. Perused the statement of Rubina, a girl who studying with the prosecutrix. This witness stated the conduct of the applicant.

9. Learned counsel for the applicant further submits that questionable letter does not bear signature of the applicant and nor it has been related in the hand writing of the applicant. It is a forged and concocted document to implicate the applicant is having ulterior motive for wreaking vengeance against the applicant because before this incident there was a dispute happened between Kapil and the applicant. Kapil is the brother of witness Rubina who is friend of the prosecutrix, therefore, prosecutrix, Rubina and Kapil cooked story against the applicant and forgedly prepared questionable letter and falsely implicated the applicant. Learned counsel by placing reliance on the decision of Hon'ble Apex Court in the case of State of Haryana & Ors. Vs. Ch. Bhajanlal & ors. [AIR 1992 SC 604] submits that in the forgoing circumstances, FIR and other criminal proceeding should be quashed.

10. Having heard learned counsel for the parties and perused the whole evidence collected during investigation and submitted along with charge sheet.

11. Hon'ble Apex Court in the case of Ch. Bhajanlal & ors. (supra) categorically held that the inherent powers envisaged under Section 842 of Cr.P.C. should be used sparingly in extra-ordinary circumstances. In para-108 and 109 of that judgment, Hon'ble Apex Court has culled out some important points for quashing

of the FIR or complaint, as under:-

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercise.

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 F.I.R. 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 F.I.R. 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 F.I.R. 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 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 on 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."

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in

embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice." :

12. Perusal of the statement of prosecutrix recorded under Section 161 as well as 164 of Cr.P.C. before the Magistrate. Prosecutrix categorically stated that she stated the incident happened with her to one Kapil and Kapil went to school on the next day and scolded the applicant thereafter applicant offered pardon for that incident to the prosecutrix. This fact, prima facie shows that quarrel happened between the applicant and Kapil after the incident not before the incident, therefore, it cannot be said that there are chances of false implication of the applicant on the basis of animosity between Kapil and applicant.

13. Hon'ble Apex Court in the case of Ch. Bhajanlal & ors. (supra) discussed the decision rendered in the case of R.P. Kapoor Vs. State of Punjab, AIR 1960 SC 866. In this case Hon'ble Apex Court in para-6 of the judgment considered the conditions on which FIR can be quashed and these conditions are further discussed in the case of Ch. Bhajanlal & ors. (supra).

14. Hon'ble Apex Court in the case of State of Karnataka Vs. Muniswamy and others, AIR 1977 SC 1489 dismissed the appeal filed against the judgment of the High Court passed in Criminal Appeal No.345 and 346 of 1076 whereby the High Court while exercising its inherent powers quashed the proceeding initiated by the State of Karnataka against the appellant of that case. In para-11 of the said judgment Hon'ble Apex Court has held as under :

"11. We are therefore in agreement with the view of the High Court that the material on which the prosecution proposes to rely against the respondents is wholly inadequate to sustain the charge that they are in any manner connected with the assault on the complainant. We would, however, like to observe that nothing in our judgment or in the judgment of the High Court should be taken as detracting from the case of the prosecution, to which we have not applied our mind, as against accused Nos. 1 to 9. The case against those accused must take its due and lawful course."

However, in the present case, there are statement of the prosecutrix recorded under Section 161 of Cr.P.C. by the Police as well as under Section 164 of Cr.P.C. recorded by the Magistrate and the prosecutrix was minor on the date of incident and belongs to schedule cast community, therefore, facts of the above case law and the facts of this present case are totally different.

15. Hon'ble Apex Court in the case of State of H.P. Vs. Pirthi Chand and another, (1996) 2 SCC 37 in para-13 has held that when Court exercises its inherent power under Section 482 of Cr.P.C., prime consideration should only be whether exercise of power would advance cause of justice or it would be an abuse of process of the Court. When Investigating Officer spends considerable time to collect the evidence and places the charge sheet before the Court, further action

should not be short-circuited by resorting to exercise inherent power to quash the charge sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole.

16. Hon'ble Apex Court in the case of Satish Mehra Vs. State (NCT of Delhi and another), (2012) 13 SCC 614 in para-14 has categorically held as under :

"14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in their entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

17. After considering the forging stand and the proposition of law laid down by Hon'ble Apex Court in the above cited case-laws, this Court is of the view that after considering the materials filed along with the charge sheet, it is reflected and disclosed the manner of commission of the offence by the applicant. Hence, this Court does not find any reason and ground to quash the FIR and criminal proceeding against the applicant by invoking the inherent powers envisaged under Section 482 of Cr.P.C. The applicant is having an opportunity to argue the matter before charge in the trial Court.

18. Accordingly, this petition sans merit and the same is hereby dismissed without any order as to cost.