

(2021) 07 TEL CK 0078

In the Telangana High Court

Case No : Civil Revision Petition Nos. 602, 605 And 606 Of 2020

Dr. Vijay Anand Reddy VsN.Shashank Reddy And Others

Date of Decision : 30-07-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 173, 200, 239, 240, 482
Indian Penal Code, 1860 — Section 120B, 304A, 418, 420

Citation : (2021) 07 TEL CK 0078

Hon'ble Judges : Dr. Shameem Akther, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Since the facts of the case and issue involved in both these Criminal Petitions are similar and both these Criminal Petitions emerge out of the same

Calendar Case, they are taken up together and being disposed of by this common order.

2. Both these Criminal Petitions are filed by the petitioners/A1 & A2 under Section 482 of the Code of Criminal Procedure, 1973, (Cr.P.C.) seeking to

quash the proceedings against them in C.C.No.1304 of 2014 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad, registered for

the offences punishable under Sections 418, 420, 304A & 120B of IPC. The petitioner in Criminal Petition No.8621 of 2014 is A1 and the petitioner in

Criminal Petition No.4586 of 2014 is A2 in the subject Calendar Case.

3. The respondent No.1 in both these criminal petitions/de facto complainant filed a private complaint under Section 200 of Cr.P.C. before the learned

III Additional Chief Metropolitan Magistrate, Hyderabad, making certain allegations against the A1 & A2. The learned Magistrate, having examined

the complaint, referred the same to the Station House Officer, Banjara Hills Police Station, under Section 156(3) of Cr.P.C., for investigation and

report. On such referral, the Station House Officer, Banjara Hills Police Station, registered a case in Crime No.587 of 2013 against the A1 & A2 for

the offences punishable under Sections 418, 420, 304A & 120B of IPC; and, on completion of investigation, filed charge-sheet before the trial Court

on 20.03.2014. The trial Court had taken cognizance against A1 & A2 for the offences mentioned supra. Aggrieved by the same, A1 & A2 filed both

these Criminal Petitions to quash the proceedings against them in the subject C.C.No.1304 of 2014.

4. Heard Sri V.R.N.Prashanth, learned counsel representing M/s.Indus Law Firm, learned counsel for petitioners in both these Criminal Petitions, Sri

Shyam S. Agrawal, learned counsel for respondent No.1/de-facto complainant in both these Criminal Petitions, Smt.Juvvadi Sridevi, Additional Public

Prosecutor representing the 2nd respondent-State in both these Criminal Petitions and perused the record.

5. The learned counsel for the petitioners in both these Criminal Petitions (A1 & A2) would submit that the allegations levelled against A1 & A2 in the

charge-sheet, even if taken on their face value and accepted in their entirety, do not constitute the alleged offences. The subject private complaint

lodged against A1 & A2 is baseless and wholly misconceived. Further, the subject private complaint was filed belatedly, i.e., after three years of the

alleged offences, only to harass A1 & A2 and with ulterior motive, as such, it is not in limitation. A1 & A2 are doctors and they acted as a team in the

best interest of the patient. Further, A2's role was limited to the extent of referring the patient to A1 for treatment and he did not treat the patient

at any point of time. There was no medical negligence on the part of A1 & A2, as alleged. There is no allegation in the subject private complaint that

A1 & A2 were negligent in giving medical treatment/advice, which lead to death of the deceased-Smt.N.Kamala. A1 & A2 have got substantial

material to their credit such as order, dated 10.06.2021, of National Consumer Disputes Redressal Commission etc., which, if examined together with

the material on record, would lead to an irresistible conclusion that they are not guilty of the alleged offences. Further, there is no bar to file an

application under Section 482 of Cr.P.C. before framing of charges. Though there is no prima facie evidence or material on record to take cognizance

of the alleged offences against A1 & A2, the trial Court erred in taking cognizance of the same against A1 & A2. Under these circumstances,

continuation of proceedings against A1 & A2 is nothing but travesty of justice and cannot be continued and ultimately prayed to allow the Criminal

Petitions as prayed for. In support of his contentions, the learned counsel had placed reliance on the following decisions.

1. State of Punjab v. Sarwan Singh (1981) 3 SCC 34
2. Srinivas Gopal v. Union Territory of Arunachal Pradesh (1988) 4 SCC 36
3. Rakesh Ranjan Gupta v. State of U.P. and another (1999) 1 SCC 188
4. Dr.Suresh Gupta v. Government of NCT of Delhi and another (2004) 6 SCC 422
5. Zandu Pharmaceutical Works Ltd. and others v. Mohd. Sharaful Haque and another (2005) 1 SCC 122
6. Jacob Mathew v. State of Punjab and another (2005) 6 SCC 1
7. A.S.V.Narayan Rao v. Ratnamala and another (2013) 10 SCC 741
8. Jayshree Ujwal Ingole v. State of Maharashtra and another (2017) 14 SCC 571
9. Harish Dahiya @ Harish and another v. State of Punjab and others (2019) 18 SCC 69
10. P.Malathi v. States of Telangana and A.P. (2014) SCC Online Hyd 483
11. Ramakrishna Reddy v. P.Malathi and another (SLP No.8630-8631/2014 dated 17.11.2014)
12. Dommati Siva Kumar v. The State of A.P. (2014(3) ALT (CrI.) 278 (AP))

6. Per contra, the learned Additional Public Prosecutor appearing for the 2nd respondent-State would contend that a perusal of the subject complaint

clearly discloses serious offences against A1 & A2.

The police concerned have completed investigation and filed charge-sheet before the trial Court against A1 & A2 for the offences punishable under

Sections 418, 420, 304A, 120B of IPC. The trial Court has taken cognizance of the alleged offences. All these offences are triable as warrant case.

However, no charges are framed yet. Therefore, it is not open to A1 & A2 to approach this Court directly under Section 482 of Cr.P.C., as an

efficacious remedy is available to them under Section 239 or 240 of Cr.P.C., as the case may be. Both these Criminal Petitions are filed only with a

view to drag on the proceedings and to frustrate the complaint filed by the de-facto complainant. There is no merit in these petitions and ultimately

prayed to dismiss the Criminal Petitions.

7. The learned counsel for the 1st respondent/de-facto complainant in both these petitions also raised similar contentions.

Further, the learned counsel, relying on the decision of the Honâ??ble Supreme Court in *Rajiv Thapar Vs. Madan Lal Kapoor* (2013) 3 SCC 330,

would contend that there are no justifiable grounds/reasons to exercise inherent jurisdiction of this Court under Section 482 of Cr.P.C. The

petitioners/A1 & A2 are required to appear before the trial Court and make their submissions and prove that there are no grounds to frame charges

and proceed against them, as contemplated under Section 239 Cr.P.C. Learned counsel further contended that there is ample record to frame charges

against the petitioners/A1 & A2 for the offences punishable under Sections 418, 420, 304A & 120B of IPC and proceed against them.

8. In view of the above submissions, the point that arises for determination in both these Criminal Petitions is as follows:

â??Whether the proceedings against the petitioners/A1 & A2 in C.C.No.1304 of 2014 on the file of learned III Additional Chief Metropolitan

Magistrate, Hyderabad, registered for the offences punishable under Sections 418, 420, 304A, 120B of IPC, are liable to be quashed?â??

Point:

9. The case of the prosecution, as seen from the charge sheet filed before the Court below and the documents enclosed thereto, is that the 1st

respondent/de-facto complainant in both these criminal petitions filed a private complaint under Section 200 Cr.P.C. before the trial Court stating that

his mother Smt.N.Kamala, was suffering from continuous headache and doctors advised for immediate surgery. On 24.09.2009, when he contacted

Dr.Vijayanand (A2), the said doctor advised for lymph nodes biopsy, which was done on 25.09.2009, and the result was declared as â??no

cancerâ??. Another biopsy surgery was conducted on 01.10.2009. The result of the sample obtained from brain of the patient revealed that the

patient had â??CNS Primary Lymphomaâ?? and can be cured by Chemotherapy and Radiotherapy. The patient was admitted in Apollo Hospital,

Jubilee Hills, Hyderabad, on 06.10.2009. The patient was referred to Dr.S.V.S.S.Prasad (A1) under the guidance of A2. Discussions were also held

with Dr.Praveen, Oncologist, practicing in USA, who is a relative of the complainant, who promised to give his guidance. Tests were conducted and

the patient was treated suspecting TB by Dr.K.V.Bhargava. On 11.10.2009, the patient was discharged from hospital and A1 advised certain medications to the patient until next visit. On 19.10.2009, the patient was again admitted to the hospital of A1. Since the patient was very weak, she was shifted to MICU on 20.10.2009. Subsequently, when the patient was examined by A2, she was weak. Since A1 has not given proper treatment for the fever of the patient in the initial stage, it leads to complications. Subsequent treatment was given by Dr.Lavanya. Due to abnormal treatment, both the kidneys of the patient were damaged. The patient condition was deteriorated and she was admitted in ICU on 05.11.2009 and the same condition was continued and the acidosis levels increased and the process became irreversible. On 10.11.2009, patient developed minor cardiac arrest and recovered by herself. Immediately, she was put on ventilator. She did not improve and deteriorated further. On 11.11.2009, patient developed second cardiac arrest and on 12.11.2009 she finally succumbed to the illness due the improper treatment given by the accused. Thus the accused were negligent in exercising pre/post chemo precautions and delay in administering vital drugs to minimize the complications and thereby cheated the complainant. The criminal conspiracy, common intention and negligent acts of the accused resulted in death of the patient.

10. Though several contentions have been raised by the learned counsel for the petitioners/A1 & A2, his core contention is that the allegations made in the charge-sheet, even if taken on their face value and accepted in their entirety, do not make out ingredients of the alleged offences and that there is no bar to file a quash petition under Section 482 of Cr.P.C. before framing of charges. On the other hand, the main contention of the learned counsel for respondents is that when an efficacious remedy is available to A1 & A2 under Section 239 or 240 of Cr.P.C., this Court is not justified in exercising the extraordinary jurisdiction under Section 482 Cr.P.C.

11. Here, it is apt to state that Section 239 Cr.P.C provides that if, upon considering the police report, and the documents sent with it under Section 173 Cr.P.C, and making such examination, if any, of the accused as the Magistrate thinks necessary, and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. Thus, Section

239 Cr.P.C. mandates discharge of the accused, if the Court finds that the charge against the accused is groundless.

12. Section 240 Cr.P.C provides that if the Court is of the opinion, upon consideration of the police report and the documents produced by the Police

and also after examination of the accused, if any, and hearing the parties, that there is ground for presuming that the accused has committed an

offence, he shall frame in writing, a charge against the accused. Thus, Section 240 Cr.P.C authorizes the trial court to frame a charge against the

accused, if the Court is of the opinion that on an examination of all the material, there is ground for presuming that the accused has committed an

offence.

13. In the instant case, admittedly, these quash petitions under Section 482 Cr.P.C. were filed at a stage when the police concerned have completed

investigation and submitted charge-sheet for the offences punishable under Sections 418, 420, 304A, 120B of IPC against the petitioners/A1 & A2,

and the Court below had taken cognizance of the offences as triable as a warrant case. Now, the Magistrate has to proceed in accordance with

Sections 239 or 240 of Cr.P.C., as the case may be. If the trial Court refuses to discharge the accused under Section 239 Cr.P.C. and if charges are

framed in accordance with Section 240 Cr.P.C. on a finding that a prima facie case has been made out, the petitioners/A1 & A2 may, if they feel

aggrieved, invoke the Revisional jurisdiction of the Session Court or the High Court contending that the charge-sheet submitted under Section 173

Cr.P.C. and documents sent with it do not disclose any ground to presume that they have committed any offence for which they are charged. Without

exhausting the said remedy, the petitioners/A1 & A2 directly filed these criminal petitions under Section 482 Cr.P.C., seeking to quash the entire

proceedings against them by circumventing the express provisions under the Code of Criminal Procedure. Further, it is not in dispute that the offences

alleged against A1 & A2 are triable as a warrant case. In a warrant case, it is incumbent on the Magistrate to hear the accused persons before

framing charge. It is only with a view to provide an opportunity to the accused persons, to seek their discharge on the ground that the Police Report

and the documents sent with it are not sufficient to frame charge. Further, the matter which can be agitated before the trial Court itself by way of

filing appropriate application under the express provisions contained in the Code of Criminal Procedure, is carried to the High Court under Section 482

Cr.P.C. Admittedly, in the subject Calendar Case, the learned Magistrate has merely taken cognizance of the alleged offences. Charges are not yet

framed. But the petitioners/A1 & A2 straight away came to this Court to quash the entire proceedings pending before the trial Court urging certain

grounds. These grounds could as well be urged before the trial Court in appropriate proceedings, as the trial Court is competent and has jurisdiction to

decide the case. Even if the trial Court passes an order either in favour of the de-facto complainant holding that there is a prima facie case, or in

favour of A1 & A2 by discharging them, the aggrieved party can move the superior Court by way of Revision, as provided under the Code of Criminal

Procedure, thereby the superior Court will also have the advantage of going through the order passed by the trial Court and the reasons assigned by it

to reach to such conclusion.

14. It is well established that though the powers of this Court under Section 482 Cr.P.C., are very wide, those powers are required to be exercised

sparingly and with abundant caution. The said inherent power can be exercised only when there is abuse of process of Court or to secure ends of

justice. This provision is intended to do justice, where, in the given facts and circumstances of the case, under Section 482 Cr.P.C, this Court cannot

embark upon an inquiry to consider and hold as to whether or not the offences alleged against the accused are established basing on record. The

prescribed procedure provided by law has to be followed and adhered to by the parties to litigation. When there is an efficacious remedy available,

proceedings under Section 482 Cr.P.C. cannot be resorted to, so as to stifle a legitimate prosecution. The provisions under Section 482 Cr.P.C.,

cannot be invoked to circumvent the express provisions under the Code of Criminal Procedure, much less when there is a specific provision in the

Code for redressal of grievances of aggrieved party, as the instant one. In fact, the Honâ??ble Supreme Court, in catena of decisions, deprecated the

practice of staying criminal trials and police investigations, except in exceptional cases. The present case, in my considered view, does not fall under

exceptional cases where the inherent power under Section 482 can be exercised.

15. Though the learned counsel for petitioners/A1 & A2 relied on as many as 12

decisions cited supra in support of his case, since this Court is not expressing any view on the merits of the matter, it is not necessary to discuss the said decisions.

16. In view of the above discussion and reasons assigned, it is not a fit case to exercise inherent jurisdiction under Section 482 of Cr.P.C. and allow

the Criminal Petitions as prayed for. The petitioners/A1 & A2 are relegated to the trial Court to work out the remedies available, as indicated above.

17. With the above observations, both the Criminal Petitions are disposed of.

Miscellaneous petitions, if any, pending in both these Criminal Petitions, stands closed.