

*THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

+Writ Petition No. 13734 of 2016

% 26-07-2022

Dr. T. Raja Rao

.. Petitioner

Vs.

\$ State of Andhra Pradesh, through
S.H.O., Ponnur Urban PS, Guntur
District, rep. by Public Prosecutor,
High Court at Hyderabad and another

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner

: Sri P. Sai Surya Teja
representing Sri Vikas Joshi

^ Counsel for respondent Nos.1&2

: The Assistant Public Prosecutor

? CASES REFERRED :

- 1) 1992 Supp (1) SCC 335
- 2) (2014) 2 SCC 1
- 3) (2006) 10 SCC 92
- 4) (2013) 3 SCC 330

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION No. 13734 of 2016

Between:

Dr. T. Raja Rao

.. Petitioner

Vs.

State of Andhra Pradesh, through
S.H.O., Ponnur Urban PS, Guntur
District, rep. by Public Prosecutor,
High Court at Hyderabad and another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 26.07.2022

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

VENKATESWARLU NIMMAGADDA, J

HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**CRIMINAL PETITION No. 13734 of 2016****ORDER:**

This Criminal Petition is filed by the petitioner/accused, under Section 482 Cr.P.C., seeking quashment of the proceedings against him in respect of Crime No.151 of 2016 of Ponnuru Urban Police Station, Guntur District, which was registered for an offence punishable under Section 376-E IPC.

2. The case of the petitioner, in nutshell, is that he is a doctor and running a hospital in the name of "Praja Vaidyasala" (People Hospital) with an object to serve the poor and weaker sections at a nominal fee. He is also the President of the A.P. Civil Liberties Committee, Guntur District, and he is aged about 60 years. In respect of a dispute between his distant relatives, when the petitioner approached T. Sandole Police Station and questioned the misbehavior of the police, they manhandled and abused him in the name of social status. Then, the petitioner submitted a representation to the higher authorities concerned seeking to initiate action against the misbehaved police officers. As there was no response, the petitioner filed a private complaint against the Sub-Divisional Police Officer, the Inspector of Police and three other police officials in CFSR No.16 of 2016 on the file of the Additional Judicial Magistrate of First Class, Bapatla, for the offences punishable under Sections 120-B, 167, 211, 270, 220, 323, 342, 357, 506 IPC and Section 3 (1) (p) (r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. As a counter blast to it, the Sub-

Divisional Police Officer and the Circle Inspector got filed the present complaint against the petitioner by the 2nd respondent alleging that when the 2nd respondent went to the hospital of the petitioner for treatment of abdomen pain, the petitioner touched her thighs and private parts and inserted his finger into her vagina and having been afraid of his behavior, the 2nd respondent came out of the hospital and informed of the same to one Avula Yesubabu, who accompanied the 2nd respondent to the hospital, and on his advice, the 2nd respondent lodged the present complaint against the petitioner.

3. Heard Sri P. Sai Surya Teja, learned counsel, representing Sri Vikas Joshi, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner contends that the petitioner has not committed any offence as alleged by the 2nd respondent/*de facto* complainant and he was falsely implicated in the present crime and as a counter blast to the private complaint filed by him against the police officers, with an ulterior motive the Sub-Divisional Police Officer and the Circle Inspector got filed the present complaint against the petitioner for an offence under Section 376-E IPC. The learned counsel submits that as a matter of procedure and practice, the female patients are physically examined in the presence of a female staff nurse in the doctor's room behind the curtain arranged for that purpose and the other patients would wait at the door steps of the room as well as inside the room for their turn, in view of rush and time

constraint. However, the respondent police without looking into all these aspects registered the crime against the petitioner. The learned counsel further submits that there are no ingredients in the complaint to constitute an offence punishable under Section 376-E IPC. Section 376-E IPC illustrates that whoever previously convicted of an offence punishable under Section 376 or Section 376-A or Section 376-D and is subsequently convicted of an offence punishable under any of the said Sections shall be punished with imprisonment for life. Whereas, in the instant case, the petitioner has never been convicted of anyone of the said offences.

i) Learned counsel for the petitioner submits that as per the International standard Gynecology Test Books, pelvic examination is necessary for the patient of severe abdomen pain and lower abdomen pain. Non-conducting of such examination and treating the patient for such problem amounts to medical negligence on the part of the doctor. He contends that the present alleged offence comes under the definition of Exception-I of Section 375 IPC. He also contends that at the instigation of one Mr. Yesubabu, who accompanied the 2nd respondent to the hospital, the 2nd respondent lodged the present complaint with the police. In fact, the said Yesubabu is an accused in Crime No.133 of 2015 of Ponnur Urban Police Station and he is in touch with the local police including the Station House Officer as well as the Sub-Divisional Police Officer and to overcome the private complaint lodged by the petitioner and with an intention to blackmail the petitioner to come to their terms, this false case was foisted against the petitioner. The learned counsel further emphasizes that as per the Manual on Clinical

Surgery written by S. Das, the examination of acute abdomen is compulsory. He contends that registration of the present crime is nothing but abuse of process of law and in excess of the power vested with the authorities.

ii) The learned counsel contends that the police maliciously got filed the report against the petitioner with an ulterior motive and to wreak vengeance against the petitioner. In view of the facts and circumstances as stated above, this Court can exercise the extraordinary jurisdiction under Article 226 or the inherent powers under Section 482 of Cr.P.C. either to prevent the abuse of process of law or otherwise to secure the ends of justice. It is contended that without conducting any preliminary enquiry, the police erroneously registered the crime. In support of his contentions, the learned counsel placed reliance on the decisions of the Hon'ble Apex Court in *State of Haryana Vs. Bhajan Lal*¹ and *Lalita Kumari Vs. Government of Uttar Pradesh*².

He, therefore, prays for quashment of the subject crime.

5. On the other hand, learned Assistant Public Prosecutor would submit that the 2nd respondent herself submitted the complaint to the police without any instigation alleging that the petitioner committed the offence punishable under Section 376-E IPC and therefore, prays for dismissal of the criminal petition.

¹ 1992 Supp (1) SCC 335

² (2014) 2 SCC 1

6. In the facts and circumstances of the case, it is appropriate to refer the Manual on Clinical Surgery which reads as under:

“EXAMINATION OF THE ABDOMEN - INSPECTION:-
The patient should lie flat on his back with legs extended. The whole abdomen from the ripples above down to the saphenous openings (thus the inguinal and femoral rings are exposed) must be exposed. Examination should be carried out in good light, preferably in day light.

AUSCULTATION:- *This is a very important part of examination in acute abdominal conditions and should never be omitted. The student should be familiar with normal peristaltic sounds noting their character and frequency by studying them in abdomen. The ‘silent abdomen’ is a pathognomonic feature of diffuse peritonitis. Even localized absence of peristaltic sound will be evident around acute inflammation of the organ concerned.*

To the contrary a ‘noisy abdomen’ is a feature of acute intestinal obstruction. Normal intestinal sound is heard as clicks and gurgles but in intestinal obstruction distinct metallic tinkles or borborygmi can be heard. In case of peritonitis or paralytic ileus when the intestinal sounds are absent peculiar respiratory and cardiac sounds become audible.

Measurement: *Rate of distension in acute intestinal obstruction or paralytic ileus or post-operative peritonitis can be assessed through repeated measurements.*

Rectal Examination – *No examination of an acute abdominal case is complete without the digital examination of the rectum. The right wall may be tender in pelvic type appendicitis, which may not show any tenderness or rigidity of the anterior abdominal wall. Tenderness is often elicited in the rectovesical pouch in perforated peptic ulcer. The bulging of the anterior wall of the rectum with tenderness is significant of a pelvic abscess. In intussusceptions, after the rectal examination has been finished one will find the gloved finger to be smeared with mucus and blood (red-currant jelly) but there will be no faecal odour.*

In majority of cases of acute abdomen there is ballooning of the rectum whose significance is yet to be found out.

Vaginal Examination – Purulent discharge and tenderness in both fornices are suggestive of acute salpingitis. In case of ruptured ectopic gestation, the cervix feels softer and any movement of the cervix will initiate pain.”

7. As seen from the above and as per the International standard Gynecology Test Books, acute abdomen and pelvic examinations are necessary for the patient of severe abdomen pain and lower abdomen pain, and non-conducting of such examinations on the patient for such problem amounts to medical negligence on the part of the doctor.

8. It is the version of the 2nd respondent that she consulted the petitioner with a complaint of severe abdomen pain. While testing her, the petitioner touched her thighs and private parts and inserted his finger into her private parts. Thereafter, she came out of the room with fear and went home and informed of the same to her neighbour, Mr. Avula Yesubabu, who, in turn, advised her to lodge a complaint to the police and on his advice, they went to the police station and gave a report. But, it is not the case of the 2nd respondent that when the petitioner misbehaved with her as alleged, she made any noise and that she informed of the incident to her family members or relatives. It is the case of the petitioner that said Avula Yesubabu is an accused in Crime No.133 of 2015 of Ponnur Urban Police Station and he is in touch with the local police including the Station House Officer as well as the Sub-Divisional Police Officer. In view of the above, lodging a complaint by the 2nd respondent against the petitioner only on the advice of her neighbour, Avula Yesubabu, without taking the assistance of her family members or relatives by informing them of the incident, specifically reveals

a suspicion on her part that only at the instigation of others, she lodged the present complaint.

9. The further contention of the petitioner is that as a counter blast to the private complaint filed by him against the police officers, the present case has been got foisted in order to wreck vengeance against him. The petitioner filed a private complaint before the Additional Judicial Magistrate of First Class, Bapatla, against the Sub Divisional Police Officer, Bapatla, the Circle Inspector of Police, Bapatla Rural, the Assistant Sub-Inspector of Police, T.Sandole P.S., and two others, alleging that with regard to a dispute between his distant relatives, when the petitioner approached T. Sandole Police Station and questioned the misbehavior of the police, they manhandled and abused him in the name of social status. Having regard to this contention, there is a considerable substance and there is every possibility of abuse of process of law by the police in the case on hand.

10. The facts and circumstances narrated above indicate that the present criminal proceedings are manifestly attended with *mala fide* and where the proceedings are maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to personal grudge. In this connection, learned counsel for the petitioner placed reliance on the decision of the Hon'ble Apex Court in *State of Haryana Vs. Bhajan Lal* (1 supra) wherein it is held thus:

“102. 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 exercised.

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xxxxxx

(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.

(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. It is contended by learned counsel for the petitioner that without conducting any preliminary enquiry as mandated, the police registered the present crime against the petitioner with an ulterior motive. In support of this contention, he relied upon the decision of the Hon’ble Supreme Court in

Lalita Kumari case (2 supra). In Para No.120-6 of its judgment, the Hon'ble Apex Court specifically directed the prosecution in respect of investigation as well as enquiry, as under:

“120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/family disputes*
- b) Commercial offences*
- c) Medical negligence cases*
- d) Corruption cases*
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

12. The other contention of the petitioner is that the petitioner conducted clinical examination on the 2nd respondent at busy clinical timings i.e., in the morning hours and there were en-number of patients waiting at the door steps of the doctor's room and even in doctor's room there were medical staff other than the petitioner i.e., staff nurse and medical maid. Therefore, there is no possibility of taking place of the alleged offence as complained.

In similar circumstances, in *Sadashiv Ramrao Hadbe Vs. State of Maharashtra*³, the Hon'ble Supreme Court held as follows:

“9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the Court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.

10. In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able bodied person of 20 years of age with ordinary physique. The absence of injuries on the body improbabilise the prosecution version.”

13. This Court has taken note of the law as declared by the Hon'ble Supreme Court of India in *Rajiv Thapar Vs. Madan Lal Kapoor*⁴ on the aspect of the judicial conscience of the High Court to exercise its power under Section 482 of Cr.P.C. to quash criminal proceedings. In the said judgment, the following has been held in the relevant portion:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Crl.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all prosecutions/complainants case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and

³ (2006) 10 SCC 92

⁴ (2013) 3 SCC 330

circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges leveled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations leveled by the prosecution/complainant. It should be sufficient to rule out, reject necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

- i) Step one, whether the material relied upon by the accused is sound, reasonable, and undubitable, i.e., the material is of sterling and impeccable quality?*
- ii) step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges leveled against the accused i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.*
- iii) step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?*

iv) *Step four, whether proceeding with the trial would result in an abuse of process of the Court and would not serve the ends of justice?*

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under section 482 of Cr.P.C. such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

14. Section 376-E IPC illustrates that whoever previously convicted of an offence punishable under Section 376 or Section 376-A or Section 376-D and is subsequently convicted of an offence punishable under any of the said Sections shall be punished with imprisonment for life. But, in the present case, the petitioner has never been convicted of anyone of the said offences and there are no ingredients in the complaint to constitute the offence punishable under Section 376-E IPC, as contended by the learned counsel for the petitioner. In fact, said contention was not disputed by the learned Assistant Public Prosecutor. Apart from the above, the other contention of the petitioner is that the alleged offence comes under the definition of Exception-I of Section 375 IPC which envisages as under:

“A medical procedure or intervention shall not constitute rape.”

In view of the above, this Court is of the considered opinion that the alleged offence squarely falls under the purview of Exception-I of Section 375.

15. As seen from the entire record and having regard to the contentions of the counsel for the petitioner and the learned Assistant Public Prosecutor, there is a *prima facie* substance that the police officers got filed the present complaint in retaliation to the private complaint filed by the petitioner without conducting any preliminary enquiry and this Court is of the opinion that the aforesaid decisions relied on by the learned counsel for the petitioner are squarely applicable to the facts of the case on hand, and in view of the aforesaid reasons and the findings recorded and the principles laid down by the Hon'ble Apex Court in the above referred judgments, this Court has absolutely no scintilla of hesitation to hold that continuation of the prosecution against the petitioner undoubtedly tantamount to abuse of process of law. Therefore, this Court is inclined to quash the subject F.I.R. by exercising the power under Section 482 Cr.P.C.

16. Accordingly, the Criminal Petition is allowed and the proceedings initiated against the petitioner in Crime No.151 of 2016 of Ponnuru Urban Police Station, Guntur District, are hereby quashed.

As a sequel, miscellaneous applications, if any, pending in the criminal petition shall stand closed.

VENKATESWARLU NIMMAGADDA, J

26th July, 2022

Note: L.R. Copy be marked.

(b/o)

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HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

Criminal Petition No.13734 of 2016

26th July, 2022

cbs