

THE HON'BLE SRI JUSTICE A.V. SESA SAI

Writ Petition No.21099 of 2015

ORDER:

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This writ petition is filed under Article 226 of the Constitution of India seeking quashment of FIR No. 165 of 2015 on the file of the Station House Officer, Huzurnagar Police Station, Nalgonda District, the 2nd respondent herein.

Heard Sri Praveen Kumar Veerjala, learned counsel for the petitioners and learned Government Pleader for Home.

The petitioners 1 and 3 are the husband and wife and the 3rd respondent is the son of the sister of the first petitioner herein. The 3rd respondent herein lodged a complaint before the 2nd respondent, and the police registered the said complaint as FIR No.165 of 2015 on 29.06.2015 for the alleged offences under Sections 406, 420, 506 read with 34 of IPC.

In the present petition, it is the case of the petitioners herein that the first information report registered by the 2nd respondent basing on the complaint lodged by the 3rd respondent herein does not disclose the commission of any offense nor it makes out any case against the petitioners herein. It is also the case of the petitioners that even if the allegations as per the first information report are taken on their face value as accepted in their entirety, the same do not *prima facie* constitute any offence against the petitioners and it is not fair to compel the petitioners to undergo rigmarole of the criminal trial, in the absence

of ingredients of the sections as mentioned in the first information report. It is also the case of the petitioners herein that the complaint lodged by the 3rd respondent before the 2nd respondent is *mala fide*, oppressive and vexatious and there is no *prima facie* case made out to connect the petitioners herein to the alleged offences, and as such, the very registration and continuation of the proceedings against the petitioners is a patent abuse of the process of law. It is also the complaint of the petitioners herein that the 2nd respondent, Station House Officer, in total ignorance of the mandate of the Hon'ble Apex Court and provisions of Section 41A of Cr.P.C., is hunting the petitioners herein to harass them. It is also the contention of the learned counsel for the petitioners that according to the provisions of Section 60A of the Code of Civil Procedure, no arrest shall be made except in accordance with the provisions of the Code or any other law for the time being in force providing for arrest.

On the contrary, it is vehemently contended by the learned Government Pleader for Home that since there are *prima facie* allegations against the petitioners herein in the first information report, the petitioners herein cannot request this court to scuttle the investigation.

A reading of the first information report, which is placed on record along with the writ petition shows that there are *prima facie* allegations against the petitioners herein and in the absence of any element of abuse of process of law, the jurisdiction of this court under Article 226 of the Constitution of India cannot be permitted to be invoked. At this juncture, it is appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **State of Haryana and Others v. Ch.Bhajanlal and others**^[1]. In the said decision, the Hon'ble Apex

Court at paragraph 108 laid down the following guidelines which need adherence while dealing with the applications for quashments under Sections 482 Cr.P.C and Article 226 of the Constitution of India:

- “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 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 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.”

In the considered opinion of this court, the case of the petitioners herein does not fit in any one of the guidelines stipulated by the Hon’ble Apex Court in the judgment referred *supra*.

Before parting with this order, it would be appropriate to observe that the Police during the course of investigation shall adhere to the provisions of Section 41-A of the Cr.P.C., Section 60 of the Cr.P.C. and the principles laid down by the Hon’ble Apex Court in **ARNESH KUMAR VS. STATE OF BIHAR AND ANOTHER**^[2].

For the aforesaid reasons, the writ petition is disposed of.
There shall be no order as to costs.

The miscellaneous petitions, if any, filed in the writ petition shall also stand disposed of.

A.V. SESA SAI, J.

Dt.10-07-2015.

Note:

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^[1] AIR 1992 SC 604

^[2] (2014) 8 Supreme Court Cases 273