

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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Criminal Petition No.2366 of 2015

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ORDER:

This application is filed for quashing FIR No.6 of 2015 on the file of Police Station Mangalagiri.

2. The petitioners are A-1 to A-3 in the said FIR which was registered at the instance of 2nd respondent. In the said FIR, it is alleged by 2nd respondent that she is working as a Health Assistant at the hospital in VIth A.P.S.P.Battalion, situated at Mangalagiri while her husband is working as a Head Constable at Duggirala police station. On 29-02-2012, 2nd respondent claimed to have purchased plot No.38 in Sy. No.139/1A, admeasuring 132 ½ sq. yds at Khaza village, Mangalagiri Mandal for Rs.1,33,000/- under registered sale deed in document No.1192/2012 registered at the office of the Sub Registrar, Pedda Kakani. The 2nd respondent alleged that on 05-12-2014, she went to construct a house in her plot and that the petitioners and their gang of 20 persons stopped construction in her plot and dismantled its boundary wall and the house under construction. She stated that she went to the plot along with her son and found that 1st petitioner and his men. So she lodged a complaint to the police by calling phone No.100. She stated that when she questioned the petitioners as to why they dismantled her house, they replied that it is their property, she can do whatever she wants and abused her in a filthy language. She alleged that the petitioner No.2 stated that they

had sold the land to 3rd respondent and he would look after the plot and that they threatened her stating that they have the support of the Superintendent of Police and a Judge. Then a complaint was lodged on 08-01-2015 at 1700 hours. On the basis of which, FIR No.6 of 2015 was registered in Mangalagiri Police Station.

3. The learned counsel for the petitioner contended that the sale deed on the basis of which 2nd respondent claims to have purchased the property in question has no legal validity; that she has no title to the property; and the very delay in filing of the complaint on

08-01-2015 when the incident is alleged to have happened on 05-12-2014 indicates that it is not *bona fide*. He further contended that the petitioner Nos.1 and 2 had also lodged the complaints on 22-07-2014 and 06-12-2014 which have not been enquired into or investigated by the police and this indicates collusion between police and the husband of 2nd respondent who is a Head Constable in Duggirala Police Station. Learned counsel for the petitioner has also referred to several documents in support of the title of the petitioners in respect of the said property. He therefore, prayed that the application be allowed and the FIR be quashed.

4. In the **State of Haryana Vs. Bhajan Lal**, the Supreme Court has laid down guidelines for exercise of power under Section 482 Cr.P.C. One of the principles laid down therein is that where allegations made in the FIR or complaint, even if they are taken at their face value and accepted their entirety do not *prima facie* constitute an offence or make out a case against the accused,

then they can be quashed. The Supreme Court also observed that if 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, then also it can be quashed. However, the Court cautioned 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; and 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 FIR 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. This principle has been reiterated in para 20 of the judgment in

Umesh Kumar Vs. State of A.P. and another

“20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the

accused from undergoing the agony of a criminal trial. (Vide *Pepsi Foods Ltd. v. Judicial Magistrate* ((1998) 5 S.C.C. 749), *Ashok Chaturvedi v. Shitul H. Chanchani* ((1998) 7 S.C.C. 698), *G. Sagar Suri v. State of U.P.*((2000) 2 S.C.C 636) and *Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy* ((2011) 12 S.C.C. 437).”

and also in **Bhaskar Lal Sharma Vs. Monica**, wherein it is stated:

“The facts, as alleged, therefore will have to be proved which can only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court’s power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.”

5. A reading of the above judgments therefore indicates that it is not permissible at the stage of quashing to enquire into or appreciate in a summary manner the averments made in the complaint or FIR, that it is not permissible for this Court to appreciate the evidence and that any document filed along with Section 482 Cr.P.C. petition labeled as evidence without being tested and proved, cannot be examined.
6. After perusing the complaint lodged by 2nd respondent against the petitioners, I am of the opinion that the allegations made therein, taken at their face value and accepted in their entirety, *prima facie* constitute an offence and make out a case against the petitioners/accused. The correctness of the pleas taken by the petitioners cannot be gone into by this Court nor can the material placed before this Court by the petitioner be considered at this stage while considering the application for

quashing of the FIR. It is no doubt true that a complaint appears to have been lodged by the petitioners to the police against 2nd respondent, but the truth or otherwise of the allegations made in the present complaint would also have to be investigated by the police.

7. I am therefore of the opinion that this is not a fit case to quash the FIR No.6 of 2015 on the file of the police station Mangalagiri, Guntur District against the petitioners.
8. Therefore, this application is dismissed. It is made clear that any observations made in this order shall not affect in any manner the investigation into the allegations made against the petitioners by 2nd respondent or allegations made against 2nd respondent by the petitioners.
9. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 06-04-2015

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