

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION No.1682 of 2015

ORDER :

This Criminal petition is filed by the Petitioners/ accused Nos.1 to 8 under Section 482 Cr.P.C seeking to quash the proceedings in P.R.C. No.10 of 2015 on the file of VII Additional Chief Metropolitan Magistrate, at Nampally, Hyderabad, registered under Sections 3 (1) (x) of SC & ST (POA) Act, 1989 (for short 'the Act') and Sections 506 and 107 IPC.

2. Heard learned counsel for the petitioners/ accused Nos.1 to 8 and learned public prosecutor for 1st respondent—state before admission and before ordering any notice to de facto complainant—2nd respondent. Perused the material on record.

3. The police after investigation filed final report under Section 173 Cr.P.C and the learned committal magistrate as per Section 190 read with 209 Cr.P.C taken cognizance of the offences by taken on file raised against the accused persons for the petitioners supra and allotted PRC No.10 of 2015 to commit the case to the Court of Sessions. The petitioners now impugning the said cognizance and allotting Pre Registration Case No.10 of 2015 to commit the case to the Court of Sessions by the learned Magistrate by filing the application under Section 482 Cr.P.C to quash the said proceedings to PRC No.10 of 2015 referred supra.

4. The factual matrix is the de facto complainant—R.Shankar Naik by report dated 16.08.2014 for the alleged occurrence dated 14.08.2014 at 18.30 hours for the police station within a distance of 2 kms of east to the alleged place of occurrence at CPI party Office at Singareni Colony, Saidabad presented a report against the

petitioners/accused Nos.1 to 8 and unnamed among others. The sum and substance of the report is that petitioners/ accused Nos. 1 to 8 i.e., A1-Chinna Jahangir, A2-Lal Mohmood, A3-Pedda Jahangir, A4-T.Raju (Adibatla), A5-Sudhakar, A6-V.Baburao, A7-V.Kumar along with some other person unnamed A8 specifically attacked the CPI Party office at Singareni Colony referred supra and thrown chairs and saying him did you file a case in Lokayukta against our Rajender Reddy (A8) and used filthy language i.e., “LAMBADI MAKYALOWDE” and threatened him that if he has not withdrawn the case, they would kill him and abused in caste, meantime his party followers Ammena, Shanthi, Ghouse, Pandu, Raju who are in the party office came there and said accused left therefrom. Therefore, he requested to take action against the persons apprehending life threat from A8—G.Rajendra Reddy saying that there are some dispute with said Rajendra Reddy with regard to Bhoodhan lands. Earlier the 2nd respondent filed three cases in different police stations.

5. The said report registered as Crime referred supra under Section 3 (i) (x) of SC/ST POA Act and 506 IPC and the investigation is conducted. In the statements of witnesses particularly LW.1 dated 23.09.2014, it is stated that meantime on seeing this incident Shankarnayak along with Smt.Ameena, Shanta, Pandu and Raju were intervened and questioned the actions of accused persons and those persons are left by abusing them from the CPI party office. Similar statement is recorded from the witnesses LWs.2 to 6. It is there from police filed final report that was taken cognizance.

6. The contention of the learned counsel for the petitioners seeking to quash the proceedings of FIR is that all the petitioners are falsely implicated by the de facto complainant and undisputedly, there are disputes in relation to Bhoodan lands and also criminal

cases against de facto complainant filed by petitioners and vis-à-vis and there is a Lokayuktha complaint with regard to Bhoodhan lands. A perusal of the contents of the report registered as FIR referred supra nowhere discloses the LWs.2 to 6 are eye witnesses as what is stated is meantime the so-called LWs.2 to 6, who are party followers came and the accused left therefrom. It is not specifically covered by the police investigation, statements of the de facto complainant as well as the witnesses LWs.2 to 6 as if they are eye witnesses which is an improvement with deliberations to implicate with after-thought though Section 3 (i) (x) of the Act has no application, for nothing in public view at the place if at all CPI party premises accessible even to the public, the public view is required and he also did not specifically states that he is SC/ ST and all the accused are non SCs/ STs. It is also the contention that there is a delay in reporting the occurrence even police station is within 2 kms, had there been any truth for the occurrence taken place allegedly on 14.08.2014 at 6.30 pm in reporting more than 50 hours on 16.08.2014 at 20.45 hours without any explanation.

7. In fact, it is the written complaint presented by de facto complainant in which he did not specify any reasons for the delay in reporting the occurrence which is the main contention of the learned counsel for the petitioners and the other is Section 3 (1) (x) of the Act has no application as the incident not occurred in public view. The delay in reporting the occurrence for more than about 50 hours though the alleged place of occurrence to the police Station is within 2 kms which is clear from the very contents of the but no explanation for delay is fatal and the proceedings are to be quashed and the continuation of proceedings are the abuse of process of law. The learned counsel for the petitioners placed reliance on three expressions, one is in ***Swaran Singh vs State***^[1] wherein the Apex

Court observed the proceedings cannot be quashed invoking Section 482 Cr.P.C where, on perusal of FIR showing the allegations made therein to be correct, a criminal offence is prima facie made out against accused but quashing is permissible in relation to accused against whom no prima facie offence is disclosed in the FIR under Section 3 (i) (x) of the Act. It is observed further that the expression "place within public view" distinguished from the expression "public place" there was observed among three accused that accused Nos.2 and 3 uttered the abusive words with offensive language near the car parked at the gate of the premises of the complainant which is a place in the public view whereas accused No.1 concerned he was not shown that he used any offensive words within public view, thereby the FIR proceedings quashed.

8. It is undisputedly after investigation police filed final report. The remedy of quashing FIR earlier not invoked where it is an improvement to the FIR from the statement of witnesses during investigation and that omission in FIR is material to confront them under Section 155 (2) and 145 of Evidence Act. So far as all the petitioners are concerned, from the FIR it is the averment that all the accused persons thrown chairs and uttered in filthy language by touching caste name. It is mentioned that the defacto-complainant is as a Secretary of All India Adivasi Mahasaba. Once he is a Secretary of the Tribal Adivasi Mahasaba, it is premature for the Court to say there is no mention of his caste as SC for nothing to show a specific mention is required. Further in the investigation, the police filed charge sheet that shows he is Lambada by caste to say SC all the accused mentioned as non-SCs. The charge sheet shows is not even in dispute in the quash proceedings regarding the respective castes.

9. The delay in reporting the occurrence is fatal to the prosecution or not is a matter of appreciation by the trial Court.

10. From the above expression, even coming to the other citation placed reliance of this Court in another bench in **P.Anand Rao vs State of AP**^[2] it was held, in fact, in **State of Madhya Pradesh vs Awadh Kishore Gupta**^[3] observed at para No.6 referring to the expression of the Apex Court held that at the stage of investigation, it is impermissible for the High Court to look into the materials, the acceptability of which is essentially a matter for trial. The prosecution was referring to another expression of the Apex Court made that without material required to be proved, no inference of the material is to be drawn to quash the FIR proceedings. Regarding the public view this decision P.Anand Rao (supra) referred to some expressions and held referring to Swaran Singh (supra). From the perusal of the FIR with conclusion at para No.37 from expressions referred supra in relation to public view to say public view refers to public persons present. Even therefrom it is a matter of trial to decide about there are specific words in FIR mentioned about presence of LWs.2 to 6 and their witnessing the occurrence as to the accused persons uttered in offensive language. In view of the contention that the statements of the witnesses are improvement without referring the same in FIR, this Court is unable to come to the conclusion to quash the FIR or charge sheet and post cognizance proceedings at the stage of committal therefrom basing on the contention of the delay in FIR and the improvement in the statements which not borne by contents of FIR in taking the cognizance of the charge sheet.

11. The other expression of Delhi High Court in CrI.P.M.P No.2757 of 2009 regarding the scope of quash proceedings at para No.9 reversed the observation in **Deepa Bajwa vs State and others**^[4] which is also a case of 3 (1) (x) of the Act speaks of first

version in the complainant is always important and subsequent filling of lacunae is not permissible, in quashing the FIR. In fact as referred supra, in the present case, it is not the stage of investigation to quash the FIR but for what is stated above of final report filed and taken cognizance therefrom.

12) Having regard to the above, as the material falls short to quash the proceedings filed under Section 482 Cr.P.C., the Criminal Petition is disposed of, however, by giving opportunity to the petitioners if they are able to show only from the prosecution material as laid down by the Apex Court in ***State of Orissa vs Debendra Nath Padhi***^[5] to decide on its own merits. Further, in the event of petitioners filing any application under Section 227 Cr.P.C for charges not framed and heard and for case not committed so far to the Court of Sessions. As it is submitted by the learned counsel for the petitioner that the most of the accused persons are daily earners and it is ordeal for them to face the day-to-day trial and their personal attendance is required to be dispensed with, remedy is left open, in the event of passing orders on hearing of charges if not discharged and any charges framed besides right to impugn, to file an application under Rule 37 Cr.R.P for the learned Special Judge to hear and permit one of the accused to represent on behalf of all during trial unless their personal appearance is required for examination on charges and 313 Cr.P.C examination etc.

13. Miscellaneous petitions, if any pending in this Revision shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Dt.09.09.2015
KNL/VVR

- [\[1\]](#) 2008 (8) SCC 435
- [\[2\]](#) 2013 Lawsuit (AP) 653
- [\[3\]](#) 2004 (1) SCC 691
- [\[4\]](#) 2004 (77) DRJ 725
- [\[5\]](#) 2005 (1) SCC 568