

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.8113 of 2012

ORDER:

This is a Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 ('the CrPC' for short) by the petitioner/Accused no.2 requesting to quash the proceedings against him in case in Crime No.4 of 2010 of Devarapalli police station of Visakhapatnam District registered for the offences punishable under Sections 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1988 and Section 427 read with Section 34 of the IPC.

2. I have heard the submissions of the learned counsel for the petitioner/A2, the learned Additional Public Prosecutor appearing for the 2nd respondent/State. Though notice was served on the first respondent/informant, none appeared. I have perused the material record.

3. Now the points for determination are:

(1) Whether the petitioner/A2 had made out valid and sufficient grounds for quashing the proceedings against them in the case in Cr.No.4 of 2010 of Devarapalli PS.,Visakhapatnam?

(2) Whether the uncontroverted allegations made in the first information do not disclose *prima facie* the commission of any offence, much less the alleged offences, and make out a case against the petitioner/A2?

4.

POINTS:

4. (a) The informant lodged a report on 06.02.2010 with the Station House Officer, Devarapalli alleging *inter alia* as follows: 'The Tahsildar, Devarapalli had allotted house sites in Government land in S.No.133 of Devarapalli. The Government had sanctioned, for a third time, Indiramma colony houses. The informant who is a beneficiary of the said scheme was constructing her house. While so, one K.S. Appa Rao, the Gram Sarpanch had submitted a report to the Officers concerned that she was already a beneficiary of RPHS and that she (informant) is again making constructions under the scheme of Indiramma Adarsa House. On that the DE [Housing] had called the informant and had made enquiries. The informant had stated that earlier also she was a beneficiary and that since Rs.5000/- was sanctioned to her she is constructing a house. The Panchayat Secretary-R.K. Naidu, the petitioner herein, had issued a show cause notice *inter alia* stating that she is making construction of the house without permission from the panchayat. A time of three days was given for submitting explanation. She had personally gone to the panchayat office and had offered her explanation on 04.02.2010. She along with three other members of such scheme had again gone to the office of the panchayat on 05.02.2010. At that time, the sarpanch was also present in the panchayat office along with the panchayat secretary. The informant and others had submitted that they are under the impression that no permission from the panchayat is necessary for construction of Indiramma Houses and that therefore, they did not apply for permission for construction of houses before making constructions. They had also undertaken that they would obtain permission from the panchayat and would make further constructions. They had also submitted a written representation to the sarpanch. On hearing the representation of the informant and others, the petitioner/A2 and the Sarpanch Suri Appa Rao (in-charge sarpanch-A1) had abused the informant and others in filthy language using their caste name. However, the informant and others had kept quiet and later

returned to their houses. The accused had sent workers and got demolished the houses under construction.' Based on the above report, the subject crime was registered.

4. (b) Now the case of the petitioner/A2 in support of his request for quashing the proceedings against him is this: 'The petitioner/A2 is a public servant. In due discharge of his duties he had issued a show cause notice. After the explanation was filed, the informant and others have never approached the petitioner much less on 05.02.2010. At the time of removal of constructions all the members were present. No sanction was obtained under Section 197 of the CrPC. There is delay in lodging the FIR. Earlier a criminal petition was filed in CrI.P.No.2394 of 2010 to quash the proceedings. The same was withdrawn with liberty to file a fresh petition after completion of investigation. Now that the investigation is completed, this present petition is filed. On the same set of facts a departmental enquiry was initiated. The petitioner had contended before the departmental authority that pursuant to the report of the Sarpanch in regard to the illegal constructions of houses in S.No.133, he had visited the spot and had issued the notices to the concerned; and, that subsequently the Sarpanch had also given a report and that action for demolition was taken as the constructions were made in the poramboke lands and that all the actions that were taken are well within the duties enjoined upon the petitioner, however, twisting the issues a false complaint was filed. By GO.MS.No.241 dated 17.08.2012 communicated to the petitioner through District Panchayat Officer the Government had decided to drop the charge against the petitioner as the Enquiry Officer has not found fault with the action of the petitioner/A2. Thus the departmental proceedings were dropped. The case is fabricated.'

4. (c) At the time of hearing, the learned counsel for the petitioner/A2 had reiterated the case urged in the petition and had further

submitted that the informant and others were allowed to make constructions and that they had completed the constructions and that the alleged incident is false and that even according to the averments in the information lodged with the police, the incident had happened in the Panchyat office and that at best, it can only be said that on account of demolition of the houses of the informant and others, they are aggrieved and therefore, to wreck vengeance, a false complaint is filed taking advantage of their caste.

4. (d) On the other hand, the learned Additional Public Prosecutor would submit that the present petitioner acted high handedly while discharging his duties and that in spite of the fact that no permission was required from the panchayat for constructing houses under the Indiramma Housing Scheme, a show cause notice was unnecessarily issued and that despite giving an explanation the constructions were high handedly demolished and that when the informant and other beneficiaries of the scheme went to the office of the panchayat secretary he had abused them using their caste name and that a reading of the report and the charge sheet would *prima facie* show that necessary averments showing the complicity of the petitioner are there and that therefore, it is not a fit case to quash the proceedings.

5. I have carefully perused the material record. I have bestowed my attention and I have given earnest consideration to the facts and submissions. The learned Additional Public Prosecutor had stated that as per the instructions received by him the evidence collected during the course of investigation as per the opinion of the Investigating Officer disclosed *prima facie* that the accused in the crime had committed offences punishable under Sections 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1988 and Section 427 read with Section 34 of the IPC. Thus, looking at the matter from the point of view of the facts and law, this Court finds

that the uncontroverted allegations made in the first information given to the police and the evidence collected in support of the same do disclose *prima facie* the commission of certain cognizable offences and make out a case *ex facie* against the A2/petitioner. Therefore, in the well considered view of this Court, none of the circumstances which are sufficient to quash the proceedings do exist in the present case. The law is well settled that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection, that too in rarest of rare cases and 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 and evidence collected. Quashing of the proceedings is permissible in a case where the allegations made in the FIR or the complaint and the final report, 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. On application of the above tests, this Court finds that there is no merit in this Criminal Petition.

7. In the result, the Criminal Petition is dismissed. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

M.SEETHARAMA MURTI, J

19th January, 2015
Vjl