

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16902 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to quash the FIR in Crime No.23 of 2016 on the file of Kondapuram Police Station, SPSR Nellore District for the offences punishable under Sections 447, 427, 506 r/w 34 IPC and Section 3(1)(r)(s) of SC & ST (POA) Act, 2015.

2. The respondents 2 and 3 are the defacto complainants. As per the allegations in the compliant, they belong to Schedule Caste (for short 'SC') and they filed a petition before this Court for fixing the boundary stones. When the survey stones are laid by the officials, the petitioners removed those survey/boundary stones and are obstructing the defacto complainants from cultivating the lands from the last one year and threatening to kill them as the petitioners belong to upper caste whereas the defacto complainants belongs to Schedule caste.

3. The present petition is filed stating that the allegations made in the compliant on its face value would not constitute the offences punishable under Section 447, 427, 506 r/w 34 IPC and Section 3(1)(r)(s) of SC & ST (POA) Act, 2015 and there is a dispute with regard to obtaining patta by making misrepresentation to the Government etc., and therefore, lodging complaint before the police is nothing but abuse of process of Court.

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4. As seen from the allegations made in the complaint, the petitioners do not belong to either Schedule Caste or Schedule Tribe, they belong to upper caste whereas the defacto complainants i.e., respondents 2 and 3 belong to Schedule Caste.

5. Section 3(1)(r)(s) deals with the offences

“Section 3

(1).....

(r) deals with intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view

(s) deals with abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.

6. As seen from the allegations made in the complaint there is a specific allegation that petitioners threatened to kill them being the members of the higher Caste.

7. The words Insult, criminal intimidation under Section 503 of Indian Penal Code, 1860 (for short 'IPC') “whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation”. Explanation-A reads threat to injure the

reputation of any deceased person in whom the person threatened is interested, is within this Section.

8. The allegation of threatening to kill the defacto complainants by the petitioners amounts to criminal intimidation within Section 503 of IPC. Therefore, the allegation that the petitioners threatened to kill respondents 2 and 3 who belong to Schedule Caste would fall within Section 3(1)(r) of SC & ST (POA) Act, 2015. But there is absolutely nothing in the complaint to constitute the offences punishable under Section 3(1)(s). Therefore, the proceedings against the petitioners for the offences punishable under Section 3(1)(s) of SC & ST (POA) Act, 2015 are liable to be quashed but the proceedings under Section 3(1)(r) of SC & ST (POA) Act, 2015 cannot be quashed as there is sufficient material and on the otherhand the allegation in the averments which on its face value would constitute the offences punishable under Section 3(1)(r) of SC & ST (POA) Act, 2015 *prima facie*.

9. Section 447 deals with Punishment for criminal trespass:

Section 441 of IPC defined "Criminal Trespass"

According to it whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or

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with intent to commit an offence, is said to have committed criminal trespass”.

10. In the present case, revenue officials as per the directions of this Court fixed the boundary stones but the petitioners removed the said boundary stones and entered into the property and not allowing the respondents 2 and 3 to cultivate the lands. These allegations on its face value would constitute offences punishable under Section 447 of IPC. Therefore, I find no material to quash the proceedings in crime No.23 of 2016 for the offences punishable under Section 447 of IPC.

11. Section 427 deals with Mischief causing damage to the amount of fifty rupees.

12. Mischief is defined under Section 425. According to it whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it unjustly, commits “mischief”.

13. Here the petitioners allegedly caused damage to the boundary stones by removing the said stones, and due to its removal, the value of the property may diminish. Therefore, the Act committed by the petitioners of removal of boundary stones or survey stones fixed by the officials as directed by this Court amounts to offence punishable under Section 427 of IPC.

14. The other offences allegedly committed by the petitioner is punishable under Section 506 of IPC. As discussed in earlier paras, the offences punishable under Section 3(1)(r) of SC & ST PO Act, 2015, there is a specific allegation that they all threatened the petitioners to kill. Such Act falls within Section 503 of IPC as discussed above. Therefore, the allegations made in the complaint on its face value constitute the offences punishable under Section 447, 427, 506 r/w 34 IPC and Section 3(1)(r) of SC & ST (POA) Act, 2015, except Section 3(1)(s) of SC & ST (POA) Act, 2015.

15. The power under Section 482 can be exercised sparingly in extraordinary circumstances to give affect to the orders passed by this Court under Cr.PC and to prevent abuse of process of Court and to secure the ends of justice.

16. The Apex Court laid down certain guidelines in the case of **State of Haryana vs. Bhajan Lal**¹. According to guideline 1 where the allegations made in the first information report or the complaint, even if they are taken at their face value accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused, proceedings can be quashed.

17. As discussed in the above paras, the allegations made in the complaint on its face value if accepted in their entirety would constitute the offences punishable under 447, 427, 506 r/w 34 IPC and Section 3(1)(r) of SC & ST (POA) Act, 2015.

¹ 1992 Supp.(1) SCC 335

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18. It is also contended that intimidation is not within the public view to attract Section 3(1)(r) of the Act.

19. According to Section 3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. The Section does not say that such intimidation must be within the public place, but it must be in a place within public view. There is a lot of distinction between the public place and public view. The alleged offences took place in the agricultural land and whether it is within the public view or not is a matter of investigation and on that ground, the proceedings cannot be quashed at this stage.

20. Learned counsel for the petitioners further contended that subsequent to those incidents covered in the claim, there are two other complaints one against the petitioner and the other against the respondents.

21. The other complaint dated 08.12.2016 referred to above by the petitioners was lodged by Darla Gopi and there is a reference about the name of the Sarpanch, but the alleged incident took place on 07.12.2016 under Crime No.48/2016 and the incident in the present case took place on 27.05.2016. Therefore, there is no direct nexus between these two incidents and on that ground, the proceedings in crime No.23 of 2016 cannot be quashed.

22. Learned counsel further contended that respondent obtained assignments by making misrepresentation to the Government but that cannot be looked into at this stage. Since the jurisdiction of this Court is limited and the power under Section 482 IPC is to be *ex debito justitiae* to do real and substantial justice for administration of which alone Court exists. Whenever an attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (**vide Mrs.Dhanalakshmi vs.R.Prasanna Kumar & Ors AIR 1990 SC 494**).

23. In another judgment of Apex Court in **State of Orissa & Anr vs. Saroj Kumar Sahoo²**, the Supreme Court held that inherent power under Section 482 of Cr.P.C. should not be exercised by the High Court to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any

² (2005) 13 SCC 540

stage while exercising jurisdiction under Section of 482 Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused etc.

24. In view of the above two judgments, this Court cannot exercise its inherent power under Section 482 to quash the proceedings at the crime stage except in extra ordinary circumstances, more particularly, when the facts are in complete and hazy. In the present case, investigation is not complete and no material is brought on record to come to any conclusion. Therefore, it is difficult to quash the proceedings at this stage.

25. In view of the foregoing paras, I find no ground to quash the proceedings in crime No.23 of 2016 for the offences punishable under Section 447, 427, 506 r/w 34IPC and Section 3(1)(r)(s) of SC & ST (POA) Act, 2015 while quashing the offences punishable under Section 3(1)(s) of SC & ST (POA) Act, 2015.

26. In the result, the petition is allowed in part quashing the proceedings in crime No.23 of 2016 for the offences punishable under Section 3(1)(s) of SC & ST (POA) Act 2015 while declining the other offences punishable under Sections 447, 427, 506 r/w 34IPC and Section 3(1)(r) of SC & ST (POA) Act, 2015.

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27. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 20.12.2016
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