

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.17058 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.574 of 2016 on the file of Additional Judicial Magistrate of First Class at Addanki, for the offences punishable under Sections 323, 324, 448 read with Section 34 IPC.

The main contention raised before this Court is that the petitioner/A-5 who attended physical test for selection for the post of Sub inspector and that he was playing cricket in market yard compound by the time of alleged offence and he is no way concerned with the alleged offence and the police falsely implicated him in the said case by depriving him from getting selection as Sub Inspector of Police. On account of the civil disputes between the accused and the second respondent, the petitioner who belongs to a different religion was implicated falsely without any material and prayed to quash the proceedings.

During hearing, learned counsel for the petitioner Sri K.J.V.N.Pundareekakshudu drawn the attention of this Court to the allegations made in the complaint lodged by the first respondent on 02.10.2016 and also statement recorded by the police under Section 161(3) of Cr.P.C. In the complaint dated 02.10.2016, there is a specific allegation that when the defacto complainant questioned about the act of the petitioners, respondents 1 to 10 in C.C.No.5741 of 2016 bet the defacto complainant's wife and relatives causing bodily injuries.

On the basis of the above complaint, the police registered F.I.R No.51 of 2016 and during investigation; the police examined the defacto complainant who specifically stated that the respondents 1 to 10 in C.C.No.5741 of 2016 bet his wife and relatives with hands and legs, besides causing bodily injuries. Similarly, when examined, the wife and relatives of the defacto complainant also reiterated the statements of the defacto complainant, stating that the respondents 1 to 10 in C.C.No.5741 of 2016 have trespassed into the house and beat them badly, thus caused bodily injuries.

If those allegations are taken on its face value, they would constitute an offence punishable under Sections 323 and 448 IPC. Further, the doctor who examined the injured found bodily injuries on the body of his wife and relatives of defacto complainant, issued a certificate opining that the injuries are of simple in nature. Causing such injuries amount to causing voluntary hurt would attract an offence punishable under Section 323 IPC and similarly, trespassing into the house to cause bodily injuries would constitute an offence punishable under Section 448 IPC, involvement of A-5 (petitioner herein) is specific and his absence at the time and place of occurrence is a disputed question of fact and based on such plea, proceedings against petitioner (A-5) cannot be quashed.

The present criminal petition is filed by the Petitioner/Accused No.5 only. Therefore, I find sufficient ground to proceed against the petitioner herein for the offences punishable under Sections 323, 324, 448 r/w 34 IPC.

The jurisdiction of this Court under Section 482 of Cr.P.C is limited and this Court can exercise its inherent jurisdiction sparingly in exceptional circumstances to give effect to the orders passed by this Court and to prevent abuse of process of law and to meet the ends of justice.

In ***State of Haryana v. Bhajan Lal***¹ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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 FIR 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 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 FIR 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,

¹ 1992 Supp. (1) SCC 335

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.

According to guideline No.1 of **Bhajanlal** case, 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, the proceedings cannot be quashed. Even otherwise, when charge sheet is filed, the Court is bound to confine to the allegations made in the complaint and not required to appreciate the evidence except for limited purpose to find out whether there exists any ground to proceed against the petitioner or not.

The inherent power under Section 482 Cr.P.C can be exercised except to give effect to the orders passed by this Court, to prevent abuse of process of the Court and to meet the ends of justice. Such inherent power should not be exercised by the Court to stifle the legitimate prosecution. This Court being the highest Court of the 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. While exercising jurisdiction under Section 482 of the 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. (vide **State Of Orissa v. Saroj Kumar Sahoo**²)

In view of the law declared by the Apex Court in both the judgments referred supra, confining to the allegations made in the charge sheet and the statements recorded by the police during investigation under Section 161(3) Cr.P.C, I find existence of sufficient ground to proceed against the petitioner for the said offences punishable Sections 323, 324, 448 read with Section 34 IPC. Hence, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed at the admission stage.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:27.12.2016

SP

² (2005) 13 SCC 540