

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.7690 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 proceedings in Crime No.26 of 2016 of P.S.Khanapur, Warangal District, registered against the petitioners for the offence punishable under Sections 506, 109 read with 34 of Indian Penal Code, 1860 (for short 'I.P.C.') and Sections 3(1)(v) and 3(1)(x) of SC & ST (POA) Act, 1989 (for short, 'the Act').

The main contention of the petitioners is that the allegations made in the complaint would not constitute an offence punishable under Sections 506, 109 read with 34 of Indian Penal Code, 1860 (for short 'I.P.C.') and Sections 3(1)(v) and 3(1)(x) of SC & ST (POA) Act, 1989 and that it is a complaint lodged by the petitioners due to civil disputes.

During hearing, learned counsel for the petitioners would contend that the offence did not take place within public view and in public place and thereby the incident even if true, it would not fall within the ambit of Section 3(1)(v) and Section 3(1)(x) of the Act.

He placed reliance on the Judgment of the Apex Court in **ASMATHUNNISA v. STATE OF ANDHRA PRADESH REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH, HYDERABAD¹** and **GORIGE PENTAIAH v. STATE OF ANDHRA PRADESH AND OTHERS²** wherein the Apex Court held the ingredients of an offence punishable under Section

¹ (2011) 11 SCC 259

² (2008) 12 SCC 531

3(1)(x) of the Act, presence of person being abused and abuse must be in public view.

Here the allegation made in the complaint is that the petitioners abused the *de facto* complainant raising his caste name in the agricultural land. But it is the contention of the petitioners that no public were present at the time of alleged abuse. As seen from the purport of the provision in the Act and law laid down by the Apex Court, abusing a person belonging to Schedule Caste in public view does not mean that it must be in public place. Therefore, when the petitioner abused the *de facto* complainant raising his caste name would fall within the ambit of section 3(1)(x) of the Act.

Even otherwise in **ASHABAI MACHINDRA ADHAGALE v. STATE OF MAHARASHTRA AND OTHERS**³ the Apex Court held that the details of the accused need not be given and laid down certain guidelines at paragraph 10 of the Judgment referring the guideline laid down by the Apex Court in **STATE OF HARYANA V. BAJANLAL**⁴.

The other contention of the counsel for the petitioners is that there is abnormal delay of 6 Months in lodging the complaint, which is not explained.

But the delay in lodging the complaint can be explained during trial. If the *de facto* complainant is unable to explain the delay, the court may draw necessary inference and pass appropriate order and at this stage, this Court cannot quash the proceedings, on the ground of delay.

³ (2009) 3 SCC 789

⁴ 1992 Supp (1) SCC 335

Learned counsel for the petitioners further contended that the complaint was lodged with an oblique motive to wreck vengeance against the petitioners and drawn the attention of this Court to guideline No.7 in **BHAJAN LAL's** case, where a criminal proceeding is manifestly attended with malafide 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 and also drawn the attention of this Court to guideline No.1 in the same Judgment, 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.

Undisputedly, at the time of filing the petition, the investigation is at fetus stage and till today investigation is not yet completed. In such case, it is difficult to quash the proceedings unless there is some strong material before the court to exercise such jurisdiction at the threshold of the investigation.

In **STATE OF ORISSA V. SAROJ KUMAR SAHOO**⁵ the Apex Court held that inherent power under Section 482 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

⁵ (2005) 13 SCC 540

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 stage while exercising jurisdiction under Section 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.

Thus, it is clear from the law declared by the Apex Court that unless there is strong material before the trial court, this court cannot quash the proceedings at the threshold. In the present case, the investigation is not yet commenced, even otherwise, material on record would constitute, prima facie, an offence on its face value, by applying guideline No.1 in Bajanlal's case.

However, at this stage, learned counsel for the petitioners requested to direct the police, Khanapur Police Station, to follow the procedure provided under Section 41-A Cr.P.C. and

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guidelines laid down by the Apex Court in **ARNESH KUMAR V. STATE OF BIHAR**⁶.

Acceding the request of the counsel for the petitioners, I deem it appropriate to direct the Station House Officer, Khanpur Police Station, to follow the procedure provided under Section 41-A Cr.P.C. and the guidelines laid down by the Apex court in **ARNESH KUMAR** referred to supra, subject to its applicability.

Accordingly, the criminal petition is disposed of with the above direction.

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

Date: 30.11.2016
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M. SATYANARAYANA MURTHY, J



⁶ 2014(2) ALT (CrI.) 457 (SC)