

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.15125 OF 2016

ORDER:

This petition is filed seeking to quash the proceedings in C.C.No.582 of 2016 on the file of Additional Judicial First Class Magistrate at Gudivada, Krishna District, for the offence punishable under Section 354 I.P.C.

The specific allegation made by the second respondent and police report dated 20-7-2013 is that while she was proceeding in rickshaw, she noticed petitioner at the scene of offence and she demanded to pay the amount due to her but immediately he threatened her and abused her in filthy language and slapped her and pressed her neck and tried to remove her sari and in the said process, her blouse was torn and thus, the petitioner committed the offence punishable under Section 354 I.P.C.

Police after due investigation filed charge sheet before Additional Judicial Magistrate of First Class, Gudivada having found that there is sufficient material to proceed against the petitioner.

The contention of the petitioner before this court is that the defacto complainant filed C.C.No.229 of 2013 before IV Additional Magistrate, Vijayawada under Section 138 of N.I.Act for recovery of amount which was ended in compromise but taking advantage of the compromise, now, the defacto complainant filed false complaint before police making a serious allegation that he outraged her modesty in public place. It is further contended that the case is

falsely filed against the petitioner and therefore, sought to quash the proceedings in C.C.No.582 of 2016.

Jurisdiction of this court under Section 482 Cr.P.C. is limited in the guidelines issued by apex Court in State of *HARYANA v. BHAJAN LAL* ⁽¹⁾ and in *MADHAVRAO JIWAJI RAO SCINDIA AND ANOTHER v. SAMBHAJIRAO CHANDROJI RAO ANGRE AND OTHERS* ⁽²⁾.

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (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 uncontroverted 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*

¹ 1992 Supplement (1) SCC 335

² AIR 1988 SC 709

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, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *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."*

In view of the principles laid down by the apex court in the above judgment, the courts can exercise jurisdiction under Section 482 Cr.P.C. where the allegations made in the charge sheet are taken as it is, it would not constitute the offence under Section 354 I.P.C. the court can quash the proceedings pending before the court.

But here, the contention of petitioner is that it is false complaint. The falsity in the allegations made in the charge sheet has to be decided only after full-fledged trial before the trial court.

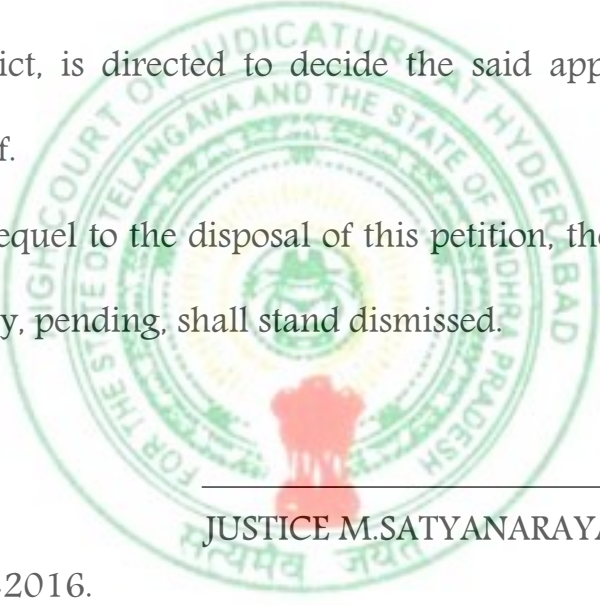
Therefore, on the ground that complaint is false, this court cannot quash the proceedings while exercising jurisdiction under Section 482 Cr.P.C. In the absence of any other grounds, it is difficult to quash proceedings pending before the Additional Judicial

Magistrate of First Class, Gudivada, Krishna District in C.C.No.582 of 2016.

Hence, this Criminal Petition is dismissed at the stage of admission.

However, the petitioner is permitted to move appropriate application under Section 205 of Criminal Procedure Code or Rule 37 of Criminal Rules of Practice to dispense with the presence of the petitioner after issuing notice to the Public Prosecutor and on filing such the application, the Judicial Magistrate of First Class, Gudivada, Krishna District, is directed to decide the said application on the same day itself.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.



JUSTICE M.SATYANARAYANA MURTHY

Dated 25-10-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 25-10-2016.

Dvs