

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.17087 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.612 of 2016 dated 12.11.2016 on the file of Station House Officer, Mailardevpally Police Station, Cyberabad, Ranga Reddy District, for the offences punishable under Sections 447, 427, 506 r/w 34 IPC.

The first respondent/defacto complainant lodged a complaint with the police against the petitioner on 12.11.2016 alleging that he purchased the property in Sy.No.50/2 & 50/3 admeasuring 10.21 ½ acres situated at Bamrukumdowla Village, Mailarevpally, vide document Nos.1349/2006, 3556/2006, 9150/2005, 10436/2005, 877/2005. It appears, on 12.11.2016 at about 21:00 hrs, the petitioner herein along with his henchmen trespassed and tried to encroach the said land, claiming through document of 1981 under Sy.No.38/3, Mailarevpally Village, without any manner of right and that the alleged attempt amounts to trespassing into the property.

On the strength of the above complaint, the Station House Officer, Mailardevpally Police Station, Cyberabad, Ranga Reddy District registered Crime No.612 of 2016 on 12.11.2016.

The contention of the present petitioner herein/2nd accused is that he did commit no offence and he is in possession of the property, which he purchased vide document of 1981 under Sy.No.38/3 and he never made any attempt to encroach into the property.

During hearing, learned counsel for petitioner Sri V. Brahmaiah Chowdary urged that the petitioner never trespassed into the property and he is not punishable for the offences referred supra. Further, it is urged that O.S.No.183 of 2016 pending on the file of Additional Junior Civil Judge-cum-XVII Metropolitan Magistrate, Cyberabad at Rajendranagar, wherein, the Court below granted injunction order in I.A.No.581 of 2016 in favour of the petitioner herein restraining one Balaji and Radha (respondents in I.A.No.581 of 2016n) from interfering with his possession and enjoyment of the property, the present case is foisted against the petitioner by the defacto complainant, as a counter blast in view of the pendency of the above suit. Therefore, lodging complaint is nothing but abuse of process of this Court and prayed to quash the proceedings.

Per contra, the learned Public Prosecutor for State of Telangana would contend that the property involved in O.S.No.183 of 2016 i.e. Sy.No.38/3 possessed by the petitioner is totally different from the property possessed by the first respondent/defacto complainant in Sy.No.50/2 & 50/3. Whereas the property allegedly trespassed by the petitioner is lying in Sy.No.50/2 & 50/3, which the first respondent allegedly purchased under registered sale deed.

It appears, from the contentions raised by the learned counsel for the petitioner that the petitioner never trespassed into the property of the first respondent/defacto complainant to constitute offences punishable under Sections 447, 427, 506 r/w 34 IPC.

Further, this Court while exercising jurisdiction under Section 482 Cr.P.C, cannot decide the disputed question of fact as to whether the petitioner trespassed into the property. Trespassing into the property by the petitioner is question of fact which has to be decided only after recording evidence by the Court. Lodging complaint with the police at this stage as a counter blast action to O.S.No.183 of 2016 is not *prima facie* established. O.S.No.183 of 2016 was filed by the petitioner seeking permanent injunction and obtained interim injunction against the respondents therein restraining them from causing interference into the peaceful possession and enjoyment of the property. In fact, the defacto complainant, who is a neighbour of the petitioner, has nothing to do with the alleged suit O.S.No.183 of 2016. Therefore, mere obtaining an interim injunction by the petitioner in I.A.No.581 of 2016 in O.S.No.183 of 2016 is not a ground as the property involved in the suit and allegedly trespassed are different to conclude *prima facie* that the petitioner did commit no offence. Further, the defacto complainant has nothing to do with regard to the property and litigation in O.S.No.183 of 2016. The property involved in the suit and the property involved in the present case is totally distinct and therefore, it is difficult to conclude at this stage that the complaint is lodged as an abuse of process of this Court.

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

¹ 1992 Supp. (1) SCC 335

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 to 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, 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 to make out a case against the accused and the proceedings can be quashed. Similarly, guideline nos. 6 & 7 says that if the complaint is lodged

to wreak vengeance by abusing process of law, the Court can exercise inherent power under Section 482 Cr.P.C and quash the proceedings.

In the present facts of the case, the property involved in the suit and the present case are totally different and there is nothing to conclude, obviously complaint was lodged as an abuse of process of the Court.

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 the present case, the investigation is at foetus stage and all the facts relevant are not before the Court. At this stage, it is highly difficult for this Court to conclude that the first respondent lodged a complaint as an abuse of process of the Court and to wreak vengeance against the petitioner. In fact, the defacto complainant has nothing to do with O.S.No.183 of 2016 pending on the file of Additional Junior Civil Judge-cum-XVII Metropolitan Magistrate Cyberabad at Rajendranagar.

Therefore, I find no ground to quash the proceedings at this stage and the 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 dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:26.12.2016

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² (2005) 13 SCC 540