

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.14594 OF 2016

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure 1973 (for short, 'Cr.P.C.') to quash the proceedings in C.C. No.446 of 2016 pending before the II Additional Judicial Magistrate of First Class, Ongole, for the offences punishable under Sections 354, 506 read with Section 34 of the Indian Penal Code, 1860 against the petitioners.

The second respondent lodged a complaint against the petitioners before the Station House Officer, Ongole I Town Police Station, Prakasam District, alleging that on 12.03.2016 the first petitioner, who is an ex-home guard, came to the house of second petitioner which is opposite to her house and the petitioners laughed at her and made comments and when she questioned, the first petitioner came on motor cycle and put his hand on her shoulder and pulled her saree, she escaped and later the first petitioner fled away on his motor cycle and the second petitioner said that they can do anything and even on earlier occasion while she was passing through, they made comments using filthy language, and on 21.08.2014 she lodged a complaint, but police did not take any action, but a crime was registered basing on the complaint given by them, and they are threatening to foist false cases, later based on the present complaint dated 13.03.2016 a crime was registered against the petitioners for the above offence.

After due investigation, police filed charge sheet before the II Additional Judicial Magistrate of First Class, Ongole, it was numbered as C.C. No.446 of 2016 and the learned Magistrate took cognizance of the case against both the petitioners.

The only contention before this Court is that the CC cameras allegedly arranged by the petitioners at the house of the second respondent, as per the complaint, were not seized which would establish the incident itself. Therefore non seizure of CC cameras is a ground to quash the proceedings, since the crucial evidence to establish the incident was not brought on record.

The power of this Court under Section 482 Cr.P.C. is limited and such inherent power can be exercised sparingly and not in routine manner. The object of Section 482 Cr.P.C. is to give effect to any order under this Code, or to prevent abuse of the process of any Court, or otherwise to secure the ends of justice.

In **R.P. KAPUR v. STATE OF PUNJAB**¹, the Apex Court laid down the following principles:-

- “(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (iii) Where the allegations in the First Information Report or the complaint taken at their face value and accepted

¹ AIR 1960 SC 866

in their entirety, do not constitute the offence alleged;
and

(iv) Where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

In **STATE OF KARNATAKA VS. L.MUNISWAMY & ORS.**², **KAVITA V. STATE**³ and **B.S. JOSHI V. STATE OF HARYANA & ANR.**⁴ the Apex Court highlighted the scope of Section 482 of Cr.P.C. and in **STATE OF HARYANA vs. BHAJAN LAL**⁵ laid down seven guidelines.

Applying the principles laid down in the above Judgments of the Apex Court to the present facts of the case, the allegations made in the charge sheet filed against the petitioners, so also FIR registered against the petitioners on the face of it show that they committed offence *prima facie* and it is not the case of the petitioners that the allegations made in the complaint did not constitute any offence allegedly, but it is only lack of evidence due to failure of investigating agency to collect electronic evidence i.e. CC camera footages as evidence during investigation.

But it is only failure of investigating agency and the allegations made in the charge sheet either can be proved by electronic evidence or by other mode. Therefore, failure to seize CC camera footages is not a ground to quash the proceedings in a case pending on the file of II Additional Judicial Magistrate of First Class, Ongole.

² AIR 1977 SC 1489

³ 2000 CrI LJ 315

⁴ 2003 (4) SCC 675

⁵ 1992 Supp (1) SCC 335

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Hence, I find no ground to quash the proceedings in C.C. No.446 of 2016 pending before the II Additional Munisiff Magistrate, Ongole, for the offences punishable under Sections 354, 506 read with Section 34 of the Indian Penal Code, 1860 against the petitioners. Hence, the petition is liable to be dismissed.

In the result, the petition is dismissed.

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

Date: 18.10.2016
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M. SATYANARAYANA MURTHY, J

