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THE HON'BLE SRI JUSTICE A.V. SESA SAI
WRIT PETITION No.5033 of 2012

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges Letter Rc.No.S3/0768/HYD-A/2012, dated 14.02.2012 and the consequential registration of a crime vide F.I.R.No.61/2012, on the file of the Abid Road Police Station, Hyderabad, first respondent herein.

2. Heard Sri D. Prakash Reddy, learned Senior Counsel, representing Sri N.Vijender Reddy, learned counsel for the petitioners on record and the learned Government Pleader for Home for the respondents 1 to 3 and 5 and Sri B.S.Venkata Ramesh, learned counsel for the respondent No.4 apart from perusing the material available before the Court.

3. The fourth respondent herein submitted a representation dated 14.02.2012 to the second respondent A.P. State Commission for Scheduled Castes and Scheduled Tribes, requesting to take action against the petitioners herein. The second respondent Commission vide impugned letter dated 14.02.2012 requested the Commissioner of Police, Hyderabad to examine the contents of the petition submitted by the fourth respondent and take necessary action as per the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called 'the Act'). Basing on the said Commission's letter, the first respondent police registered FIR.No.61/2012 on 16.02.2012 for the alleged offence under Section 3 (1) (v) of the Act.

Challenging the very validity and the legal sustainability of the letter dated 14.02.2012 and the very registration of crime vide F.I.R.No.61 of 2012, the present writ petition came to be filed.

4. This Court, while ordering *Rule Nisi* on 04.02.2012, granted interim stay in WPMP.No.6420 of 2012. Responding to the *Rule Nisi* issued by this Court, counter affidavits have been filed by the respondents 4 and 5 denying the averments made in the affidavit filed in support of the writ

petition and in the direction of justifying the impugned action.

5. It is contended by the learned Senior Counsel, appearing for the writ petitioners that the very registration of First Information Report, in the facts and circumstances of the case, is a patent abuse of process of law and that the subject matter is basically of civil nature. It is the further submission of the learned senior counsel that as a measure of counter blast to the representation dated 14.02.2012, the fourth respondent herein filed a representation before the second respondent. It is further contended that in view of the common orders passed by this Court in W.P.Nos.9668 and 19117 of 1987 and W.P.No.673 of 1992, dated 30.08.2011, the very basis for the complaint is *mala fide* and impermissible. It is the further submission of the learned Senior counsel that there are no ingredients of Section 3 (1) (v) of the Act in the case of the fourth respondent, as such, the very prosecution launched against the petitioners is highly unwarranted and in view of their failure before this Court and the Hon'ble Apex Court earlier, the very complaint made by the fourth respondent is a patent abuse of process of law. It is also the further submission of the learned counsel that the letter dated 14.02.2012 addressed by the second respondent Commission to the Commissioner of Police is wholly without jurisdiction and does not have any statutory sanction. In support of this contentions, learned Senior Counsel places reliance on the judgment of the Hon'ble Apex Court in **STATE OF HARYANA AND OTHERS v. BHAJANLAL AND OTHERS**^[1].

6. On the contrary, it is contended by the learned Government Pleader so also the learned counsel for the fourth respondent that absolutely there is no illegality in the registration of the crime against the petitioners in view of the illegal action of the petitioners herein. It is further submitted that since there are *prima facie* allegations against the petitioners herein, the investigation by the police cannot be scuttled. The learned Government pleader so also the learned Standing Counsel seek to justify the letter dated 14.02.2012 addressed to the second respondent

under the provisions of

12 (b), 12 (f) and 12 (g) of the A.P. State Commission for Scheduled Castes and Schedule Tribes Act, 2003.

7. In the above background, now the issue that emerges for consideration of this Court is_ “Whether the petitioners herein are entitled for any relief from this Court under Article 226 of the Constitution of India?.”

8. The very genesis for initiation of the criminal prosecution against the petitioners is a representation dated 14.02.2012 submitted by the fourth respondent to the second respondent Commission. The second respondent Commission on the same day, enclosing a copy of the said representation, addressed a letter bearing Rc.No.S3/0768/HYD-A, dated 14.02.20112, requesting the Commissioner of Police to examine the contents of the petition and take necessary action as per the provisions of the Act. It is the case of the petitioners herein that on 14.02.2012 certain officials of the Municipal Corporation visited the subject area on some representation made by their tenants for providing amenities. In the said representation dated 14.02.2012, petitioners herein brought to the notice of the Corporation the orders passed by this Court in W.P.Nos.9668 and 19117 of 1987 and 673 of 1992 on 30.08.2001. The said order is placed on record along with the writ petition as a material paper. In W.P.No.19117 of 1987 Muralidhar Bagh National Huts Union appeared as respondent No.4. In this context, it may be appropriate to refer to paragraph No.15 of the said judgment, which reads as under:

“In view of the facts stated above from which there cannot be even an inference that the property in the instant cases can be declared as slum area and applying the above legal principles enunciated to the word ‘ satisfied ‘ employed in Section 3 (1) of the Slum Act, we are not in doubt as to the total non-application of mind on the part of the Municipal Corporation of Hyderabad in declaring the property in question as slum area. The impugned notifications dated 14.10.1987 and 4.12.1991 are thus held as illegal and are accordingly set aside. Insofar as Writ Petition No.9668 of 1987 is concerned, the petitioners are

entitled for directions against the respondent from suo-motu providing any amenities, unless there are specific directives issued by any competent court of law having jurisdiction in that regard. However, the Slum Area Occupancy Certificates issued by respondents 1 and 2 of the premises bearing No.5-4-51 to 5-4-108 and 5-4-123 to 5-4-182/1 situated at Murlidhar Bagh, Hyderabad are held to be void.”

9. While referring to the above said paragraph No.15 of the Judgment, learned Senior Counsel contends that unless the specific directions are issued by a competent Court of law, the official respondents cannot provide any amenities *suo motu*. In fact, highlighting the above said findings of this Court, the petitioners herein submitted their representation on 14.02.2012. On the same day, the fourth respondent herein also submitted a representation to the second respondent Commission, making complaint against the petitioners herein stating that for the last 50 years the petitioners are harassing and coming in the way of undertaking the repairs and sought intervention of the second respondent. It is also to be noted that the said orders passed by this Court in the above writ petitions were confirmed by the Hon'ble Apex Court in the appeals filed by the Municipal Corporation and the Muralidhar Bagh National Huts Union and the copies of the orders passed by the Hon'ble Apex Court are also placed on record along with the writ petition as material papers.

10. It is interesting to note that the second respondent Commission in the impugned letter dated 14.02.2012 stated that the fourth respondent in his representation stated that the petitioners are harassing and threatening them with dire consequences in the event of failure to vacate the land. A perusal of the representation dated 14.02.2012 submitted by the fourth respondent to the second respondent does not reflect anything with regard to dispossession. It is also the submission of the learned Senior Counsel that the impugned letter dated 14.02.2012 has absolutely no legal sanctity and is beyond the scope of the powers vested in the second respondent Commission under the provisions of

2003 Act. Though an attempt is made by the learned Government Pleader and also the learned counsel for the fourth respondent to justify the action of the second respondent under the provisions of Sections 12-B, 12-F and 12-G, this Court is of the considered opinion that the said provisions of law by any stretch of imagination would not authorize the second respondent to resort to the impugned action and in fact no other provision of law is brought to the notice of this Court by the respondents to justify the action of the second respondent. In this context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in **STATE OF HARYANA AND OTHERS v. BHAJANLAL AND OTHERS**^[2]. In the said judgment, the Hon'ble Apex Court laid down the guidelines under which the quashment of First Information Report can be sought. The said guidelines read as under:

- “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 F.I.R. 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 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.”

11. The present case, in the considered opinion of this Court, would undoubtedly falls under guidelines 1, 5 and 7. In the facts and circumstances of the case and having regard to the various orders passed by this Court, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned prosecution launched against the petitioners herein is undoubtedly an abuse of process of law, as such, further continuation of the prosecution cannot be permitted.

12. For the aforesaid reasons, writ petition is allowed, quashing the Letter Rc.No.S3/0768/HYD-A/2012, dated 14.02.2012 and F.I.R.No.61/2012 on the file of the Abid Road Police Station, Hyderabad, first respondent herein. As a sequel, miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V. SESA SAI, J

Date:27.6.2016

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THE HON’BLE SRI JUSTICE A.V. SESA SAI

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Dated 27th June, 2016

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[\[1\]](#) 1992 Supp (1) SCC 335

[\[2\]](#) 1992 Supp (1) SCC 335