

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.15123 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.541 of 2016 of Madhapur (Guttala) Police Station for the offences punishable under Sections 218, 220, 342, 406 & 420 IPC.

The 2nd respondent lodged a complaint dated 12.09.2016 to the Station House Officer, Madhapur Police Station, Cyberabad making serious allegations against the petitioner herein complaining certain illegal acts committed by him. The specific allegations made by the 2nd respondent against the petitioner in the complaint read as under:

“On 13.06.2014 about 10-45 a.m, I went to P.S. to enquire about my complaint status and I waited upto 3.00 p.m. then V. Srinivasa Rao informed that he has received a complaint from one Smt. K. Sirisha, against me stating that I had illegally trespassed into Plot No.20 on 7-6-2014 at 19.00 hours. I questioned Mr. V. Srinivasa Rao about why he had not taken any action on my complaint dated 7-6-2014. I further submit that Mr. V. Srinivasa Rao never informed about the above said complaint given by K. Sirisha at any point of time except on 13-6-2014. I submit that on 13-6-2014 at about 3.00 PM during the above said conversation, Mr. V. Srinivasa Rao stated that my plot was worth Rs.1 crore and my daughter is working in the USA and demanded me to get an amount of Rs.5 lakhs as bribe or otherwise he threatened to remand me immediately and I expressed my inability to pay such an amount as a bribe. I requested him to permit me to explain my complaint/grievance before the higher officers but he had not allowed me to meet them and told me that there was pressure from the higher authorities and further threatened that if I argue with him, he would implicate me in an SC/ST atrocity case by taking a fresh complaint. At about 4.00 PM on 13-6-2014 without giving 41A Cr.P.C notice which is mandatory, he had arrested me and later produced before the Miyapur Court, Cyberabad and thereafter I obtained bail from the Competent Court.”

It is contended that, when the Station House Officer did not register the complaint, the 2nd respondent filed a private complaint which was referred to the police exercising power under Section 156 (3) of Cr.P.C. and Crime No.564 of 2014 was registered on

30.07.2012 for the offences punishable under Sections 120B, 447, 427, 506 r/w 34 of IPC against P. Dilip and four others.

The facts of the case are that the 2nd respondent/complainant's daughter V Mayura had purchased Plot No.21/A admeasuring 260 Sq.Yards in Survey No.32 of Guttalabegumpet, Hyderabad, through a registered sale deed bearing No.9357/2004 dated 31.08.2004 from V. Narasimha and others. As she is settled in USA along with her husband, she executed a General Power of Attorney (GPA) on 02.09.2004 in favour of the 2nd respondent to look after the affairs of the property. The 2nd respondent is in exclusive possession of the same plot. It is the case that on 07.06.2014 at about 16:00 hrs one Paruchuri Dilip and four others illegally trespassed into the plot belonging to the complainant with an intention to grab the property and damaged the walls. On that matter, the complainant went to Madhapur Police Station to lodge a complaint. In spite of making a complaint, the petitioner/Accused-1 being the area Sub-inspector did not register the F.I.R.

Further, instead of not registering the F.I.R the petitioner/Accused-1 conspired with his own brother in law by name Kanneti Venkateshwarlu and hatched a plan to grab the property bearing Plot No.21/A. In this connection, both the petitioner and his brother in law obtained documents for Plot No.20 from Mrs. S. Amulya and got it registered in the name of the petitioner's brother-in-law as Benami vide Sale Deed No.8625/2014 dated 16-7-2014. Taking advantage of above sale deed, the petitioner being the sector Sub Inspector of Police misused his official power for his personal gain and in a motivated manner with the help of his brother-in-law disturbed the 2nd respondent's peaceful

possession in Plot No.21/A.

A departmental enquiry was conducted against the petitioner and having found that the petitioner has misused his power during his tenure as Sub-Inspector at Madhapur Police Station, the Commissioner of Police, Cyberabad, through proceedings Rc.No.05/Major/Pr-II/Cyb/2015-16, dated 22-06-2016 awarded punishment in reduction in time scale of pay by two stages for three years with effect on future increments and pension. The proceedings also mentioned that the suspension period from 25.02.2015 to 23.06.2015 is to be treated as 'not on duty'.

It is pertinent to mention that during the departmental enquiry it was proved the petitioner personally approached Assistant Engineer in Electricity Department, Jubilee Hills, Hyderabad to obtain electric connection to one Sunkara Amulya for the Plot No.20 by showing Plot No.21/A. The above said acts clearly show that the petitioner hatched plan to grab the plot and accordingly to his pre-plan, on behalf of Sunkara Amulya he has approached A.E, Electricity Department, Jubilee Hills with a request to give new electricity connection and further hatched plan to get Plot No.20 registered in his brother-in-law name, as he is his benami and thereafter achieved his target. It is also alleged that he tampered the documents of ULC and TSSPDCL from the case diary files by damaging the police force name.

Later, the complaint was submitted to the Commissioner of Police against 2nd respondent and on the basis of enquiry, proceedings were initiated against the petitioner for registering crime illegally against the 2nd respondent in violation of the procedure. But, ultimately the petitioner was found guilty for the misconduct in the

departmental enquiry on 30.05.2015 and thus, the petitioner committed various offences punishable under Section 218, 220, 342 & 406 r/w 420 IPC.

No doubt, the petitioner filed the present petition under various grounds, mainly contending that earlier he worked as Sub-Inspector of Police at Madhapur Police Station and that, on the basis of the complaint given by the 2nd respondent, on reference under Section 156(3), the police registered Crime No.564 of 2014 on 30.07.2014 against P. Dileep and four others and that the petitioner is not an accused in the said complaint and that he had no suspicion or involvement in the said crime. It is also further contended that the petitioner is no way connected with the allegations in any manner.

A suit was filed by Mrs. Sunkara Amulya against Smt. V. Mayura seeking relief of perpetual injunction to restrain unlawful interference of the defendant with the peaceful possession and enjoyment of the plaintiff over the suit schedule property consisting of Plot No.20 to the extent of 240 Sq.yds situated in Sy.No32 at Guttala Begumpet Village, the II Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar vide judgment dated 02.06.2014 held that the plaintiff-Mrs. Sunkara Amulya is not entitled for any relief and dismissed the suit in favour of Smt. V. Mayura i.e. daughter of the 2nd respondent herein.

It is contended that the 2nd respondent made a false complaint, though he is aware that his daughter purchased Plot No.21-A and implicated the petitioner in criminal case and that the allegation that the petitioner colluded with the 2nd accused is false.

During hearing, learned counsel for the petitioner mainly contended that when a civil suit is decreed by the II Addl. Senior Civil

Judge on 02.06.2014 in O.S.No.820 of 2008, holding that the Smt. Mayura, daughter of the defacto complainant was in peaceful possession and enjoyment of the property, the question of the petitioner interfering with the possession and enjoyment of the property would not arise. Therefore, the alleged trespassing into the property by the petitioner and others, so also creation of documents by the petitioner etcetera would not arise. Learned counsel for the petitioner drawn attention of this Court to finding and issue No.1 in the judgment in O.S.No.820 of 2008 and also the counter filed in I.A.NO.611 of 2014 in O.S.No.227 of 2014 filed by Kanneti Venkateswara Rao against Sudhakar Reddy, the defacto complainant herein and the finding recorded in the departmental enquiry found him guilty and imposed punishment in reduction in time scale of pay by two stages for three years with effect on future increments and pension. The proceedings also mentioned that the suspension period from 25.02.2015 to 23.06.2015 is to be treated as 'not on duty'.. Therefore, the petitioner did commit no offence and prayed to quash the proceedings.

The 2nd respondent appeared in person and filed several documents, almost reiterating the contentions in the complaint and annexed several documents and drawn attention of this Court to complaint and contended that the Commissioner of Police has believed that the petitioner has committed illegal acts and imposed punishment for the misconduct in discharging his duties as Sub-Inspector of Police and therefore, there are no grounds to quash the proceedings against him.

The offences allegedly committed by the petitioner are punishable under Sections 218, 220, 342, 406 & 420 IPC.

Section 218 I.P.C deals with public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture and it reads as under:-

“Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Undisputedly, the petitioner being Sub Inspector of Police is a public servant as defined under Section 211 IPC. The alleged acts committed by the petitioner is creation of complaint against the defacto complainant and tampering of documents of ULC & TSSPDCL in the case diary files by damaging the police force name, as alleged in paragraph 8 of the complaint. Thus, the petitioner being a public servant allegedly tampered records including complaint and obtained a compliant against the person who acted against his wish by issuing notice under Section 41-A immediately, on the spot and tampered the records of ULC & TSSPDCL. Such acts would certainly constitute an offence. The essential ingredient to commit an offence is that, it must be an intentional. The intention is one of the prime ingredients to constitute an offence. Here, the allegations made in the complaint against the petitioner is that with a view to grab the property, the petitioner and his brother in law hatched a plan, created the complaint and tampered documents to form as record i.e. case diary. That would fall within Section 218 of IPC. From a bare reading of Section 218 IPC, it would be suffice to say that any public servant is

charged with the preparation of any record which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss to the public or to any person shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Thus, the alleged act of the petitioner by creating complaint and tampering the records referred supra in connivance with his brother in law to grab the property would suffice to conclude that he intentionally created the complaint and tampered the record on the face value of the allegations made in the complaint.

The offence allegedly committed by the petitioner is punishable under Section 220 IPC. Section 220 IPC deals with commitment for trial or confinement by person having authority who knows that he is acting contrary to law and it reads as follows:-

“Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

Here, the allegation made against the petitioner is that the 2nd respondent when enquired, lodged a complaint while enquiring about the previous complaint. The petitioner allegedly created a complaint and issued notice under Section 41-A of Cr.P.C on the spot and without even requiring him to submit his explanation for the notice, confined him in jail and it is an offence. No doubt, if a complaint is received about commission of cognizable offence, the Station House Officer can register a crime, issue FIR under Section 154 and take up investigation as per the procedure. But here, the petitioner issued

notice under Section 41-A, since the offence allegedly committed by him is punishable with imprisonment of not less than 7 years and even without affording reasonable opportunity, kept him in police lock up.

Section 220 IPC provides punishment to an officer who detains or keeps a person in confinement with incorrect or malafide motive. Sections 330 & 331 spelt out that whoever voluntarily causing grievous hurt to extort confession, or to compel restoration of property shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. But, in the present case, the defacto complainant was kept in police lock up even without providing reasonable opportunity to submit reply to the notice under Section 41-A of Cr.P.C. Thus, as the fundamental right of life and liberty was infringed, the Court must proceed to take necessary action according to the law, since grant of compensation by way of damages is not adequate, in view of alleged commission of offence punishable under Section 220 of IPC, subject to proof of the ingredients during trial.

Even otherwise, the Supreme Court in **Arnesh Kumar's case** laid down certain guidelines and according to it, if the police officer violates the guidelines, it amounts to contempt of court, in view of the law declared by the Apex Court which is extracted hereinunder.

“(1) All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;

(2) All police officers be provided with a check list containing specified sub-clauses Under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated

the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

Here, the petitioner failed to adhere to the guidelines and in violation of the guidelines keep him in police lock-up.

The petitioner also allegedly committed an offence punishable under Section 342 i.e. punishment for wrongful confinement, as the petitioner was confined in police lock up after issuing notice under Section 41-A of Cr.P.C.

In the present case, the petitioner was allegedly confined in police lock up till he was produced before the Magistrate at Miyapur. As on today, it is difficult to conclude that the petitioner was confined wrongfully, since the case is under investigation. However, the petitioner was found guilty in departmental proceedings for creating documents and tampering of documents while discharging his duties as public servant i.e sub inspector of police, those findings may be relevant but not conclusive proof, since, in criminal case proof

beyond reasonable doubt is essential. Therefore, it is difficult to come to a conclusion at this stage whether the petitioner committed any offence punishable under Section 342 IPC.

Similarly, the petitioner also allegedly committed offence punishable under Sections 404 & 406 IPC. But, however, at this stage it is difficult for me to decide, as this Court make roving enquiry at threshold while exercising jurisdiction under Section 482 of Cr.P.C.

The jurisdiction of this Court under Section 482 of Cr.P.C is limited and at best, this Court can exercise jurisdiction sparingly in exceptional circumstances, more particularly, allegations made in the complaint would constitute offences on its face value.

In **State of Haryana v. Bhajan Lal**¹ the Supreme Court considered in detail the power of this Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint, which are as follows:

“(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 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

¹ 1992 Supp (1) 335

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.”

The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide **Mrs. Dhanalakshmi v. R. Prasanna Kumar and Ors.**²; **Ganesh Narayan Hegde v. S. Bangarappa and Ors.**³; and **M/s Zandu Pharmaceutical Works Ltd. and Ors. v. Md. Sharaful Haque and Ors.**⁴)

In **State of Orissa v. Saroj Kumar Sahoo**⁵, the Supreme Court had an occasion to deal with the scope of Section 482 and held that the inherent powers under Section 482 Cr.P.C should not be exercised by the High Court to stifle a legitimate prosecution. The Apex Court also held that the High Court being the highest Court of a

² AIR 1990 SC 494

³ (1995) 4 SCC 41

⁴ AIR 2005 SC 9

⁵ (2005) 13 SCC 540

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. The Supreme Court further observed that there is no hard and fast rule 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 of 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.

The Court can not evaluate the material and documents on record and it cannot appreciate evidence, to conclude whether the material produced are sufficient or not for convicting the accused. Therefore, the limited purpose of appreciating of facts is only to come to a conclusion whether the proceeding against the accused for the alleged offence committed by the accused be proceeded. Thus, the limited jurisdiction under Section 482 of Cr.P.C can be exercised only in exceptional circumstances.

In **Ramesh v. State of Tamil Nadu**⁶, the Supreme Court held that the Court has to consider whether the allegations with regard to Section 482 and they are as follows:

“In the petition under Section 482, three contentions were raised-

(i) That the allegations are frivolous and without any basis;

(ii) Even according to the F.I.R., no incriminating acts were done within the jurisdiction of Trichy Police Station and the Court at Trichy and, therefore, the learned Magistrate lacked territorial jurisdiction to take cognizance of the offence;

(iii) Taking cognizance of the alleged offences at this stage is barred under Section 468(1) Cr.P.C. as it was beyond the period of limitation prescribed under Section 468(2).”

In an identical situation, the Division of this Court in **D. Kasaiah v. Sunkara Srinivasulu and others**⁷, while reiterating the principles laid down by the Supreme Court in **Bhajanlal, and R.P. Kapur** cases, held in paragraph 32 as follows:

“.....Further, as already held, prima facie, whether it is the FIR lodged at the earliest point of time or the later one, both discloses commission of offence, whether disclosure of such offence is against all the accused or some is a matter to be established at the time of appreciating the evidence that may be adduced by the prosecution before the Court. In our view, since already the later first information report has been registered and forwarded to the Court and charge sheet had already been filed, the earliest first information report cannot now be substituted with the present one.”

While Dealing with the object of "First Information Report" under section 154 of the Criminal Procedure Code, the Privy Council in **Emperor v. Khwaja Nazir Ahmad**⁸ held that the object of the provisions as to an information report (commonly called a first information report) is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to

⁶ AIR 2005 SC 1989

⁷ 2013 (1) ALD (Cri) 685

⁸ AIR 1945 PC 18

be forgotten or embellished, and the report can be put in evidence when the informant is examined if it is desired to do so. It was held just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India there is a statutory right on the part of the police under Sections 154 and 156, to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under Section 561A of the Code of Criminal Procedure, 1898 (corresponding to Section 482 of Code of Criminal Procedure, 1973).

Thus, it is clear from the law declared by the Privy Council when the case is at the investigation stage, the Court cannot interfere by exercising jurisdiction under Section 482 of Cr.P.C, more particularly, when the investigation is at the threshold stage.

In the facts of the case, the investigation is not yet completed and the allegation made against the petitioner, who is a police officer is serious in nature. If such police commits such an offence, being a law enforcing agency is allowed to commit less offence to grab the property, it would be difficult for any other authority to control, the situation like one in this case and it is nothing but violation of duty and that apart, the petitioner was already found guilty for tampering of official records. In such a case, it is difficult for this Court to

conclude at the threshold that no case is made out against the petitioner for the serious offences allegedly committed by him, being a police officer while discharging his duty. In those circumstances, the petitioner is not only guilty of violation of directions given by the Supreme Court in **Arnesh Kumar's** case (referred supra), but also guilty of serious offences punishable under Sections 218, 220, 342, 406 & 420 IPC on its face value of the allegations made in the complaint.

By applying the principles laid down in various judgments (referred supra), it is difficult for me to exercise jurisdiction under Section 482 Cr.P.C which is inherent and discretionary and it can be exercised only in exceptional circumstances unless concluded that the petitioner did not commit any offence at the threshold. 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.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

M. SATYANARAYANA MURTHY, J

Date:30.11.2016
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