

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.15134 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings against the petitioner in Crime No.372 of 2016 on the file of S.H.O., Khammam II Town Police Station, Khammam, for the offence punishable under Section 384 of I.P.C.

The case of the defacto complainant is that he was carrying on construction company business in Khammam. While so, one Mandadapu Sudhakar used to regularly visit the construction site and would complain about the works undertaken by the defacto complainant are of substandard and threatened to get the construction checked with a team of retired engineers who are with him and would complain to higher authorities and threatened that the works would be cancelled. By threatening the defacto complainant for the above facts, the petitioner took an amount of Rs.4,50,000/-. Based on the complaint, the police registered F.I.R.No.372 of 2016.

Now, the present petition is filed raising several contentions and one among them is that, the petitioner filed W.P.(PIL).No.109 of 2016 before this Court challenging the regularization proceedings issued in favour of the local M.L.A, and after filing the said PIL, the present complaint is lodged with the police by the defacto complainant. Therefore, the defacto complainant lodged complaint only as abuse of process of law, to take vengeance on account of filing of PIL before this Court and that it is a false complaint. As seen from

the allegations made in the complaint, there is a direct allegation that the petitioner demanded Rs.4,50,000/- from the petitioner while complaining the substandard works carried on by the defacto complainant. So, if the allegations made in the complaint on its face value are taken into consideration, it would constitute an offence, subject to its proof. This Court can exercise its jurisdiction under Section 482 sparingly and not in a routine manner and more particularly, when the Court is satisfied that the allegations in the first information report or complaint it would not constitute an offence if taken on its face value.

The Apex Court in **State of Haryana v. Bhajan Lal**¹ laid down seven guidelines. Guideline No.1 held that where the allegations made in the first information report or the complaint, even if they are taken on their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the Court can quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C.

In **Madhavrao Jiwaji Rao Scindia & anr. etc. vs. Sambhajirao Chandrojirao Angre & ors. etc**², the Apex Court held that the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence.

Therefore, by following **Madhavrao**'s case, the special facts or special features have to be taken into consideration to quash the

¹ 1992 Supp. (1) SCC 335

² 1988 AIR 709

criminal proceedings to decide the *lis* between the parties, as held by the Supreme Court **Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy and ors**³.

In **R.P. Kapur v. State of Punjab**⁴, the Apex Court held as follows:

- (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 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 view of the guidelines laid down by the Apex Court in the judgments referred supra, if the facts on its face value are taken into consideration, it constitutes an offence, *prima facie* if proved. The Court cannot interfere, except when the Court comes to a conclusion that it is an out come of abuse of process of law. But at this stage, it is difficult for me to conclude that the present complaint was filed as an outcome of abuse of process of law.

Learned counsel Sri Raghunandan would contend that the petitioner being a genuine litigant public is apprehending his arrest in connection with the above crime. In fact, the arrest is not a must.

³ 2011 (3) ACR 3156 (SC)

⁴ AIR 1960 SC 866

In **Som Mittal v. Government of Karnataka**⁵, the Apex Court while deciding the application to release accused on pre arrest bail relating to the State of Uttar Pradesh held that where there is no provision for grant of pre arrest in bail in criminal cases and while concurring with Justice H.K. Sema, His Lordship Justice Markandeya Katju followed the principle laid down in **Joginder Kumar v. State of Uttar Pradesh**⁶ case wherein it was held as follows:

“no arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing and the justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional right of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the persons complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendation of the Police Commissioner merely reflects the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be a reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to a person to attend the Station House and not to leave Station without permission would do.??

After this judgment, the Apex Court in **Arnesh Kumar v. State of Bihar**⁷ directed all the police officers to follow the procedure prescribed under Section 41-(A) of Cr.P.C. Therefore, taking into consideration of the law declared by the Apex Court in **Joginder's case and Arnesh Kumar case** (referred supra), the police are

⁵ AIR 2008 SC 1126

⁶ AIR 1994 SC 1349

⁷ 2014 (3) ACR 2670 (SC)

directed to follow the guidelines laid down by the Apex Court in both the judgments and the police shall not arrest the petitioner except by following the guidelines referred supra.

With the above direction, the criminal petition is disposed of.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:25.10.2016
SP

