

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15451 OF 2016

ORDER:

This criminal petition, under Section 482 of Criminal Procedure Code, 1973 (for short, 'Cr.P.C'), is filed by the petitioner to quash the proceedings in C.C. No.197 of 2015 pending before the Judicial First Class Magistrate, Mylavaram, Krishna District.

The first and third petitioners are the husband and wife and the second petitioner is brother of first petitioner. The *de-facto* complainant, who is second respondent herein, is also the brother of petitioners 1 and 2. The second respondent lodged a complaint before the police, Mylavaram Police Station, on 19.07.2015 making serious allegations that the petitioners trespassed into his house and caused simple and grievous injuries to the second respondent and his wife, and the same was registered as a case in Cr.No.137 of 2015 and later during investigation the police examined as many as 10 witnesses, including Medical Officer, who examined the injured persons and issued wound certificate, and after following necessary procedure filed final report before the Judicial Magistrate of First Class, Mylavaram, under Section 173 Cr.P.C. where specific overt acts are attributed to the petitioners.

According to the allegations made in the charge sheet, A.1 beat the second respondent with stick on his head, A.2 beat him on his back with a stick, caused bleeding injuries, A.2 stabbed L.W.2 with stick at her upper side of left side waist, A.3 while caught hold of tuft of L.W.2, then juvenile fisted on her back

while threatening the second respondent and his wife (L.W.2) saying that they would kill them. Thereafter they were shifted to hospital, examined by the doctor, and issued wound certificate expressing his opinion, and later during investigation seized the material objects i.e. weapons used in the incident.

Thus the allegations made in the charge sheet and the statements recorded by the investigating agency under Section 161(3) Cr.P.C. during investigation discloses *prima facie* case on its face value to constitute the offence punishable under Section 448, 323, 324, 506 read with Section 34 IPC.

The main contention of the petitioners is that the family disputes are converted into criminal litigation and that the investigation agency did not consider the objections to the notice under Section 41-A Cr.P.C. and that a separate charge sheet is filed before the different authority against juvenile, who involved in this crime.

As seen from the material on record, non consideration of reply to notice under Section 41-A Cr.P.C. by the investigating agency regarding the civil disputes is not a ground, when the facts made out a *prima facie* case to proceed against the petitioners and that apart there is absolutely nothing on record to establish that there were civil disputes and those disputes converted into criminal litigation.

In **STATE OF HARYANA v. BHAJAN LAL**¹ the Apex Court laid down the following guidelines to be followed by the High courts in exercise of their inherent powers to quash a criminal complaint:

¹ 1992 Supp.(1) SCC 335

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“(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 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.”

Similarly in **MADHAVRAO JIWAJI RAO SCINDIA & ANR. v. SAMBHAJIRAO CHANDROJIRAO ANGRE & ORS.**,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. The same

² AIR 1988 SC 709

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principle is reiterated in **STATE OF BIHAR & ANR. VS. SHRI P.P. SHARMA & ANR.**³

The cumulative effect of the principles laid down in the Judgments of the Apex Court referred to above is that when the allegations made in the charge sheet if taken on its face value would not constitute an offence punishable under any provision of IPC, this Court can quash the proceedings unhesitatingly. But when there are specific allegations, which would constitute an offence under Sections 448, 324, 506 read with 34 IPC and they are supported by the evidence collected by investigating agency during investigation and the statements recorded under Section 161 (3) Cr.P.C., this Court cannot exercise such inherent power to quash the proceedings and therefore, I find no ground to quash the proceedings in C.C. No.197 of 2015 pending before Judicial Magistrate of First Class, Mylavaram, Krishna District.

Accordingly, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date: 31.10.2016
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³ AIR 1991 SC 1260