

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.17159 OF 2016

ORDER:

This criminal petition, under Section 482 of the Code of Criminal procedure, 1973 (for short 'Cr.P.C'), is filed to quash the proceedings in Cr. No.229 of 2013 of Bheemunipatnam Police Station, Visakhapatnam District, registered against the petitioner for the offences punishable under Sections 420 and 471 of Indian Penal Code, 1860 (for short, 'I.P.C.').

Respondent 2 and 3 lodged a complaint against the petitioner on 10.06.2013 alleging that the land admeasuring Ac.7.75 cents in S.No.24, Nidigattu Village, Bheemunipatnam, is in the name of Maharaja of Vizianagaram, but the petitioner herein and others, having submitted false documents to the Court, have threatened their ryths and watchmen, troubling them, and trying to enter into the land without his knowledge. He also contended that passbook No.322059 for patta No.146 is created to claim rights in the property and requested the police to take action against the petitioner. On the strength of the above complaint, the police registered a case in Cr. No.229 of 2013 and issued F.I.R. During investigation, the police recorded statements of respondents 1 and 2. Copies of those statements are filed before this court along with the criminal petition.

The main grounds urged before this court are, a plain reading of the complaint, it does not disclose any offence much less the offence allegedly committed by the petitioner and that the dispute is purely civil in nature, and suit in O.S. No.421 of 2006 is pending before the II Additional Senior Civil Judge,

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Visakhapatnam, wherein an interim order was obtained in the year 2006. Respondents 2 and 3 can implead in the suit filed for declaration of title and consequential injunction, but lodging the complaint is an abuse of process of law and prayed to quash the proceedings.

During hearing, Smt. M.S.V.S. Sudha Rani, learned counsel for the petitioner, vehemently contended that the complaint is bereft of any details, to whom the property exactly belongs, there are many family members of Maharaja of Vizianagaram and in the absence of any specific details, respondents 2 and 3 are incompetent to lodge the complaint, and apart from that even in the statements recorded by the police under Section 161(3) of Cr.P.C., they did not disclose details to whom the property of Maharaja of Vizianagaram belongs.

It is further contended that the petitioner filed suit in O.S. No.421 of 2006 for declaration of title and consequential permanent injunction against against B. Narasimha Rao, K.Pydiraju, M.Varalakshmi, M.Rama Rao and S.Nookaraju, also filed I.A. No.205 of 2006 under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908 along with the suit and obtained interim order. In view of pendency of civil litigation, the respondents are not entitled to lodge the complaint and it is nothing but converting the civil litigation into criminal litigation as a cloak to harass the petitioner by abuse of process of law and prayed to quash the proceedings against the petitioner in Cr.No.229 of 2013.

As seen from the allegations made in the complaint lodged with the police, respondents 2 and 3 asserted that the land to an extent of Ac.7.75 cents in S.No.24 cents of Nidigattu Village, Bheemunipatnam, is registered in the name of Maharaja of Vizianagaram. In fact she filed suit against third parties without impleading the family members of Maharaja of Vizianagaram and obtained interim order under Order XXXIX Rule 1 and 2. But the interim order passed by the Senior Civil Judge is not binding on the respondents 2 and 3, since they are not parties to the suit or the petition. Therefore, mere filing of suit and its pendency before the competent court against the third parties is not a ground to quash the proceedings at this stage.

Learned counsel for the petitioner, while contended that the civil dispute cannot be converted into criminal litigation has drawn the attention of this court to **PARAMJEETH BATRA v. STATE OF UTTARAKHAND AND OTHERS**¹. Wherein, at paragraphs 12, the Apex Court held as follows:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this

¹ (2013) 11 SCC 673

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case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.”

In the present facts of the case, a specific allegation made against the petitioner is that she threatened the ryths and Watchmen of the lands of Maharaja of Vizianagaram. If these allegations is accepted on its face value accepting in its entirety, it would, *prima facie*, establish an offence punishable under Section 447 read with 511 of I.P.C. The truth or otherwise in the allegations made in the complaint cannot be looked into at this stage. Since the investigation at feotus stage.

No doubt, minute details were not given in the complaint dated 10.06.2013. But the allegations to constitute an offence is sufficient, since the complaint is an information about the occurrence of cognizable offence, to set the criminal law into motion and such complaint need not be an encyclopedia of facts containing minute details. Therefore, based on the information by way of complaint, dated 10.06.2013, the proceedings cannot be quashed.

Undoubtedly, there is no dispute in the law declared by the Apex Court. But in earlier Judgments, the Apex Court in **TRISUNS CHEMICAL INDUSTRY v. RAJESH AGARWAL AND ANOTHER²**, the Apex court held as follows:

“.....merely because an act has a civil profile is not sufficient to denude it of its criminal outfit.

.....
.....

We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring

² 1999 Cr.L.J. 4325

the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act, which amounted to an offence, albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases."

Similarly, in **PRATIBHA RANI VS. SURAJ KUMAR**³, the question arose that when the civil as well as criminal remedy is available to a party, can a criminal prosecution be completely barred. In this case, the matter related to the Stridhan property. The complainant alleged that her husband, father-in-law and other relatives misappropriated her jewellery and other valuable articles entrusted to them by her parents at the time of marriage. The complainant alleged that these dowry articles were meant for her exclusive use and that the accused misbehaved and maltreated her and ultimately he turned her out without returning the dowry articles. The accused filed a criminal miscellaneous petition under Section 482 for quashing the Criminal proceedings and the High Court quashed the same. The apex court held that There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but

³ 1985(2) SCC 370

clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import.

In view of the law declared by the Apex Court, when two parallel remedies are available, and when the allegations made in the complaint against the persons predominantly criminal nature, the court cannot quash the proceedings by accepting mere contention that the civil litigation cannot be converted into criminal litigation, as a tool to harass the petitioner therein.

Therefore, pendency of civil suit in O.S. No.421 of 2006 on the file of Senior Civil Judge, Visakhapatnam, against the third parties is not a ground to proceed, since the interim order passed in a suit for declaration of title binds the parties since the decree itself is a decree in personam under Section 35 of Specific Relief Act, 1963, which binds the parties to *lis*.

Therefore, pendency of suit against third parties is not at all a ground to quash the proceedings and it is not for the respondents 2 and 3 to implead themselves by filing application under Order 1 Rule 10 of Code of Civil Procedure, when there is a cloud over the title of the parties, more particularly, when the

respondents 2 and 3 claimed title to the land on behalf of Maharaja of Vizianagaram, to file appropriate suit against them by the petitioner. But the respondents 2 and 3 need not implead themselves and failure to implead themselves is not a ground to exercise jurisdiction under Section 482 of Cr.P.C.

Yet the counsel for the petitioner would contend that the statements recorded by the police under Section 161(3) of Cr.P.C. would not disclose details as to whom the property belongs to whether it belongs to any members of the family of Maharaja and the property was partitioned, that can be investigated into by the police and on that ground the proceedings cannot be quashed. When the complaint is lodged and FIR was issued, the court cannot exercise inherent jurisdiction under Section 482 of Cr.P.C. to stifle a legitimate prosecution and the High Court being the highest court of a 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. Of course, no hard and fast rule can be 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 vide Judgment of the Apex Court in **STATE OF ORISSA & ANR. VS. SAROJ KUMAR SAHOO**⁴.

In **INDIAN OIL CORPORATION VS. NEPC INDIA LTD. AND OTHERS**⁵ the Apex Court observed that the criminal litigation cannot be converted into civil litigation, however, when there is a criminality, this court cannot exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings before it and laid down the following guidelines:

- “1. The High courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.
2. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.
3. It was held that a given set of facts may make out (a) purely a civil wrong, or (b) purely a criminal offence or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.”

In view of law declared by various courts, applying to the facts of the present case and in those circumstances, the court

⁴ (2005) 13 SCC 540

⁵ 2006(6) SCC 736

cannot quash the proceedings, when the allegation made in the complaint is predominantly of criminal nature. Therefore, taking into consideration of the present facts of the case, applying to the law laid down by the Apex Court in the judgments referred to supra, I find that there is any amount of commission or omission by the petitioner, which amounts to an offence punishable under the provisions of I.P.C. Hence, at this stage, when the investigation is not complete, quashing the proceedings in Cr.No.229 of 2013 is unwarranted. In **STATE OF HARYANA V. BHAJAN LAL**⁶, wherein the Apex Court held that the court can exercise inherent jurisdiction under Section 482 of Cr.P.C. in exceptional circumstances and laid down certain guidelines. In guideline No.1 and 7, it was held that where the allegations made in the complaint or FIR taken on its face value accepting in its entirety would not, *prima facie*, constitute an offence, or where the complaint is filed is an abuse of process of law to wreak vengeance utilizing the criminal law as a tool to harass the petitioner, the court can exercise inherent jurisdiction under Section 482 of Cr.P.C.

But in the present facts of the case, the allegations made in the complaint and FIR taken on its face value, making an attempt to interfere with a threat to ryths and Watchmen of Maharaja of Vizianagaram, constitutes an offence punishable under Section 447 read with Section 511 of I.P.C. Therefore, it is not appropriate for this court to quash the proceedings at this stage. Hence the criminal petition is liable to be dismissed.

⁶ 1992 SUPP (1) SCC 335

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In the result, the criminal petition is dismissed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

Date: 29.12.2016
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