

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.7326 OF 2015

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.173 of 2016 of RGI Airport Police Station, Cyberabad for the offences punishable under Sections 452, 324, 448, 506 & 509 r/w 34 I.P.C & 156 (3) Cr.P.C.

The 2nd respondent herein lodged a private complaint against the petitioners before the VIII Metropolitan Magistrate at Rajendranagar, Cyberabad, for the above offences and in turn the Magistrate, by exercising jurisdiction under Section 156(3) of Cr.P.C, referred the matter to the 1st respondent-Station House Officer, RGI Airport Police Station, which is registered as Crime No.173 of 2015 against the petitioners for the said offences.

The case of the 2nd respondent in brief is that, the husband of the complainant is the owner and possessor of the part of the house measuring 70 sq.yds bearing No.7-9 situated at yadav Basthi, near Darga, Shamshabad Village along with some open land of nearly measures 518 sq.yards and in total an extent of 588 sq.yds. The said house originally belonged to father in law of the complainant. Father in law of the complainant Manuka Mallaiah acquired the said property from his ancestors. Manuka Malliah died leaving behind husband of the complainant and other sons to succeed the properties. The Accused No.1 is brother in law of the complainant and elder brother of the husband of the complainant and the petitioners 2 & 3 are the wife and sons of Accused No.1.

It is the case that there were small differences among the family members of Manuka Malliah with regard to the property and they were resolved before the elders of the community and the property was divided into three parts and each of them have been allotted their due share and a receipt was executed by all the brothers on Rs.50/- non-judicial stamp paper. Husband of the complainant is a paid employee earning meager amount to maintain his family consisting of the complainant, his mother and two school going children, whereas, Accused No.1 is an employee. While the matter stood thus, the 1st petitioner/A-1 along with his henchmen came to the house of the complainant, beat the complainant and her husband mercilessly and caused injuries on the hands and broke glass bottles, caused bleeding injury on the body of the husband and thrown out both defacto complainant and her husband from the house and other articles from the house. Further, the 1st petitioner/A-1 locked the house and fled away. Immediately, the complainant rushed to the police station and lodged a complaint, but no purpose was served.

It is further contended that the accused thrown the complainant and her husband, house hold articles with an intent to grab the property. Thus, the 1st petitioner with a dishonest intention to grab the property trespassed into the property, caused injuries on the body of the complainant and her husband thus, committed a serious offence punishable under Sections 452, 324, 448, 506 & 509 r/w 34 I.P.C.

As the police did not take any action on the complaint lodged, the 2nd respondent filed private complaint before VIII Metropolitan Magistrate at Rajendranagar, Cyberabad, the

same was referred to the concerned police and in turn, the police registered FIR and Crime No.173 of 2015 on the file of RGI Airport Police Station, Cyberabad.

The main contention of the petitioner is that the VIII Metropolitan Magistrate at Rajendranagar, Cyberabad forwarded the complaint to the police by exercising power under Section 156(3) without sufficient material and without cogent reason. Though the complaint does not disclose ingredients of Sections 452, 324, 448, 506 & 509 r/w 34 I.P.C & 156 (3) Cr.P.C, with the police, exercise of such power and reference of the complaint to the police is an illegal exercise of jurisdiction and thereby liable to be set-aside.

It is also further contended that the complaint is a vexatious, frivolous, oppressive and aimed to harass the petitioner and prayed to quash the same.

In the facts of the petition, several incidents regarding the civil dispute was narrated i.e. O.S.No.19 of 2013 on the file of Additional Junior Civil Judge, Rajendranagar, Ranga Reddy District. During hearing, learned counsel for the petitioner Sri B. Chinnapa Reddy would contend that the dispute is with regard to the partition of the property among the brothers and the petitioner filed a suit O.S.No.19 of 2013 and later, a decree was obtained in favour of the 2nd petitioner against the husband of the 2nd respondent/defacto complainant and therefore, by the depriving the petitioner to enjoy fruits of the decree, the present compliant is filed. More over, it is contended that the complaint also did not disclose any offence muchless an offence punishable

under Sections 452, 324, 448, 506 & 509 r/w 34 I.P.C. Therefore, the proceedings in Crime No.173 of 2015 are liable to be quashed, since filing of a complaint itself is abuse of process of Court and with a malafide intention. It is also prayed that though, entire investigation is completed and charge sheet is filed, still the Court can quash the proceedings in Crime No.173 of 2015 and filing a charge sheet is not a ground to deny relief.

Per contra, the learned Public Prosecutor for State of Telangana contended that the civil dispute is pertaining to a house bearing H.No.7-21, within the specified boundaries in O.S.No.19 of 2013, whereas, the property allegedly trespassed by the petitioner is bearing H.No.7-9. Therefore, the property involved in the civil suit is entirely different from the present one and consequently, on the ground of civil litigation, the complaint cannot be quashed.

Learned Public Prosecutor also contended that the allegations made in the complaint on its face value would constitute an offence punishable under Sections 452, 324, 448, 506 & 509 r/w 34 I.P.C & 156 (3) Cr.P.C and apart from that when the charge sheet is filed after completing investigation by the investigating agency which is registered as crime in C.C.No.994 of 2015 and coming up for trial, the proceedings in Crime No.173 of 2015 of RGI Airport Police Station, Cyberabad cannot be quashed, since no proceedings are pending before the police for the said offences and prayed for dismissal of the petition.

The learned Public Prosecutor for State of Telangana fairly conceded that, as there was no stay of further proceedings granted by this Court, the investigating agency proceeded to investigate

into the offences, completed entire investigation and filed final report before Magistrate on 30.07.2015. The Magistrate after coming to a conclusion that there is material to proceed against the accused for the said offences, taken the case on file for the above offences and registered the same as C.C.No.994 of 2015 and it is coming up for trial before the Judicial Magistrate of First Class. When a charge sheet is filed and the same is registered as calendar case, the crime would merge into calendar case and at this stage, the proceedings in C.C.No.173 of 2015 on the file of RGI Airport Police Station cannot be quashed, since no proceeding is pending before the police. At best, the petitioner is entitled to challenge the proceedings in C.C.No.994 of 2015 pending before Judicial Magistrate of First Class. Therefore, the contention of the learned counsel for the petitioner that the proceedings in Crime No.173 of 2015 can be quashed is without any basis and substance, on the other hand, it is contrary to law. Insisting upon this Court to quash the proceedings in Crime No.173 of 2015 of RGI Airport Police Station, Cyberabad which is not pending before the police for investigation is nothing but an absurdity in the contention. Therefore, on this ground alone, the proceedings in Crime No.173 of 2015 cannot be quashed.

One of the contentions raised before this Court during hearing is that, the exercise of power under Section 156(3) by the VIII Metropolitan Magistrate at Rajendranagar, Cyberabad is illegal and that the Court has to examine the complaint under Section 200 Cr.P.C. record statements under Section 202 Cr.P.C and proceed under Section 203 of Cr.P.C. It is contended that instead of proceeding under Sections 200, 202 & 203, the Metropolitan

Magistrate unnecessarily referred the complaint to the police by exercising power under Section 156(3) Cr.P.C. Therefore, it is contended that the procedure adopted by the VIII Metropolitan Magistrate is irregular and it vitiates the entire procedure. This plea urged is without any substance, for the reason that when a complaint is filed under Section 200, the Magistrate may record statements of the witnesses before it under Section 202 and take cognizance under Section 203. In the alternative, the Magistrate may refer the matter to the concerned police for investigation and call for report by exercising power under Section 156(3) Cr.P.C. Thus, when two options are available, exercising power under Section 156(3) of Cr.P.C by referring the matter to the concerned police and calling for final report is not an illegality and thereby on that ground, the proceedings in Crime No.173 of 2015 cannot be quashed.

The other contention raised by the learned counsel for the petitioner is that the dispute between the petitioners and the defacto complainant who is the wife of brother of first petitioner is purely civil in nature and their dispute claiming right for partition for allotment of due shares and as it is a case of civil nature, the Court can quash the proceedings as filing of such complaint is abuse of process of Court. That apart, a complaint was lodged by the 2nd petitioner against M. Krishna Kumar Yadav, who is the husband of the defacto complainant which is registered as case in Crime No.231 of 2014 on 09.07.2014. The defacto complainant filed private complaint as a counter blast to the earlier complaint. It is urged that, in those circumstances, the proceedings are liable to be quashed.

Learned counsel for the petitioners has drawn the attention of this Court to the proceedings in civil disputes and several documents like gift deed and would contend that the property involved in the dispute which is allegedly trespassed and the property in the suit is one and the same. The decree in O.S.No.19 of 2013 dated 04.07.2014 obtained by the 2nd petitioner would go to show that a perpetual injunction was granted against M. Krishna Kumar Yadav, husband of the defacto complainant restraining him from interfering with peaceful possession and enjoyment of the property bearing H.No.7-21. But, whereas, the defacto complainant is claiming to be in possession and enjoyment of the property bearing H.No.7-9 situate at Yadav Basti. Therefore, the property in civil dispute is distinct from the property allegedly trespassed, as such mere obtaining a decree in respect of H.No.7-21 is not a ground to quash the proceedings.

Merely because a civil dispute was disposed of, the Court cannot quash the proceedings when there is an element of criminal liability, as held by the Apex Court in **Tamil Nadu Mercantile Bank Limited vs. State through Deputy Superintendent of Police and another**¹ held that when adequate materials are available to show that a proceeding is of civil nature or that it is an abuse of process of court, the High Court could be justified in quashing the same and when the dispute is purely civil in nature, but still a party chooses to initiate criminal proceedings, the Court may quash the criminal proceedings. But here, the civil proceeding pertains to distinct property and the property which is allegedly trespassed. Therefore, the Court cannot quash the

¹ 2014(3) SCC 755

proceedings on the ground that the dispute is of purely civil nature.

In **Dr. Monica Kumar v. State of Uttar Pradesh**², the Supreme Court held that criminal proceedings can continue even if the allegation discloses a civil dispute also. It is only when the dispute is purely civil in nature but still if the party chooses to initiate criminal proceeding, the criminal proceeding may be quashed. For such purpose also the Court, save and except in very exceptional circumstances would not look to any document relied upon by the defence.

In view of the above judgment, if the matter is not purely in civil nature, the Court can not quash the proceedings.

The other contention is regarding filing of earlier complaint by the 2nd petitioner against the husband of the defacto complainant. But, that took place in the year 2014, i.e on 09.07.2014, whereas, a private complaint was filed before the Metropolitan Magistrate on 12.06.2015, almost after lapse of 11 months from the date of filing of earlier complaint. Hence, it is difficult to accept this contention at this stage to quash the proceedings.

It is a settled law that the Court can quash the proceedings by exercising its jurisdiction under Section 482 of Cr.P.C. sparingly, in exceptional circumstances by taking into consideration, circumstances of the case and such jurisdiction can be exercised only to give effect to order, under code of criminal procedure, to prevent abuse of process of court or to secure ends of

² 2008 (8) SCC 781

justice.

In **R.P. Kapur v. State of Punjab**³, the Apex Court laid down the following principles:

- (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.

Similarly, in **State of Haryana v. Bhajan Lal**⁴ the Supreme Court considered in detail the provisions of 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:

- (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.

³ AIR 1960 SC 866

⁴ 1992 Supp (1) 335

(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.

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.**⁵; **Ganesh Narayan Hegde v. S. Bangarappa and Ors.**⁶; and **M/s Zandu Pharmaceutical Works Ltd. and Ors. v. Md. Sharaful Haque and Ors.**⁷)

In the present facts of the case, there is any amount of criminal liability and the property in civil dispute and criminal dispute is distinct. Apart from that, the entire investigation is completed and charge sheet is filed before the VIII Metropolitan

⁵ AIR 1990 SC 494

⁶ (1995) 4 SCC 41

⁷ AIR 2005 SC 9

Magistrate at Rajendranagar, Cyberabad and the same was taken on file. Therefore, at this stage, the proceedings in Crime No.173 of 2015 on the file of RGI Airport Police Station, Cyberabad cannot be quashed.

Yet, another contention of the petitioner is that, the allegations made in the complaint would not constitute any of the offences, but I need not look into the charge sheet. More so, copy of the charge sheet is not filed before this Court even to look at the allegations. Therefore, at this stage, it is difficult to quash the proceedings in Crime No.173 of 2015 based on the allegations in the complaint after filing final report by the police and the registered the same as calendar case and the Magistrate has taken note of it and issued process to the petitioners which is coming up for trial. Therefore, I find absolutely no ground to quash the proceedings in Crime No.173 of 2015 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. No costs.

M. SATYANARAYANA MURTHY, J

Date:30.11.2016
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