THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.16139 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in Crime No.632 of 2016 on the file of Jubilee Hills Police Station, Hyderabad, registered for the offences punishable under Sections 448, 406, 352, 506 and 109 of Indian Penal Code (for short "I.P.C.") and under Section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short "the Act.").

Respondent No.2 Smt.M.P.Vasanthi lodged a complaint dated 01.09.2016 with the Assistant Commissioner of Police, Banjara Hills, Hyderabad making certain allegations against the petitioner, who is no other than her son. The allegations in the complaint in brief, are as follows:

> "Mr.M.P.Tej Babu, my own son was discharging the duty of 'custodian' of family estate left behind my husband, lat (Shri) M.P.Damodaram and assets owned by me.
>
> On noticing that he mismanaged sizeable funds from out of the estate earnings, approximately quantified at Rs.6.00 Crores, I parted ways and shifted to one of my daughter's residence.
>
> Since I preferred to take over Plot No.1205, Road No.60, Jubilee Hills, Hyderabad 500033, actually owned by me per Sale deed No.1055 of 2003, my son, Mr.M.P.Tej Babu, who was performing the duty of caretaker of estate, resisted, overpowering with brute force, added with Police support availed through his close acquaintances. Particulars of registered sale deed No.1055 of 2003 and corresponding encumbrance certificate are enclosed for your perusal.
>
> Subject matter became legal tangle vide WP No.35233 of 2015 filed by me.
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> Initially honored Court instructed the Jubilee Hills Police not to interfere vide its interim directions and later expressed its displeasure the way police abused their power submitted

themselves before Mr.Tej Babu at the instance of Mr.Kode Durga Prasad Rao, IPS; Director General of Police, CRPF, New Delhi. Copies of judicial orders since submitted.

Despite honored Court instructions followed by Magisterial orders instructing to offer protection to life and property dated January 13, 2016, my plot remains under illegal captivity.

Furthermore, my request for registering First Information Report against crimes listed hereunder remains frozen.

Crime.1: My plot No.1205, Road No.60, Jubilee Hills, Hyderabad 500033 is under illegal captivity of Mr.M.P.Tej Babu, which he captivated utilizing support of local police force and a bunch of henchmen since October 2015. Such acts are prosecutable per (a) Criminal trespass (b) illegal, brute force and (c) illegal encroachment of land without title. Such crimes are prosecutable per Sections 441 and 447 under Indian Penal Code.

Crime.2: Mr. Tej Babu is abusing his custodial responsibilities entrusted to him under trust, with a lone programme to gain out of the property by withholding registered sale deed No.1055 of 2003, registered in my name, which is prosecutable crime per Sections 452, 506 and 34 of Indian Penal Code.

Crime.3: Mr.Tej Babu and a set of goons employed by him kept threatening and restraining from entering the plot actually owned by me since October 2015, warning me with dire consequences. Such lawless acts are convictable per Section 503 under Criminal Procedure Code, 1973.

Ignoring all my efforts for release of plot from out of illegal encroachment stood resisted by Mr.Tej Babu contrary to provisions under Law.

Since I am 80-years old, I sought for police help with a request to register First Information Report followed by judicious action remained a futile exercise.

Surprisingly enough, local Police Officials, vetoed down their ethical obligation to protect commoners against law & order issues, preferred to go silent, indirectly offering support to criminal breach of law duly supported by thugs, who don't respect Law.

The Police officials went on to the extent of refusing to register FIR, which construed to be basis minimal duty, compelling me approach you seeking redress of legitimate grievance.

> I enclose a copy of news item referring to notification issued by Ministry of Home affairs, Government of India dated January 10, 2013 clearly instructing "Refusing to file FIR also a prosecutable crime" and shall be obliged if you could kindly instruction Station House Officer, Jubilee Hills to register FIR against Mr.Tej Babu, resident of Plot No.1313, Jubilee Hills, Hyderabad 500033 and to initiate steps for vacating my plot kept under illegal encroachment, action for release my registered sale deed held under illegal captivity by Mr.Tej Babu, followed with registering FIR.
>
> I kneel down and request you, please ensure proper action to put a stop, over almost 1-year-old ordeal encountered by me."

The present petition is filed to quash the proceedings in Crime No.632 of 2016 on the file of Station House Officer, Jubilee Hills, Hyderabad, on various grounds and mainly contending that the respondent No.2 is a pensioner, apart from it she is receiving Rs.3,50,000/- as rents every month being credited to her account. Thus, she possessed substantial amount of more than Rs.2 crores in her account besides possessing gold and other jewellery.

The petitioner, who is the son of respondent No.2, is an engineer and carried on software business worked in Bahrain, Muscat, Dubai and U.S.A. prior to coming down to Hyderabad and earned substantial income in the said employment and business. He purchased a plot in Jubilee Hills Co-operative House Building Society in Road No.66 and constructed a residential house, in which the petitioner and the respondent No.2 lived happily.

The petitioner also purchased the plot No.1205 in Road No.60, Jubilee Hills Co-operative House Building Society in the year 2003, vide registered document No.1055/2003 for a total sale consideration of Rs.60,00,000/-, which was paid by him by issuing his personal cheques numbering 12, drawn on State Bank of

Hyderabad, Hi-tech City Branch, Hyderabad dated 16.12.2002 respectively and the mode of payment of sale consideration in the sale deed itself shows that the petitioner paid the sale consideration. Thereafter, the petitioner constructed 3 servant rooms in the said plot and also dug two bore wells in the said plot and also dumped teakwood worth of Rs.40 lakhs in the said two rooms and deputed a watchman to stay in one room. He also obtained electricity and water connections from the concerned departments and paying property tax, water and power consumption bills in his individual capacity.

Since the Urban Land Ceiling was in force and the petitioner's daughter Aishwarya was a minor at that time, the respondent No.2 lent her name to act as a trustee for the minor daughter of the petitioner as she is in fiduciary capacity, therefore, the petitioner bonafidely got the said plot registered in the name of the mother and the said transaction is not prohibited under law and the same would fall under sub-section (3) (b) of Section 4 of the Benami Transaction (Prohibition) Act, 1988. Thus, the said plot belongs to his daughter – Aishwarya and even at the time of her marriage, it was openly informed to the in-laws that the subject plot is being given to her as 'Pasupu-Kunkuma' by the respondent No.2 herself.

As the respondent No.2 reached the house of her daughters, she started creating troubles and the daughters of the respondent No.2 prevailed upon their mother and polluted her mind, his mother also for obvious reasons started sailing with daughters and in the said process the respondent No.2 was provoked to claim ownership of the subject plot No.1205.

Respondent No.2 also approached the Court and filed W.P.No.35233 of 2015 to prevent the police from interfering with civil matters and obtained order in W.V.M.P.No.4362 of 2015. Thereafter, she approached the Revenue Divisional Officer – cum – Sub-Divisional Magistrate, Secunderabad Division invoking the provisions of the Act to restore back her possession and obtained order on 13.01.2016 subject to the result of W.P.No.35233 of 2015.

Challenging the order passed by the Sub-Divisional Magistrate the petitioner filed W.P.No.2008 of 2016 and the same was allowed directing the respondent No.2 to approach Civil Court to claim property i.e. Plot No.1205. Aggrieved by the same, the respondent No.2 preferred W.A.No.284 of 2016, wherein the order of the learned Single Judge was suspended. She also filed C.C.No.2144 of 2015 against the police alleging that they did not comply with the orders in W.P.No.35233 of 2015, but the said contempt case was withdrawn and was dismissed as withdrawn. Thus, the respondent No.2 lodged the complaint abusing the process of the Court and criminal law with an oblique motive to pressurize the petitioner herein and when the complaint is filed as abuse or process of law to wreak vengeance, the proceedings have to be quashed.

It is also contended that the petitioner did commit no omission or commission, more particularly the alleged offences, but he is roped with the criminal litigation, thereby he has to undergo trauma facing criminal trial or investigation without committing any offence. Thus, the respondent by filing several petitions one after the other either civil or criminal or writ petition, pressurizing the petitioner to come to her terms and it is nothing but abuse of process of the Court. Therefore, prayed to quash the proceedings in Crime No.632 of 2016 on the file of Station House Officer, Jubilee Hills, Hyderabad, registered for the offences punishable under Sections 448, 406, 352, 506 and 109 of I.P.C. and under Section 24 of the Act.

Respondent No.2 filed counter-cum-written arguments contended that she is an 80-years-old senior citizen and that she made complaint to the police on 05.10.2015 with regard to Plot No.1205, Road No.60, Jubilee Hills, Hyderabad and also filed W.P.No.35233 of 2015 on 28.10.2015.

She also contended that in the said writ petition police were directed not to interfere in Civil issues and advised her to approach Protection Officer under the Act. Thereupon she approached Sub-Divisional Magistrate – cum – Protection Officer under the Act and sought for protection and obtained order.

Though the orders were passed, police officials did not take any action for sometime. However, after one year police registered the crime against the petitioner, who committed breach of law and infringed the fundamental right. The respondent No.2 also contended that enjoying freedom with liberty is a fundamental right of an average Indian citizen and approaching Courts seeking judicious protection of basic right to live with liberty is an individual's right in Law as tutored by the Heads of Indian democracy.

She further contended that the petitioner necked her out from the house and swindled family income for past several years and disconnected the power supply to the Plot No.79, Shanti

Nagar, Hyderabad, acquired by her husband and harassed her and her 3 daughters, who are entitled to claim equal right as per Hindu Succession Act, 1956. Therefore, she approached the police to protect her from the illegal commissions and omissions of the petitioner and finally prayed that she is entitled to protection to herself as well as properties under Chapter V of the Act and the acts of the petitioner would amount to an offence and prayed to dismiss the petition.

Sri Unnam Muralidhar Rao, learned counsel for the petitioner, contended that the Plot No.1205, Road No.60, Jubilee Hills, Hyderabad was purchased by the petitioner with his own income and the recitals of the sale deed regarding passing of sale consideration are sufficient to prove that the petitioner himself paid sale consideration, but obtained the sale deed in the name of the respondent No.2 due to Urban Land Ceiling and that since the date of purchase he is in possession and enjoyment of the property and paying property tax, water bills to the concerned departments by issuing cheques. Thereby, the question of criminal trespass does not arise. Even otherwise, the respondent No.2 herself approached the Sub-Divisional Magistrate for appropriate relief under the Act, seeking restoration of possession. This itself shows that the respondent No.2 is not in possession and enjoyment of the property as on the date of filing of the petition before the Sub-Divisional Magistrate in view of the specific prayer in the petition filed under Chapter V of the Act. The respondent cannot be allowed to resort to such procedure as she is out of possession and at best she can recover the property by approaching the Civil Court but not under the provisions of the said Act. Merely because the property was registered in her name, who is the trustee of the petitioner, she is not entitled to claim right over the property and at beat she is entitled to recover the property subject to proof of her right over the property approaching Civil Court but by abuse of process of the Court, she is filing different petitions in different forums and lodged the present complaint with the police, that itself suffice to conclude that lodging criminal complaint is an abuse of process of the Court to wreak vengeance against the petitioner, though he is her son, at the instigation of her daughters and even otherwise the allegations made in the complaint in their face value taking in its entirety would not constitute any offence, thereby the impugned proceedings in Crime No.632 of 2016 Jubilee Hills Police Station has to be quashed.

Learned counsel for the petitioner also relied on judgments rendered in "***Zandu Pharmaceutical Works Ltd. v. Mohd.Sharaful Haque***[1]" "***Chandrapal Singh v. Maharaj Singh***[2]" "***Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre***[3]", "***Indian Oil Corpn v. NEPC India Ltd.***[4]" "***Inder Mohan Goswami v. State of Uttaranchal***[5]"

On the strength of the principles laid down in the above judgments, learned counsel for the petitioner contended that when the dispute is purely civil in nature, the complainant cannot be allowed to resort to the criminal litigation converting the civil litigation into criminal litigation and it is an abuse of process of the Court and apart from that the respondent No.2 is acting at the

[1] (2005) 1 SCC 122
[2] (1982) 1 SCC 466
[3] (1988) 1 SCC 692
[4] (2006) 6 SCC 736
[5] (2007) 12 SCC 1

instigation of her daughters, who are having an oblique motive against the petitioner to wreck vengeance and for the malafide act of the respondent No.2, the proceedings in Crime No.632 of 2016 on the file of Station House Officer, Jubilee Hills, Hyderabad are liable to be quashed.

Whereas, the respondent No.2 – **Smt.M.P.Vasanthi** appeared in-person and argued the matter. Respondent No.2 while reiterating the contentions raised in the complaint lodged with the police referred to various orders passed by different authorities including the orders passed by this Court in W.A.No.284 of 2016, contend that she is entitled to claim right over the property as she is the lawful owner of the same, thereby the petitioner is liable to deliver vacant possession of the same and as long as the registered document is in her name, she is the lawful owner of the property, thereby she is entitled to recover the possession and being a senior citizen, she is entitled to benefits under the Act. Therefore, the petitioner is bound to deliver vacant possession of the subject plot to the respondent No.2 and encroaching into the said property would amounts to violation of her legal right. Thereby the omission or commission of the petitioner is criminal act and he is liable for punishment for the offences registered under Sections 448, 406, 352, 506 and 109 of I.P.C. and under Section 24 of the Act and when the allegations made in the complaint would disclose the offences, the impugned F.I.R. cannot be quashed at the threshold of the investigation and prayed to dismiss the present petition.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are:

(1) Whether the allegations made in the complaint on their

face value, on its entirety, would constitute, prima-facie, any offence, if so, the whether the petitioner/accused be proceed further?

(2) Whether the civil dispute is converted into criminal litigation abusing the process of the Court, if so, whether the proceedings in Crime No.632 of 2016 on the file of Station House Officer, Jubilee Hills, Hyderabad, are liable to be quashed?

<u>P O I N T Nos.1 and 2</u>:

As both the points are interconnected, I find it expedient to decide both points by common discussion.

The main contention of the petitioner before this Court is that the petitioner is the owner of the Plot No.1205, Road No.60, Jubilee Hills, Hyderabad and the same was purchased with his earnings, but obtained registered document in the name of the respondent No.2 herein. To substantiate his contention, he has drawn the attention of this Court to the contents of the sale deed and passing of consideration thereunder. The sale deed was registered in favour of M.P.Vasanthi, defacto complainant executed by Smt. Vandana S.Wadhwa and Smt.Savita R. Wadhwa for consideration of Rs.60,00,000/- and the sale consideration was paid by the cheques, the details of cheques are as follows:

1) *Cheque No.694388 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 16-12-2002.*
2) *Cheque No.694389 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 18-12-2002.*
3) *Cheque No.694390 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 17-12-2002.*
4) *Cheque No.694391 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 16-12-2002.*
5) *Cheque No.694392 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 17-12-2002.*
6) *Cheque No.694393 drawn on SBH, Hi-tech Branch, Hyderabad,*

Dated: 18-12-2002.

7) *Cheque No.519201 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 30-12-2002.*

8) *Cheque No.519202 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 31-12-2002.*

9) *Cheque No.519203 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 01-01-2003.*

10) *Cheque No.519204 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 30-12-2002.*

11) *Cheque No.519205 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 31-12-2002.*

12) *Cheque No.519206 drawn on SBH, Hi-tech Branch, Hyderabad, Dated: 01-01-2003.*

All the cheques were drawn from the account of the petitioner. Thus, he paid the consideration for purchase of the property, from his account only but not from the account of the respondent No.2. She was only name lender. Added to that, the receipts for payment of property tax, electricity consumption charges would show that the petitioner alone paying taxes to the concerned authorities by issuing cheques and filed various receipts evidencing payment of electricity consumption charges and water consumption bills. These documents are sufficient, *prima facie*, to conclude that the petitioner is in possession and enjoyment of the property as an owner though the respondent No.2 is registered owner. But while deciding a petition filed under Section 482 of Cr.P.C, this Court cannot record its findings regarding the ownership since it is purely a civil dispute, which has to be examined and adjudicated by a competent Civil Court as to the ownership of the property in dispute.

The other contention of the learned counsel for the petitioner is that the respondent No.2 filed a petition under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the Sub Divisional Magistrate seeking removal of the unlawful encroachment of the property by the petitioner and get him vacated and to deliver title deeds in his illegal custody, making a allegation that the petitioner encroached the property i.e. Plot No.1205, Road No.60, Jubillee Hills, Hyderabad. The petitioner is not disputing about obtaining document in the name of respondent No.2, but contended that he is the true owner having paid total sale consideration of Rs.60,00,000/- under the document.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is intended to provide more effective provisions for the maintenance and welfare of parents and Senior Citizens guaranteed and recognized under the Constitution and for matters connected therewith or incidental thereto.

Section 21 of the Act provides the measures to be taken by the Government.

Whereas Section 23 of the Act reads thus:

> "23. (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.
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> (2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.
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> (3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organization referred to in Explanation to sub-section (1) of Section 5."

Thus, a bare look at Section 23 of the Act shows that it conferred certain powers to recover maintenance and declare any fraudulent transaction as void b the Tribunal, but the relief claimed by the respondent No.2 in the petition before the Sub Divisional Magistrate would fall within the chapter 5 of the Act, but curiously the Sub-Divisional Magistrate passed an order in favour of the respondent No.2 as prayed for and the same was set aside by this Court in W.P.No.2008 of 2016 and against which an appeal is pending granting suspension of the operation of the order. When an appeal is pending against the order passed in W.P.No.2008 of 2016, which was filed challenging the order passed by the Sub-Divisional Magistrate on 13.01.2016, I cannot express any final opinion regarding maintainability of petition before the Sub-Divisional Magistrate, but for limited purpose to find out, prima facie, case the provisions of the Act are adverted to.

Even assuming for a moment, that the petitioner is claiming right over the property though the same was registered in the name of the respondent No.2, the remedy to recover the property free from any encumbrance etc., is only a Civil Suit and such decree for recovery of possession etc, cannot be granted by a Sub-Divisional Magistrate – cum- Revenue Divisional Officer by exercising jurisdiction under the Act. Even the Criminal Court cannot pass such an order for restoration of possession unless there is a substantial proof that the petitioner criminally trespassed into the property to constitute offence punishable under Section 447 of I.P.C. It is the case of the respondent No.2, at any stage that the petitioner trespassed into the property on any particular date. The allegations made in the petition before the

Sub-Divisional Magistrate itself shows that the petitioner is in possession and the said petition did not disclose any details as to trespass with dishonest intention. Therefore, the dispute is purely civil in nature and this Court cannot record any finding with regard to the title of the property while exercising jurisdiction under Section 482 of Cr.P.C.

The respondent No.2 lodged a complaint dated 01.09.2016 with Sri Uday Kumar Reddy, Assistant Commissioner of Police, Banjara Hills, Hyderabad. Paragraph Nos.3 and 4 of the said complaint read thus:

> "3. On noticing that he mismanaged sizeable funds from out of the estate earnings, approximately quantified at Rs.6.00 Crores, I parted ways and shifted to one of my daughter's residence.
>
> 4. Since I preferred to take over Plot No.1205, Road No.60, Jubilee Hills, Hyderabad 500033, actually owned by me per Sale deed No.1055 of 2003, my son, Mr.M.P.Tej Babu, who was performing the duty of caretaker of estate, resisted, overpowering with brute force, added with Police support availed through his close acquaintances. Particulars of registered sale deed No.1055 of 2003 and corresponding encumbrance certificate are enclosed for your perusal."

If the allegations made in the paragraph Nos.3 and 4 are taken into consideration, the specific allegation is that the petitioner mismanaged the funds quantified at Rs.6 crores, but without disclosing any details, more particularly entrustment of such amount to the petitioner and dates of misappropriation and source of such income etc. Further, allegation, at best, would go to show that the petitioner was care taker of the estate and with the aid of the police took possession of the property. But more curiously, the respondent No.2 herself filed W.P.No.35233 of 2015 against the police not to interfere with the civil disputes and obtained an order from this Court in W.P.No.35233 of 2015 against the police restraining them from interfering with civil dispute. But surprisingly, she herself approached the police inviting their interference in the civil dispute. That itself shows that the respondent No.2 making attempts to dispossess the petitioner in different ways, cornering concerned police authorities making allegations against them, but again invited their interference making such serious allegations against the petitioner that he criminally trespassed into the property with illegal and brutal force without any right or title to the property and that the petitioner withhold the sale deed bearing No.1055 of 2003 and such retention would amount to offence punishable under Sections 441 and 447 of I.P.C. and that she was subjected to threat. It appears from the allegations made in the complaint that the respondent No.2 making serious allegations somehow to evict the petitioner without resorting to any civil litigation for recovery of the possession of the property and other reliefs, which she is entitled legally.

The respondent No.2, as a party-in-person, vehemently argued that the property belongs to her but the petitioner trespassed into the property with dishonest intention to grab the same. Undoubtedly, the registered sale deed stood in her name, but the contents of the documents itself *prima facie* would show that the petitioner paid sale consideration for purchase of the property by issuing cheques drawn from his account and paying the property tax, electricity and water consumption charges, the sale deed in his custody. Thereby, the said transaction is *prima* *facie* Benami transaction as contended by the petitioner, but while exercising power under Section 482 of Cr.P.C., this Court cannot record any finding as to the nature of the transaction and who is the real owner, but for limited purpose of deciding the nature of dispute, those documents are adverted to. Therefore, the entire material on records shows that the dispute between the petitioner and the respondent No.2 is purely civil in nature and such dispute cannot be converted into a criminal case by abusing the process of law to wreck vengeance against the petitioner, who is no other than the son of the respondent No.2.

Learned counsel for the petitioner to substantiate his contention that a civil dispute cannot be converted into criminal dispute, the complaint is malafide and aimed to wreck vengeance against the petitioner, the Court has to exercise its jurisdiction under Section 482 of Cr.P.C. There was no material to show commission of any offence even if complaint petition is considered in its entirety. No foundation for proceeding against the petitioner for the offences punishable under Sections 448, 406, 352 and 506 of I.P.C. was made out, the proceedings are liable to be quashed. When the complaint is clear wrong statement made to the police officer concerned, the Court can exercise its jurisdiction under Section 482 of Cr.P.C. to quash the proceedings since such power under Section 482 of Cr.P.c. is in the nature of an exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine qua res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the material to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto vide "***Zandu Pharmaceutical Works Ltd. v. Mohd.Sharaful Haque*** (referred supra)

In "***R.P.Kapur v. Sate of Punjab***[6]" the Apex Court laid down 3 guide lines as to when the Court can exercise inherent power under Section 482 of Cr.P.C and guide line No.3 says that "where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

In the present facts no evidence is available on record as to omission or commission complained, in such case this Court can exercise power under Section 482 of Cr.P.C in view of undisputed facts.

While dealing with such case, important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the

[6] AIR 1960 SC 866

evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

In "***State of Haryana v. Bhajan Lal***[7]" the Apex Court laid down 7 guidelines. According to guideline No.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. Similarly guideline No.7 says that Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive to wreak vengeance against the accused and with a view to spite him due to private and personal grudge, the Court can exercise its power under Section 482 of Cr.P.C. and quash the proceedings.

Here the allegation in the complaint lodged by the respondent No.2 is that payment of sale consideration by the petitioner by issuing various cheques referred supra and continuously paying electricity and water charges to the concerned

[7] 1992 Supp (1) SCC 335

authorities and continuing in possession. Filing of petitions one after the other before different authorities either with or without substance would show that this complaint is filed to wreck vengeance against the petitioner by his mother, defacto complainant – respondent No.2 herein.

Learned counsel for the petitioner contended that the subject property was purchased long back in the year 2003 and the petitioner is continuing in possession and enjoyment of the property, but the respondent No.2 lodged the complaint in the year 2016 without explaining any delay and it is also one of the grounds to quash the proceedings.

Learned counsel for the petitioner further drawn the attention of this court to a judgment rendered in "***Chandrapal Singh v. Maharaj Singh***" (referred supra). In the facts of the above judgment a frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the Process of law. In the said judgment the Apex Court held as follows:

> "We have now to examine whether in the background of these facts any criminal court would have entertained a complaint of the landlord under Sections 199 and 201 I.P.C. In the whole complaint there is not the slightest whisper as to what evidence was available which the appellants destroyed. Section 201 I.P.C. provides as under:
>
> 201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the....

> We minutely read line by line the complaint and did not find a single word as to what existing evidence was destroyed by the appellants individually or conjointly in respect of an offence which was already committed with the intention of screening the offender. Unfortunately, the learned Chief Judicial Magistrate appears not even to have read the complaint. Otherwise there is not one word as to what offence which he found appeared to have been committed in respect of which the evidence was destroyed or in respect of which a false information 45 was given. Therefore, on the averments of the complainant himself in the complaint no court could have taken cognizance of an offence under Section 201 I.P.C. The High Court did not examine the matter from this angle. The complaint, therefore, in respect of an offence under Section 201 I.P.C. is liable to be quashed on the ground that there is not even-the slightest allegation to constitute an offence except mentioning number of the section of the Penal Code."

The Court also observed that Day in and day out, in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under Section 199 I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court. Therefore, when a person having failed in all attempts in civil litigation invoked the jurisdiction of criminal Court by falsely implicated any person, which would amount to abuse of process of Court, on this ground also it can safely be concluded that the respondent No.2 having failed in all her attempts to recover the property resorted to criminal litigation implicating the petitioner while admitting that the petitioner is in possession of the property.

In "***Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre***" (referred supra) the Apex Court while deciding the dispute between the mother and son concluded that the settler and the accused being mother and son, an attempt was made to bring about a settlement but that having failed the appeals have been heard on merit and are being disposed of by this common judgment and held as follows:

> "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. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

When the proceedings are purely civil in nature and if the allegations made in the complaint taken on their face value do not disclose a criminal offence, this Court can exercise power under Section 482 of Cr.P.C. and quash the proceedings. A commercial transaction or dispute may also involve criminal offence. If it is found that a frivolous criminal complaint had been filed knowing well that remedy lay only in civil law, person who filed such complaint should himself be made accountable in accordance with law at the end of such proceeding. Court should exercise power under Section 250 Cr.P.C. frequently where there is malice or frivolousness or ulterior motives on the part of the complainant. Certain guidelines were laid down by the Apex Court in this regard in "***Indian Oil Corpn v. NEPC India Ltd.***" (referred supra), which are as follows:

> "(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with maladies/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) 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. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

No doubt, as per the Judgment of the Supreme Court referred above though it is a civil dispute, when the accused committed an offence the Court cannot exercise its jurisdiction under Section 482 of Cr.P.C., but when the complaint is lodged with malafide intention, the Court can exercise its power to quash the proceedings.

In the present facts of the case, the dispute is purely civil in nature as the respondent No.2 having failed in all her attempts resorted to criminal proceedings.

Similarly in "***Inder Mohan Goswami v. State of Uttaranchal***" (referred supra) the Apex Court in paragraph No.46 held as follows:

> "The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."

In "***Ganga Dhar Kalita v. The State of Assam***[8]" the Apex Court held that where the criminal complaints are filed in respect of property disputes of civil in nature only to harass the accused, and to pressurize him in the civil litigation pending, and there is prima facie abuse of process of law, and High Court can exercise inherent power but with care and caution.

By applying the principles laid down in the above judgment, it can safely be concluded that the respondent No.2 lodged the present complaint having failed in all her attempts to recover possession of property, without resorting to civil litigation and after filing a petition against the police seeking a direction not to interfere with the civil litigation and also filed a petition before

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[8] AIR 2015 SC 2304

Sub-Divisional Magistrate for recovery of property, but failed in her attempts to take possession of the property, in such case lodging present complaint can be said to be abuse of process of Court and the same can be quashed by exercising power under Section 482 of Cr.P.C.

In "***M.Srinivasulu Reddy v. Station House Officer, Vijayawada Police Station, Payakapuram, Vijayawada*[9]",** this Court while deciding the writ petition under Article 226 of the Constitution made an observation that in the event of there being any abuse of process of law, there is sacred obligation and duty on Court to arrest the same, and to strengthen the confidence of the people in the system guided by rule of law, since legislative intent behind enacting the criminal laws is to maintain law and order, peace and tranquillity in the society. Therefore, the prosecutions shall be in the direction of achieving the said goal and in the direction of inspiring confidence and faith of the people in the system and the process of law should never be permitted to achieve the destination by way of short circuit methods. It is a settled and well established proposition of law that the inherent and extraordinary power of this Court under Section 482 Cr.P.C. and Article 226 of the Constitution of India is required to be pressed into service very sparingly and with great care, caution and circumspection and within the principles and parameters laid down in the authoritative pronouncements. In the event of there being any abuse of process of law, there is a sacred obligation and duty of the courts to arrest the same and to strengthen the confidence of the people in the system guided by rule of law.

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[9] 2016(1) ALD (Crl.)1014

As per the principle laid down in the above Judgment, this Court has to come to conclusion that filing of complaint is an abuse of process of law to quash the pending proceedings exercising inherent power under Section 482 of Cr.P.C.

Courts are exercising power as *ex debito justitiae.* Power under section 482 of Cr.P.C. can be used only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code, as held by the Apex Court "***Kavita v. State***[10]" and "***B.S.Joshi v. State of Haryana***[11]"

When there is a remedy under any enactment, the Court cannot exercise its jurisdiction under Section 482 of Cr.P.C. But in the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got

[10] (2000) Cri.L.J. 315
[11] (2003) 4 SCC 675

to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction as held in "***State of Karnataka v. L.Muniswamy***[12]"

Viewed from any angle, the object of incorporating Section 482 of Cr.P.C. is to do justice to the parties i.e. either to the complainant or to the accused. If the complainant approached the Court to harass the accused to wreck vengeance or abuse of process of the Court using it as a weapon, the Court can exercise such power and quash the proceedings in appropriate case. In the recent past, the tendency of prosecutions to harass the accused is on increase while prosecuting civil remedies as the remedy is purely civil in nature; if such practice is encouraged and denied to exercise the power available under Section 482 of Cr.P.C., is disowning its responsibility. In such a case, the Courts will be privies for endless harassment by filing prosecutions one after the other.

Here, the respondent No.2 herself filed writ petition against the State seeking a direction against the police concerned not to interfere with the civil litigation. Very filing of such writ petition indicates that the respondent No.2 is aware of the nature of the litigation i.e. civil litigation. But surprisingly approached the Sub-Divisional Magistrate under the Act for a relief, which he has no authority to grant in view of the specific provisions contained

[12] AIR 1977 SC 1489

therein, but the respondent No.2 successfully obtained such relief and the Sub-Divisional Magistrate granted relief, which is in the nature of specific relief, which ultimately Civil Court can exercise. Further, the respondent No.2 herself filed counter and advanced arguments before this Court sufficiently longtime. Thus, she is not an innocent litigant, but highly literate and elite litigant, using the police as a weapon to harass the petitioner by filing complaints consciously knowing that the dispute is purely civil in nature. In such a case, this Court is bound to exercise its power under Section 482 of Cr.P.C. to quash such proceedings which is aimed to harass the petitioner at the threshold to discourage adopting of such tools of harassment, resorting to vexatious criminal prosecution.

In "***Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy***[13]" the Apex Court held that inherent power under Section 482 of Cr.P.C. can be exercised to prevent abuse of process of the Court where the Court finds that the ends of justice may be met by quashing the proceedings.

In "***Chandran Ratnaswami v. K.C.Palanisamy***[14]" the Apex Court while deciding a petition under Section 482 of Cr.P.C. held that the continuation of criminal proceedings arising out of breach of a joint venture agreement specially when such disputes have been finally resolved by the Court of competent jurisdiction is unfair and liable to be quashed.

When there is purely a civil dispute, the Court must lean to quash the proceedings as it has to be decided by a competent civil Court and continuation of such proceedings would certainly

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[13] (2011) 12 SCC 437
[14] (2013) 6 SCC 740

become a tool or weapon in the hands of litigant, such parties cannot be allowed to use such tool to put pressure on the parties to come to their terms.

Power under Section 482 of Cr.P.C. is based upon the maxim *quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest*, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. Section 482 of Cr.P.C. confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused. (Vide: "**STATE OF ORISSA v. SAROJ KUMAR SAHOO[15]" and "AMIT KAPOOR v. RAMESH CHANDER[16]")**

In "**STATE OF W.B. v. SWAPAN KUMAR GUHA**[17]**"** the Apex Court held that if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.

In the present facts of the case also it is alleged that the petitioner trespassed into the property, but the date on which the petitioner trespassed into the property belonging to the complainant was not disclosed and the omissions or commissions, if any, committed by the petitioner were also not disclosed in the entire complaint except making a bald allegation against the petitioner. Moreover, the respondent No.2 herself approached this Court seeking a direction against the police not to interfere in the civil disputes, but conveniently the respondent No.2 resorted to criminal litigation by one way seeking an order to restrain the

[15] (2005) 13 SCC 540
[16] (2012) 9 SCC 460
[17] (1982) 1 SCC 561

police and in other way she is seeking their interference in the civil litigation. Thus, the respondent wanted to enjoy the dual benefit in two different ways referred supra. This is nothing but sheer abuse of process of Court and the Court cannot permit the parties to abuse the process of law to wreck vengeance against the petitioner, who is no other than her son.

In view of my foregoing discussion and the law declared by the Apex Court, I am of the firm view that lodging complaint with the police by the respondent dated 01.09.2016 and registration of crime against the petitioner is an abuse of process of the Court and aimed to harass the petitioner to wreck vengeance against him and thereby forcing him to come to her terms instead of resorting to civil remedies, which are comprehensive in nature.

As discussed above, the conduct of the respondent No.2 is blameworthy and enjoying the benefit in different ways either due to alleged support of her daughters or somebody else. But the allegation made in the complaint appears to be directly relating to civil dispute since the petitioner is admittedly in possession of the property and the respondent No.2 requested the police to redeliver the property after evicting the petitioner, in such case the remedy available to her is to approach the competent civil Court to redress her grievance, instead of approaching the competent civil Court she resorted to criminal prosecution against her son – petitioner and it appears that on the one hand she prevented the police from interfering in civil litigation and on the other hand invited their interference in the civil litigation though she is conscious that the litigation is purely civil in nature. As such interference of the police in civil disputes would amount to abuse of process of the Court.

Consequently, the respondent No.2, at best, is entitled to redress her grievance before competent civil Court but not by approaching the police. Hence, I find no substance in the arguments of the respondent No.2, consequently the proceedings are liable to be quashed and the petition is liable to be allowed.

In the result, the petition is allowed and the proceedings in Crime No.632 of 2016 on the file of Jubilee Hills Police Station, Hyderabad, registered against the petitioner are hereby quashed.

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

JUSTICE M. SATYANARAYANA MURTHY

21.12.2016
Ksp