

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16808 of 2016

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed to quash the proceedings in Crime No.260 of 2016 of Alipiri Police Station, Tirupathi, for the offences punishable under Sections 143, 341, 188 read with 149 IPC.

Sri G.Vasantha Rayudu, learned counsel for the petitioner, contended that the allegations, made in the complaint, would not constitute the offences punishable under Sections 143, 341, 188 read with 149 IPC; there is no specific allegation against the petitioner in the entire police proceedings regarding his participation in dharna; and, in the absence of any specific allegation, the proceedings have to be quashed. It is further contended that the vehicle was seized by police but it was not produced before the Magistrate having jurisdiction over the area, and requested release of vehicle bearing No.AP26TC 4475. Learned counsel, while reiterating the contentions urged in the petition, requested to issue atleast necessary directions to police to produce vehicle before the Magistrate having jurisdiction and quash the proceedings against the petitioner.

Learned Public Prosecutor appearing for the State of Andhra Pradesh, while contending that there is any amount of evidence on record to show actual participation of the petitioner in the incident, has drawn the attention of this

Court to the news items published in Telugu Daily to establish the appearance of the petitioner among the group while breaking coconuts before commencing dharna and raising slogans standing on the vehicle; and these two news items would establish participation of the petitioner in the said dharna. It is further contended that, when investigation is not yet commenced, the Court cannot quash the proceedings since FIR is only an information for commission of cognizable offence and to set criminal law into motion.

The basis for registration of crime is police proceedings where specific role played by the petitioner i.e. Pattipati Anjibabu, being the President of Rashtra Rajaka Ikyavedika, along with others, and the news items, referred supra also, disclose actual participation of the petitioner in the dharna by breaking coconut before commencing dharna. If the allegations made in the complaint, taken in its entirety, on its face value would *prima facie* constitute an offence. However, at this stage, it is difficult to decide whether the petitioner actually participated or not by exercising power under Section 482 Cr.P.C. The power under Section 482 Cr.P.C. can be exercised by this Court sparingly and in exceptional circumstances to give effect to the orders passed by the Court, to prevent abuse of process of Court and to meet ends of justice.

Here the main contention of the petitioner is that, except breaking coconut, the petitioner did not participate in

dharna. But, as seen from the news item, the petitioner actually participated in dharna. Therefore, prima facie participation of the petitioner in the said incident cannot be ruled out.

The Supreme Court in **State of Haryana v. Bhajan Lal**¹ laid down seven guidelines as to when this Court can exercise power to quash the proceedings. They are as follows:

- 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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.
- 3) Where the uncontroverted 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 F.I.R. 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 S.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

¹ AIR 1992 SC 604

motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Guideline No.1 is specific, when 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, *prima facie* constitute any offence, the Court cannot quash the proceedings. But, here the allegations made in the FIR, coupled with news items referred above, taken on its face value would *prima facie* establish offences under Sections 143, 341, 188 read with 149 IPC. Therefore, I am unable to exercise my power under Section 482 Cr.P.C. to quash the proceedings.

The inherent power should not be exercised to stifle a legitimate prosecution. 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. (See: **Janata Dal v. H. S. Chowdhary**² and **Raghubir Saran (Dr.)**)

² [1992] 4 SCC 305

v. State of Bihar³). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: **Dhanalakshmi v. R. Prasanna Kumar**⁴, **State of Bihar v. P. P. Sharma**⁵, **Rupan Deol Bajaj v. Kanwar Pal Singh Gill**⁶, **State of Kerala v. O.C. Kuttan**⁷, **State of U.P. v. O.P. Sharma**⁸, **Rashmi Kumar v. Mahesh Kumar Bhada**⁹, **Satvinder Kaur v. State Govt. of NCT of Delhi**¹⁰ and **Rajesh Bajaj v. State NCT of Delhi**¹¹ and **State Of Orissa vs Saroj Kumar Sahoo**¹²).

³ AIR (1964) SC 1

⁴ [1990] Supp SCC 686

⁵ AIR (1996) SC 309

⁶ [1995] 6 SCC 194

⁷ AIR (1999) SC 1044

⁸ [1996] 7 SCC 705

⁹ [1997] 2 SCC 397

¹⁰ AIR 1996 SC 2983

¹¹ [1999] 3 SCC 259

¹² 2005 (13) SCC 540

In view of the principle laid down in the above judgment, and as investigation is at feotus stage, it is difficult to quash the proceedings. Hence, I find no ground to quash the proceedings. However, acceding to the request of the learned counsel for the petitioner, the police concerned is directed to produce the vehicle before the Court having jurisdiction over the area within a week since it is their obligation to produce as it is the property concerned in the above crime. On such production, the petitioner is at liberty to move appropriate application for return of the vehicle, and the learned Magistrate is directed to pass orders in accordance with law, if any such application is filed for release/return of the vehicle.

With the above direction, the Criminal Petition stands disposed of at the stage of admission. Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:14.12.2016
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