

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.597 AND 603 OF 2017

COMMON ORDER:

These Criminal Petitions have been filed requesting to invoke jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), by the petitioners herein viz., Juturi Abishek @ Abhi and Manoj @ Bheem Shetty Manoj Kumar, who are arraigned as accused Nos.3 and 4, respectively, in Crime No.16 of 2017 of Kurnool Taluq Police Station, State of Andhra Pradesh, and to quash the First Information Report registered against them for the offences punishable under Sections 147, 148, 448, 427, 307 and 506 read with Section 149 of Indian Penal Code, 1860 (IPC).

2. The petitioners along with some others alleged to have committed the aforesaid offences.

3. Heard Sri Vedula Srinivasa Rao, learned Senior Counsel, appearing for M/s. Bharadwaj Associates for the petitioner in the former criminal petition; Sri O. Manohar Reddy, learned Senior Counsel, appearing for Sri G. Sravan Kumar, learned counsel for the petitioner in the latter petition, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The learned Senior Counsel appearing for the petitioners plead innocence and false implication of the petitioners. They would submit that the *de facto* complainant - respondent No.2, in both the

petitions viz., Gurjeeth Singh has not disclosed as to how he has given the names of the persons, who said to have attacked his *Dhaba* Hotel. The second ground is, no specific overt acts have been attributed to the petitioners in the commission of the alleged offences and that it appears that they have been roped in with *mala fide* intention. The learned Senior Counsel would rely on the ruling of the Hon'ble Supreme Court in **Indian Oil Corporation v. NEPC India Limited**¹. It is therefore, according to the learned Senior Counsel that it is nothing but an abuse of process of law and thus, sought to quash the First Information Report.

5. The learned Additional Public Prosecutor would *inter alia* contend that the complaint would disclose *prima facie* allegations as to commission of non-cognizable offences and the details of overt acts have been mentioned though, not with reference to the particular petitioner/accused, but, in view of the offences punishable under Sections 147 and 148 and the other offences under Sections 448, 427, 307 and 506 read with Section 149 of IPC have been clutched, it is suffice at this stage, if participation of each of the petitioner/accused is mentioned in the complaint is referred to.

6. To comprehend the allegations made in the complaint and in arriving at whether the said allegations, if accepted on its face value, constitute offences punishable under Sections 448, 427, 307 and 506

¹ (2006) 6 SCC 736

read with Section 149 of IPC, it is relevant to refer to the averments mentioned in the complaint.

7. The whole incident mentioned in the complaint constitutes three (3) parts. First part relates to the event that took place on 11.01.2017 at 01.00 a.m., the second, relates to the event that took place on the same day at 6.30 p.m., and the third relates to the incident that took place on 12.01.2017 at 1.30 p.m.

8. The *de facto* complainant along with one Smt. Baljit Kaur and Mr. Manpreet Singh has been running a *Dhaba* in the name of '*Dhashmesh Punjabi Dhaba*', by the side of National Highway - 44, located in Kurnool Mandal, which was originally started by the husband of Smt. Baljit Kaur viz., Jarnail singh about thirty (30) years ago; on his demise which took place sometime in the recent past, the *de facto* complainant and the other two have been running the said *Dhaba*.

9. According to the version of the *de fact* complainant, on 11.01.2017 at 01.00 a.m., about 15 persons came on motorcycles, had their meals and despite demanding payment, refused to pay the amount and went away from there. The same was informed to the *de facto* complainant by Manpreet Singh; on which, himself and his friend Mr. Bhanuprasad, verified the C.C. T.V. visuals and identified one of them as Mr. Shaik Sajid @ Ajju resident of Balaji Nagar near Keshava Reddy School; and both of them, on the same evening at

about 6.30 p.m., went to his house and asked him to pay the money; on which, he informed him that he will give the money some time later, on which, they left his house; and, on 12.01.2017, at about 01.30 p.m., while the *de facto* complainant and Manpreet Singh along with the workers Anil, Vijay, Prem and Sai were preparing lunch, the petitioners along with Deva, Ravindra Naik, Abhi, Manoj, Narendraprasad, Mahendra Reddy and others came there in four (4) cars and motor cycles carrying sticks and rods and started destroying lunch preparation, shouting, how dare they were to ask for the money for the meals they had on the previous day and damaged Coca Cola Refrigerator, C.C. T.V. Monitor and chairs etc. and attacked the *de facto* complainant shouting at him that he came there for livelihood from a foreign place and threatened him that in case they will kill him, none would question them, resulting in injuries to his right thigh, left wrist and dumb wounds and even they damaged a Car bearing No.AP-21-AN-0123 and while leaving the place, they threatened him that if he asks money, they would kill him and left that place in their vehicles bearing Car Nos.AP-21-F-8111, AP-27-AE-0018, AP-21-DC-3737, AP-21-AS-6894 and motorcycles bearing Nos.AP-21-A-9740, AP-21-BG-424 and AP-21-BG-0477.

10. Based on these allegations, the Station House Officer, Kurnool Taluq Police Station, registered the aforesaid crime for the offences mentioned therein.

11. These allegations do require examination to appreciate the arguments advanced by both sides.

12. The learned Senior Counsel for the petitioners while contending that the allegations shown in the complaint *per se* do not disclose commission of any non-cognizable offences at all by the petitioners and the very fact that no overt acts have been attributed to the petitioners besides the complaint is so bereft as to how the *de facto* complainant could give the names of the persons who said to have attacked on *Dhaba* and when the whole story is inherently improbable, the investigation is nothing but an abuse of process of law and refers to the principles relating to the exercise of jurisdiction under Section 482 of Cr.P.C. to quash the complaint and criminal proceedings.

13. In **Indian Oil Corporation**¹, the Hon'ble Supreme Court expresses in paragraph No.12, thus:

“12. The principles relating to exercise of jurisdiction under [Section 482](#) of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - [Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre](#) [1988 (1) SCC 692], [State of Haryana vs. Bhajanlal](#) [1992 Supp (1) SCC 335], [Rupan Deol Bajaj vs. Kanwar Pal Singh Gill](#) [1995 (6) SCC 194], [Central Bureau of Investigation v. Duncans Agro Industries Ltd.](#), [1996 (5) SCC 591], [State of Bihar vs. Rajendra Agrawalla](#) [1996 (8) SCC 164], [Rajesh Bajaj v. State NCT of Delhi](#), [1999 (3) SCC 259], [Medchl](#)

Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan v. Vijay Singh [2001 (8) SCC 645], and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(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 *mala fides* / 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 proceeding 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.”

14. On an intrinsic examination of the complaint, it has to be said that answers are to be found for every submission made by both the learned Senior Counsel in the complaint itself. So far as the submission, that the *de facto* complainant has not disclosed as to how he has given the names of the persons who attacked on his *Dhaba* is concerned, he has clearly mentioned that six (6) persons, whose names he has given, amongst whom, names of the petitioners are finding place, are regular visitors to his *Dhaba*. Thus, this allegation constitutes *prima facie* material in identifying the culprits amongst the persons, who came in four cars and three motorcycles to the *Dhaba* of the *de facto* complainant.

15. Concerning the second submission that no specific overt acts have been attributed to the petitioners, when the offences of rioting punishable under Sections 147 and 148 of IPC have been mentioned and the other offences read with Section 149 of IPC

dealing with constructive liability are alleged to have committed, mere being a member and participation would suffice.

16. Concerning the third submission that the petitioners are roped in with *mala fide* intention, nothing is projected in the petition to show that the *de facto* complainant is inimically disposed towards the petitioners.

17. The learned Senior Counsel for the petitioner in Criminal Petition No.603 of 2017, no doubt, would submit that the very fact that the *de facto* complainant mentioned that he sustained simple injuries is sufficient to hold that none of the allegations constitute the offences levelled against the petitioner would sustain and thus, it is an abuse of process of law, but, even that submission would not merit, at this stage, in view of the fact that the allegations contained in the complaint constitute *prima facie* material to proceed with the investigation.

18. The ruling in **Indian Oil Corporation¹**, would not assist the petitioners to accede to their request, as it cannot be said that the allegations in the complaint do not *prima facie* constitute any offence or make out the case alleged against the petitioners or can the complaint be viewed as a clear abuse of the process of the Court.

19. Therefore, both the Criminal Petitions are dismissed at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petitions stand closed.

A. SHANKAR NARAYANA, J

January 30, 2017.
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