

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.7102 of 2017

ORDER:

This criminal petition, under Section 482 of Cr.P.C., is filed to quash the F.I.R.No.06 of 2017 pending investigation on the file of ACB Karimnagar Range, Karimnagar District, for the offences punishable under Section 13(1)(d) read with 13 (2) of Prevention of Corruption Act, 1988 and Section 120 (B) of I.P.C.

It is the case of the prosecution that A-1, who was Assistant Sub-Inspector of Police by name Mohan Reddy was carrying on money lending business at exorbitant rate of interest and later obtaining sale deeds by threat or otherwise in the name of his kith and kin and the petitioner, who is A-2 is one of the nearest relative of A-1 – Assistant Sub-Inspector of Police – Mohan Reddy. In the same manner, he allegedly obtained sale deed from the complainant in favour of the petitioner herein on 27-02-2013. He reported the matter to the concerned about four years later. But as seen from the allegations made in the complaint, dated 18-06-2017, in the month of February, 2013 Mohan Reddy, the Assistant Sub-Inspector of Police along with his followers went to the plot of the defacto complainant in Home-line residency at Chaitanyapurai, created havoc, kicked the articles in the

house and calculated the interest at 4% instead of 2% and demanded him to pay Rs.21,00,000/- at the point of gun. Being Assistant Sub-Inspector of Police he obtained three cheques bearing cheque No.666445, dated 05-02-2013 for Rs.9,00,000/-, cheque No.666444, dated 28-03-2013 for Rs.6,00,000/- and cheque No.666443, dated 15-03-2013 for Rs.6,00,000/-.

On 05-02-2013, the defacto complainant went to the finance company of Mohan Reddy, Assistant Sub-Inspector of Police and requested him to calculate the amount due. Thereupon, he calculated the amount due was Rs.21,00,000/- and he collected Rs.8,00,000/- from the defacto complainant and issued receipt through accountant – Gnaneshwar while agreeing to pay the balance later. But the Assistant Sub-Inspector of Police threatened him to file a case for check bounce for the offence punishable under Section 138 of Negotiable Instruments Act.

When the defacto complainant expressed his inability to pay the balance the said Mohan Reddy, Assistant Sub-Inspector of Police, taking advantage of his official position shown Singireddy Ravinder Reddy – petitioner herein and asked the said Ravinder Reddy to lend money with a direction to execute GPA in his favour. The defacto complainant having

no other alternative accepted to execute GPA in respect of the land in Sy.No.436/B to an extent of Ac.5-37 gts.

On 27-02-2013, the said Ravinder Reddy - petitioner herein took the defacto complainant to Registration Office at Sirisilla, where, instead of obtaining GPA, he forcibly obtained a registered sale deed bearing document No.1053/13 for Rs.8,00,000/- and paid accordingly. When the said act was questioned the petitioner herein replied that as directed by Mohan Reddy he obtained the document. Thus, the petitioner allegedly committed a serious offence taking advantage of the support of one Mohan Reddy. On the strength of the complaint given by the defacto complainant the present crime was registered and issued F.I.R.

The main contention of the petitioner is that there is abnormal delay in lodging complaint and the second contention is that there were two sale transactions. The petitioner herein purchased one plot on 30-06-2007 from the defacto complainant and the same was registered on 24-03-2008 on the name of the petitioner's wife and another plot was also purchased from the defacto complainant and the same was registered in the name of petitioner's wife and registered the same on 30-11-2015. Therefore, the allegations made in the complaint would not disclose, on its face value

commission of any offence and prayed to quash the proceedings.

Learned Special Public Prosecutor for ACB submits that the petitioner herein is relative of A-1 – Mohan Reddy, who took advantage of his official position got registered sale deeds from his relatives and to that effect 49 cases were registered against him and therefore, at the feotus stage of investigation this Court cannot quash the proceedings and requested to dismiss the petition.

As seen from the allegations made in the complaint the petitioner herein obtained registered sale deed by using force as directed by Mohan Reddy – Assistant Sub-Inspector of Police instead of obtaining GPA. But initially the defacto complainant agreed to execute registered General Power of Attorney for lending money by said Ravinder Reddy – petitioner herein as directed by Mohan Reddy – Assistant Sub-Inspector of Police. Since he was threatened the petitioner to discharge the debt at the point of gun, therefore, instead of obtaining GPA the petitioner obtained a registered sale deed by threat or force.

Admittedly, the investigation is not yet completed. Hence, the power under Section 482 of Cr.P.C., can be exercised only in exceptional circumstances, where the

allegations made in the complaint would not make out a *prima facie* case against this petitioner.

In **State of Haryana v. Bhajan Lal**¹ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This 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.*

(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.*

¹ 1992 Supp. (1) SCC 335

(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.

In view of guidelines 1, 6 & 7, criminal proceedings cannot be allowed to be continued, as the proceedings are initiated to wreak vengeance by abuse of process of the law.

In ***R.P. Kapur v. State of Punjab***², the Hon'ble Apex Court laid down following three (3) principles enabling the Court to exercise the inherent power under Section 482 of Cr.P.C.:

(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;

² AIR 1960 SC 866

(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.

In **(Mrs.) Dhanalakshmi v. R. Prasanna Kumar and others³**, the Supreme Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. in that event there would be no justification for interference by the High Court.

In any view of the matter, when the investigation is in fetus stage this Court normally would not venture to quash the proceedings since the F.I.R. is only an information about occurrence of a cognizable offence to set the criminal law into motion. In such case, based on the allegations made in the complaint it is difficult to conclude that the petitioner herein did not commit the offence at this stage and quash the proceedings.

³ AIR 1990 SC 494

In a judgment reported in ***State of Orissa v. Saroj Kumar Sahoo***⁴, the Apex Court held that the inherent powers under Section 482, Cr. P.C. should not be exercised by the High Court 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. While exercising jurisdiction under Section 482 of the Cr. P.C., it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

⁴ (2005) 13 SCC 540

In view of the law declared by the Hon'ble Apex Court in the judgments referred supra, it is clear that at the stage of F.I.R. the Court shall not ordinarily exercise power to stop the prosecution when the investigation is not completed and when the entire material is not placed before this Court.

In the present case on hand, the investigation is not completed and statements of some witnesses under Section 164 of Cr.P.C., have to be recorded. Therefore, at this stage it is difficult to conclude that there is no *prima facie* material to proceed against the petitioner for various offences he allegedly committed.

The main contention of the petitioner is delay in lodging complaint but delay by itself is not a ground to quash the complaint except when the cognizance is barred on account of limitation. The other two transactions between the petitioner and the defacto complainant are one of the circumstances but that by itself is not a ground to quash the entire proceedings and in fact, those transactions cannot be taken into consideration at this stage. Therefore, taking into consideration of entire material, I find it is difficult to accept the contention at this stage to conclude that there was no *prima facie* material against this petitioner to proceed further. Hence, I am unable to exercise inherent jurisdiction under Section 482 of Cr.P.C., to quash the proceedings in Crime

No.06 of 2017 on the file of ACB Karimnagr Range, Karimnagar District. Consequently, the petition is liable to be dismissed, as it is devoid of merits.

In the result, the Criminal Petition is dismissed. However, the petitioner is at liberty to question the proceedings at the appropriate stage.

The Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 01, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRIMINAL PETITION No.7102 of 2017

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