

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.93 OF 2017

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings in Cr. No.219 of 2016 of II Town Police Station, Nellore, registered against the petitioners for the offences punishable under Sections 420 and 506 of Indian penal code, 1860 (for short 'I.P.C.') and Sections 3(1)(r)(s) of SC/ST (POA) Amendment Act, 2015.

The case of the *de facto* complainant in brief is that, she belongs to Schedule Caste working as Asha volunteer and working as Warden in Mahila Mandal. On 05.09.2012 she mortgaged the property of second respondent, Gundiguntla Rajeswari and obtained hand loan of Rs.5,00,000/-, for her necessity and thereafter she paid Rs.6,00,000 as interest and Rs.2,50,000/- as principal, while agreeing to repay Rs.2,50,000/- principal amount, she asked the petitioners to come to Nellore to receive the amount and requested to return the documents of second respondent. The petitioners came to her house on 26.08.2016 at 6.30 P.M., then she requested them to return the documents, thereupon Varada Mallikarjuna Rao and Janardhan Rao abused her by raising her caste name, while disclosing that they obtained sale deed defrauding the respondents 1 and 2 herein and demanded her to vacate the house and hand over the possession of the property and abused her again and again raising her caste name. Then she threatened them to foist a case against them, but due to intervention of Sk.Abdul Rawoof who promised to settle the disputes by 19.09.2016, but it was not settled. She also received notice from the petitioners dated

17.09.2016 demanding to vacate the premises. Based on the complaint the police registered a crime No.219 of 2016 of Nellore II Town Police Station for the above offences and the investigation not yet completed.

The main contention of the petitioners before this court is that no date of incident was mentioned in the complaint lodged with the police and that she converted civil litigation into criminal after exchange of notice between them, after filing suit in O.S. No.529 of 2016 pending on the file of II Additional Junior Civil Judge, Nellore, for various reasons, including payment of Rs.1,54,000/- and to deliver vacant possession, after evicting the second respondent herein and he also filed a petition under Order XV-A of the Code of Civil Procedure, 1908, which is pending before the court. It is nothing but an abuse of process of court and prayed to quash the proceedings.

Admittedly, *defacto* complainant, who is the first respondent herein, belongs to Schedule Caste and her contention in the complaint is that when she approached for loan and mortgaged 7 ankanams of land belonging to the second respondent by depositing title deeds and obtained mortgage loan and paid Rs.6,00,000/- as interest and Rs.2,50,000/- towards principal amount, when she intend to repay the balance amount of Rs.2,50,000/- asked both the petitioners to come to her house at Nellore and when they came there they informed that they obtained sale deed fraudulently from the second respondent and abused her raising caste name in filthy language again and again, but she did not lodge complaint on account of intervention of Sk.Abdul Rawoof, but the matter was not

settled even after placing the same before the elders, therefore she lodged the complaint on 28.09.2016.

No doubt the complaint is bereft of all details. But the complaint is an information to the police about the occurrence of cognizable offence and it need not contain minute details of the incident, since it is not an encyclopedia of facts. Taking advantage of absence of full details, the proceedings cannot be quashed. The real facts would be collected during investigation. Therefore, at this stage on the strength of such contention, the proceedings cannot be quashed.

The other contention is that about conversion of civil litigation into criminal proceedings, since she lodged the complaint after receiving notice from the petitioners.

No doubt every omission or commission will have two parallel remedies both civil and criminal and her allegation is that when she mortgaged title deeds and obtained an amount of Rs.5,00,000/- and the petitioners instead of obtaining mortgage deed they obtained registered sale deed fraudulently and if really they obtained sale deed fraudulently, it is predominantly in criminal nature. When two parallel remedies are available, more particularly, when the omission or commission is predominantly criminal nature, the consequence of both proceedings are different the parties can approach either of the courses open to them. Therefore, it does not amount to conversion of civil dispute into criminal, at this stage, *prima facie*. Even pendency of suit before the court is of no use and it will not come to the aid of the petitioners to get quashing the proceedings in Cr. No.219 of 2016, since it is not known whether

the plaint was subsequent to registration of crime or before lodging the complaint. In the absence of any details, pendency of suit in O.S. No.520 of 2016 on the file of II Additional Junior civil judge is no assistance to the petitioners to quash the proceedings.

It is settled law that this court can exercise inherent power under Section 482 of Cr.P.C. sparingly and in exceptional circumstances only to implement the orders passed under the code, to prevent abuse of process of the court or to meet the ends of justice. The inherent power under Section 482 of Cr.P.C. should not be exercised to stifle the legitimate prosecution and the high court being the highest court of state should normally refrain from giving prima facie decision in case where the 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 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 vide Judgment of the Apex Court in **STATE OF ORISSA & ANR. VS. SAROJ KUMAR SAHOO**¹.

¹ (2005) 13 SCC 540

In the present case, the investigation is at the fetus stage and no material is produced before the court for perusal whether the police recorded any statements of witnesses etc., but at this stage except the complaint lodged by the first respondent with the police, no other material is available on record to exercise inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings.

In **STATE OF HARYANA V. BHAJAN LAL** the Apex Court laid down certain guidelines to exercise inherent power under Section 482 of Cr.P.C. and according to guideline No.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, the court can exercise inherent jurisdiction to quash the proceedings. Similarly in guideline No.7 held that 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 court can quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C.

In the present case, it is difficult to conclude, at this stage, whether the proceedings are initiated to wreak vengeance by an abuse of process of court even applying guidelines 1 and 7 laid down in **BHAJAN LAL's** Case referred to supra.

At this stage, Sri J. Seshgiri Rao, learned counsel for the petitioners, requested to issue an appropriate direction to the police not to arrest. But, passing such an order would amount to granting pre-arrest bail, which is not permissible under the provisions of

SC/ST (POA) Amendment Act, 2015 and in view of the specific bar contained therein, in normal course, the court shall not exercise power under Section 482 of Cr.P.C. granting such an order not to arrest the petitioners. In **PARVINDERJIT SINGH AND ANR. V. STATE (U.T. CHANDIGARH) AND ANR**² the Apex Court while deciding the question whether a direction not to arrest a person in connection with non cognizable offence can be given, it was held that an interim order restraining arrest of a person charged with a cognizable offence, if passed while dealing with an application under Section 438 of Cr.P.C, will amount to interference in the investigation.

If the request of the petitioners is accepted, certainly, it would amount to interference with the investigation in view of the Judgment referred supra.

The only apprehension of the petitioners is that there is every possibility of their arrest by the police in connection with the above crime and that apart Section 438 Cr.P.C. has no application to the proceedings under the provisions SC/ST POA Act and in case the police arrested, they will put to serious loss, besides incalculable damage to their reputation.

The arrest of the accused is not must in all cases and the Court can issue necessary direction to the concerned police to follow certain guidelines. In **SOM MITTAL V. GOVERNMENT OF KARNATAKA (1994 CRL LJ 1981)** the Apex Court while deciding the application to release on pre-arrest bail relating to a State of Uttar Pradesh, held that where there is no provision for grant of pre-

² AIR 2009 SC 502

arrest bail in Criminal Cases, and while concurring with justice H.K. Sema, his Lordship Justice Markandey Katju, following the principle laid down in **JOGINDER KUMAR V. STATE OF UTTER PRADESH AND OTHERS (AIR 1994 SC 1349)**, wherein it was held that

“no arrest can be made, power to arrest is one thing and the justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It is would be prudent for a police officer in the interest of protection of the constitutional right of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need of effect arrest. Denying a person of his liberty is a serious matter. The recommendation of the police commissioner merely reflects the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be a reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officers issues notice to a person to attend the Station House and not to leave Station without permission would do. Para No.13 of the same judgment has also referred to the Third Report of the National Police Commission which stated that by and large nearly 60% of the arrests in the country were unnecessary or unjustified. Also, 43.2% of the

expenditure in jails was over such prisoners only who need not have been arrested at all. Despite this categorical judgment of the Supreme Court, it appears that the police is not at all implementing it. What invariably happens is that whenever an FIR of a cognizable offence is lodged the police immediately goes to arrest the accused person”.

In case the police resort to arrest the petitioners without following the principle, it amount to clear violation of the aforesaid judgment of the Apex Court.

Therefore, the Station House Officer, II Town Police Station, Nellore, is directed to follow the principle laid down by the Apex Court in **JOGENDER KUMAR**'s case referred to supra and proceed with the investigation in connection with Cr.No.219 of 2016.

With the above direction, the criminal petition is disposed of.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 05.01.2017
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