THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9776 OF 2011

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by accused No.1 in Crime No.39 of 2011 of Jukkal Police Station, Nizamabad District registered for the offences punishable under Section10 of Protection of Civil Rights Act, 1955 (for short 'P.C.R Act') and Section 3 (1) (vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST (POA) Act').

2) The petitioner is A.1. The 2nd respondent—Jadhav Hari, who belongs to ST Lambada, lodged a private complaint with the police dated 15.07.2011 alleging that on 03.06.2011, the complainant went to the office of Tahsildar, Jukkal, to enquire about the change of name of the possessor of agricultural land in revenue records in respect of Sy.No.117 of Sidhapur Village to an extent of Ac.1.35 gts for the year 2010-11, as the Tahsildar visited his field without giving any notice to him, issued Proceeding certifying possession of Javeed Ali Khan Sab over the agricultural land illegally. At that time, accused No.1 was standing in front of Tahsil office, Jukkal, allegedly insulted the 2nd respondent, who belongs to ST Lambada, stating that 'Ore Lambadi Munda Koduka, passed the correct order nuvu avadivira adgavaddu and appeal before R.D.O. Bodhan' in the presence of four witnesses and thus, the petitioner/A.1 allegedly committed an offence under

Section 3 (1) (ii) and (vii) of SC/ ST Act.

3) It is the contention of the petitioner/A.1 that the allegations made in the complaint would not attract any offence on its face value accepting to its entirety and that there is discrepancy in the complaint as well as the statement recorded under Section 161 (3) Cr.P.C. In the statement recorded by the learned Magistrate under Section 164 Cr.P.C, there is any amount of discrepancy with regard to the incident. That apart, the statement recorded under Section 161 (3) Cr.P.C clearly discloses that he lodged a complaint only at the instance of advocate, though no incident had taken place. Thus, in view of the discrepancy in the complaint and statement recorded by the police and Magistrate, the complaint against this petitioner cannot be proceeded and prayed to exercise inherent power of Section 482 Cr.P.C and quash the proceedings

4) During the course of hearing, Sri K.Durga Prasad, learned counsel for the petitioner/A.1 would contend that the allegations made in the complaint are baseless and that apart in view of the statement recorded by police under Section 161 (3) Cr.P.C with regard to occurrence of incident, the allegations made in the complaint cannot be believed. However, the 2nd respondent changed his version before the learned Magistrate when a statement under Section 164 Cr.P.C was recorded in such case more particularly, in view of change of his version from time to time and from stage to stage during investigation, the case of the complainant cannot be accepted at any cost against this petitioner

and prayed to quash the proceedings, since, it is abuse of process of law, if such complaint is allowed to proceeded, it is difficult for any officer to discharge their official duties and prayed to quash the proceedings.

5) Sri M.Rajamalla Reddy, learned counsel for respondent No.2 contended that the statement recorded under Section 161 (3) Cr.P.C is not a substantive piece of evidence and no evidentiary value can be attached under Section 164 Cr.P.C and if the statement recorded by Section 164 of Cr.P.C and the allegations made in the complaint accepting in its entirety, made out an offence punishable under the Section supra. Thereby, the disputed question of fact cannot be gone into while deciding the application filed under Section 482 Cr.P.C and prayed to dismiss the petition.

6) Undisputedly, the petitioner was discharging his official duties being a Tahsildar of Jukkal, when the alleged incident said to have taken place and that respondent No.2 admittedly belongs to Schedule Tribe and on the advice of his advocate—Sri T.Vittal, the respondent appears to have lodged the complaint against the petitioner making such allegation that the petitioner insulted and humiliated in the public view by abusing him by raising his caste name, thereby allegedly committed an offence punishable under Section 3 (1) (i) (ii) which deals with punishment for the act of petitioner with an intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or

any other obnoxious substance in his premises or neighbourhood;

7) But the present facts would not constitute the offence punishable under Section 3(1) (ii) of SC/ST (POA) Act on its face value.

8) The other offence allegedly committed by the petitioner/ accused is Section 3 (1) (vii) of SC/ ST (POA) Act. Section 3 (1) (vii) deals with force or intimidation of a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

9) Here, the allegations would not constitute the offence punishable under Section 3 (1) (vii) of the Act even if accepted in its entirety, on its face value. The allegations at best may constitute the offence punishable under Section 3 (1) (x) of the Act. It deals with intentional insulting or intimidating with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Therefore to constitute the offence punishable under Section 3 (1) (x) of the Act, there must be a specific allegation that petitioner intentionally insulted or intimidated a person belonging to SC/ ST and with an intention to humiliate such a member within public view.

10) The complaint must disclose the following requirements.

i) intentional insult or intimidation

ii) with an intention to humiliate a member of SC/ ST

iii) it must be within public view

11) The allegations made in the complaint are that '*Ore Lambadi Munda Koduka*' would touch the caste name of the respondent No.2 within public place in front of Tahsil office, thereby satisfied the third condition but none of the allegations disclose that the petitioner intentionally insulted or intimidated the 2nd respondent and with an intent to humiliate the 2nd respondent.

12) The complaint is bereft of any allegations with regard to intentional insult or intimidation and humiliation of 2nd respondent. In the absence of these two allegations mere abusing him as '*Ore Lambadi Munda Koduka*' would not constitute the offence punishable under Section 3 (1) (x) of SC/ ST (POA) Act but strangely the police registered the crime for the offence punishable under Section 3 (1) (vii) of SC/ ST (POA) Act and Section 10 of P.C.R. Act.

> *Section 10 of P.C.R. Act deals with abetment of offence. Whoever abets any offence under this Act shall be punishable with the punishment provided for the offence.*

Here the question of abetment does not arise since the petitioner himself allegedly abused the 2nd respondent as 'Ore Lambadi Munda Kodaka' within public view. Therefore, the allegations would not attract the offence punishable under Section 10 of PCR Act.

13) The power of this Court under Section 482 Cr.P.C is limited and the Court has to look into the allegations made in the complaint and documents annexed to it, to find out whether those allegations if accepted in entirety, on its face value to constitute

the offence or not. In ***State of Karnataka vs M.Devendrappa***[1] the Apex Court while deciding an appeal preferred against the order passed under Section 482 of Cr.P.C. held that while exercising power under Section 482 of Cr.P.C. meticulous analysis of case to find out whether the case would end in conviction or acquittal is not necessary and placed reliance on ***State of Haryana v. Ch.Bhajan Lal***[2]. Therefore, quashing of proceedings on the ground that there is no direct evidence is not proper.

14) Learned counsel for 2nd respondent placed further reliance on ***Ghanshyam Sharma v. Surendra Kumar Sharma***[3] wherein the Apex Court held that the High Court cannot decide the provision under which the offence falls; it may be under the provisions cited in the impugned charge sheet or under the provision High Court felt was attracted, but it is for the trial Court to decide that on the evidence produced before it. Even if this principle is applied to the present facts of the case, still it is the duty of the respondent No.2 to make out a specific case to attract the offence punishable under Section 10 of PCR Act and Section 3 (1) (ii) (vii) of SC/ ST (POA) Act, but this Court cannot express its opinion that the allegations made in the complaint would attract particular offence and in view of the undisputed law declared by the Apex Court it is clear that this Court cannot conclude that the allegations made in the complaint would attract particular offences going into the material meticulously.

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[1] AIR 2002 SC 671
[2] AIR 1992 SC 604
[3] (2014) 13 SCC 401

15) Learned counsel for respondent No.2 further contended that the power under Section 482 Cr.P.C is to be exercised with care and sparingly, High Court has only to see whether allegations in complaint make out prima facie case. It has no power to examine truth and correctness of allegations. Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. To exercise powers under Section 482 of Cr.P.C. the complaint in its entirety shall have to be examined on the basis of the allegations made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same, but the offence ought to appear ex facie on the complaint. In support of his contention, he placed reliance on ***Medchl Chemicals and Pharma Private Limited v. Biological E.Limited***[4].

16) The principles laid down in Medchl Chemicals and Pharma Private Limited v. Biological E.Limited (referred supra) is identical to the principles laid down in ***Mrs. Dhanalakshmi v. R.Prasanna Kumar***[5] and there is no quarrel about law declared by the Apex Court and this Court cannot venture to examine the correctness or truth in the allegations made in the complaint. The

[4] AIR 2000 SC 1869
[5] AIR 1990 SC 494

same principle is also reiterated in ***State of Orissa v Saroj Kumar Sahoo***[6], wherein 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.

17) Thus, in view of the law declared by the Apex Court in the above judgments, this Court cannot express its opinion as to which offence these offences would constitute. If the allegations made in the complaint would constitute any of the offences under

[6] (2005) 13 SCC 540

the provisions of SC/ ST (POA) Act, the Court cannot quash the proceedings vide Bhajanlal (supra).

18) Therefore, I need not consider the allegations made in the statement recorded by police, during investigation, under Section 161 (3) Cr.P.C so also the statement recorded by learned Magistrate under Section 164 Cr.P.C and on the strength of such statements, this Court cannot quash the proceedings.

19) As discussed above, the complaint is bereft of two requirements except abusing the respondent No.2 within public view and it is not clear whether this petitioner intentionally insulted or humiliated him. Therefore taking into consideration of all the allegations made in the FIR on its entirety and its face value would not constitute an offence much less the offences punishable under Section 10 of P.C.R. Act and Section 3 (1) (ii) and 3 (1) (vii) of SC/ST (POA) Act.

20) Therefore, I find it is a fit case to quash the proceedings by applying the principle laid down in ***State of Karnataka vs L.Muniswamy***[7] wherein the Apex Court has laid down certain principles on the basis of which High Court has to exercise its jurisdiction under Section 482 Cr.P.C while holding that jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

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[7] (1977) 2 SCC 699

21) Hence, I find no ground to permit the 1st respondent to proceed further in Crime No.39 of 2011 of Jukkal Police Station, Nizamabad registered for the offences punishable under Sections 10 of P.C.R Act and Section 3 (1) (vii) of SC/ ST (POA) Act against this petitioner.

22) In the result, the Criminal Petition is allowed and the proceedings against the petitioner/ A.1 herein in Crime No.39 of 2011 of Jukkal Police Station, Nizamabad registered for the offences punishable under Sections 10 of P.C.R Act and Section 3 (1) (vii) of SC/ ST (POA) Act, are hereby quashed.

23) Consequently, miscellaneous petitions, if any in the Criminal Petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Dated: 12.04.2017
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9776 OF 2011

Date:12.04.2017

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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते