

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8862 OF 2013

ORDER:

This petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.135 of 2013 on the file of II Additional Judicial Magistrate of First Class, Tanuku, West Godavari District, registered against the petitioner and others for the offences punishable under Sections 324, 323 & 506 r/w 34 I.P.C.

The main contention of the petitioner is that, on the date of offence, the petitioner was attending to physical qualifying test (4 km run for men) conducted on 11.12.2012 at CRR Polytechnic College, Eluru, West Godavari District. Therefore, his presence at the time of offence that allegedly took place at 08:30 AM would not arise and thus, he pleaded *plea of alibi*, it is relevant under Section 11 of Indian Evidence Act.

During hearing, learned Public Prosecutor for the State of Andhra Pradesh produced a letter issued by the Deputy Commissioner of Prohibition & Excise, Eluru, West Godavari District to the Assistant Public Prosecutor, High Court, certifying that the petitioner has attended Physical Qualifying Test (4 km run for men) on 11.12.2012 at CRR Polytechnic College, Eluru, West Godavari District and the Deputy Commissioner also certified that the event was conducted batch-wise from 5:30 AM to 9:00 AM. It was also stated in the letter that the petitioner qualified in the said Physical Qualifying Test.

No doubt, it is clear that the petitioner participated in the Physical Qualifying Test on 11.12.2012 at Eluru and got qualified in the said test. Whereas, the offence allegedly took place in Malleswaram Village, Pervali Mandal, Tanuku at 08:30 A.M. In those circumstances, in view of the letter produced by the learned Public Prosecutor for the State of Andhra Pradesh, the presence of the petitioner in Malleswaram Village at 08:30 AM at the scene of offence is highly improbable. Further, the presence and participation of the petitioner in the alleged offence cannot be believed. Though, I am conscious about the scope of Section 482 Cr.P.C, that disputed fact cannot be decided while exercising inherent power under Section 482 Cr.P.C. But, in view of the submission made by the learned Public Prosecutor for the State of Andhra Pradesh and based on the letter issued by the Deputy Commissioner of Prohibition & Excise, Eluru, West Godavari District, the contention of the petitioner holding that the petitioner's presence at the time of offence is ruled out.

In ***State of Karnataka v. L. Muniswamy and Ors.***¹, the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind

¹ AIR 1977 SC 1489

a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

In **State of Haryana v. Bhajan Lal**² the Apex Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex 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.

² 1992 Supp. (1) SCC 335

(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.

(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 guideline no. 7, criminal proceedings cannot be allowed to be continued, as the proceedings are initiated to wreak vengeance by abuse of process of the law. Consequently, the proceedings are liable to be quashed, as lodging complaint against the petitioner is abuse of process of the Court to wreck vengeance against the petitioner.

In the result, the criminal petition is allowed by quashing the proceedings in C.C.No.135 of 2013 on the file of II Additional Judicial Magistrate of First Class, Tanuku, West Godavari District.

Consequently, miscellaneous petitions, if any, pending in this petition, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:26.04.2017

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