

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8915 of 2017

ORDER:

This Criminal Petition is filed, under Section 482 of the Code of Criminal Procedure, 1973, to quash the proceedings in Crime No.114 of 2017, dated 09.06.2017, pending on the file of the Police Station, Kulsumpura, Hyderabad, for the offences punishable under Sections 471, 506 r/w 34 IPC.

2. The 1st respondent lodged a complaint, dated 09.06.2017, with the Inspector of Police, Kulsumpura Police Station, alleging that he executed a lease deed in favour of one Krishna Murthy, who is the partner of M/s.Jai Darbar Maisamma Wines, represented by C.Yogeshwar Rao, S/o.C.Satyanarayana, for the premises bearing Municipal No.13-4-595/1/2, near Kamela, Jiyaguda in the year 2015. Recently, he came to know that C.Yogeswara Rao created forged lease deed said to have been executed by him in favour of M/s.Jai Darbar Maisamma Wines and submitted the same to the Excise Superintendent, Hyderabad. On the strength of the said complaint, the police registered the Crime referred above for various offences and issued FIR.

3. The present petition is filed on the ground that the 1st respondent himself admitted about execution of lease deed in favour of Krishna Murthy, who is none other than the partner of C.Yogeswara Rao, for letting out the premises bearing No.13-4-595/1/2, near Kamela, Jiyaguda and the alleged forgery of the lease deed by the petitioner does not arise and the allegations made in the complaint would not disclose commission of any offences

on its face value and thereby, the proceedings in Crime No.114 of 2017 are liable to be quashed. It is also contended that O.S.No.1350 of 2017 is pending on the file of IX Junior Civil Judge, City Civil Court, Hyderabad, restraining the respondents from illegally dispossessing the petitioner without following due process of law. Therefore, the dispute is with regard to the eviction of the tenant in occupation of the premises and the civil dispute is pending. The investigating agency cannot proceed against the petitioners for the offence punishable under Sections 471 and 506 r/w 34 IPC.

4. Heard the learned counsel for the petitioner at the stage of admission.

5. During the hearing, the learned counsel for the petitioner, while reiterating the above contentions, would draw the attention of this Court to the interim order, dated 07.06.2017, passed by the learned IX Junior Civil Judge, City Civil Court, Hyderabad, in I.A.No.300 of 2017 in O.S.No.1350 of 2017, whereby the 1st respondent was restrained from dispossessing the petitioner. He also would draw the attention of this Court to the lease deed allegedly executed by B.Narsing Rao, in favour of M/s.Jai Darbar Maisamma Wines, represented by its proprietor Yogeswra Rao, duly signed by his petitioner and the 1st respondent. On the strength of these two documents, he contended that when the 1st respondent himself executed lease deed, he cannot now contend that it is forged document.

6. This Court can exercise inherent power under Section 482 Cr.P.C. only when the allegations made in the complaint, if taken on its face value, would *prima facie* make out a case to proceed against

them for various offences allegedly committed by the petitioner or the Court finds that filing of a criminal complaint is an abuse of process of the Court.

7. 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. The 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.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

¹ 1992 Supp. (1) SCC 335

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.

8. In *R.P. Kapur v. State of Punjab*², this Court laid down the following principles:

(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;

(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.

9. There is nothing to show that the 1st respondent abused the process of the Court and on the other hand the allegations made in the complaint would disclose that he executed a lease deed in favour of Krishna Murthy, who is the partner of C.Yogeswra Rao, Proprietor

² AIR 1960 SC 866

of M/s.Jai Darbar Maisamma Wines, by letting out the property. The petitioner allegedly forged a lease deed and produced the same before the Prohibition and Excise Superintendent for obtaining licence for running the shop. Therefore, the 1st transaction i.e., execution of lease deed in favour of Krishna Murthy is admitted while denying the lease deed in favour of C.Yogeswra Rao, petitioner herein and contended that it is a forged document. Therefore, these two transactions are distinct and merely because Krishna Murthy obtained premises on lease and continuing in possession of the premises itself to conclude at this stage that the lease deed allegedly produced by he the petitioner before the Excise Superintendent is genuine. Even otherwise this court cannot go into the minute details at the stage of deciding application under Section 482 Cr.P.C. though it empowers this Court to exercise inherent power to prevent the abuse of the process of the Court. In the 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 Cr.P.C. It is not, however, necessary that there should be a meticulous analysis of the case before 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.

10. In the present facts of the case, there is nothing to establish *prima facie* case that the complaint is frivolous, vexatious or *mala fide* and on the other hand, the complaint discloses an offence punishable under Section 471 IPC. Even otherwise, the present stage in the crime is relevant, but investigation is not yet commenced and it is at fetus stage and in such a case this Court would not normally exercise inherent power under Section 482 Cr.P.C. When the investigation is not commenced and complete facts are not before this Court and hazy, this Court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings as held by the Apex Court in “*State of Orissa v. Saroj Kumar Sahoo*”³, 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

³ (2005) 13 SCC 540

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 material produced is sufficient or not for convicting the accused. Though no straight jacket formula can be laid down to exercise such jurisdiction. Hence, in the present case, when investigation is not yet commenced, it is difficult to conclude that the complaint was filed as abuse of process of Court, as such, I find no ground to quash the proceedings.

Accordingly, the Criminal Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed.

September 22, 2017
Lmv

JUSTICE M.SATYANARAYANA MURTHY

