

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6669 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in P.R.C.No.05 of 2016 on the file of Judicial Magistrate of First Class, Palamaner, arising out of Crime No.23 of 2015 of V.Kota Police Station, Chittoor District, registered for the offences punishable under Sections 193, 307, 384, 341, 419, 420, 494, 498, 504 and 506 read with 34 and 109 of Indian Penal Code (for short "I.P.C.") and under Section 12 of Contempt of Court Act, 1971 read with 156 (3) of Cr.P.C.

The respondent No.2, who is impleaded as per orders in CrI.P.M.P.No.10692 of 2016, is the defacto complainant and filed private complaint against the petitioners herein for the offences punishable under Sections 193, 307, 384, 341, 419, 420, 494, 498, 504 and 506 read with 34 and 109 of I.P.C. and the Magistrate referred the matter to the police under Section 156 (3) of Cr.P.C. for investigation and after investigation, police filed report dated 02.04.2015.

According to the allegations made in the charge sheet, accused Nos.1 to 6 have committed the offence punishable under Sections 193, 307, 384, 419, 420, 498, 109 and 506 read with 34 of I.P.C. as they have created false evidence, with intention to do away with the life of the complainant, wrongfully restrained the complainant by accused No.1 to 6 with the support of other accused Nos.7 to 11, extorted the amount by accused No.7, whereas accused Nos.1 to 7 at the instigation of other accused wilfully cheated the complainant, intentionally insulted and caused breach of peace, criminal

intimidation with the common intention, at the instigation of other accused Nos.7 to 11, thus the accused allegedly committed offence punishable under Sections 193, 307, 384, 341, 419, 420, 494, 498, 504 and 506 read with 34 and 109 of I.P.C.

Investigating Agency came to such conclusion based on the statements of L.Ws.1 to 8 recorded by the police under Section 161 of Cr.P.C. during investigation. But the petitioners herein though challenging the charge sheet did not place on record the statements recorded by the police during investigation and other material for verification of the Court as the statements recorded by the police and other material form part of final report filed under Section 173 of Cr.P.C., to decide whether the conclusion of the investigating agency is based on any material or not? In the absence of such material, it is difficult for this Court to quash the proceedings at this stage.

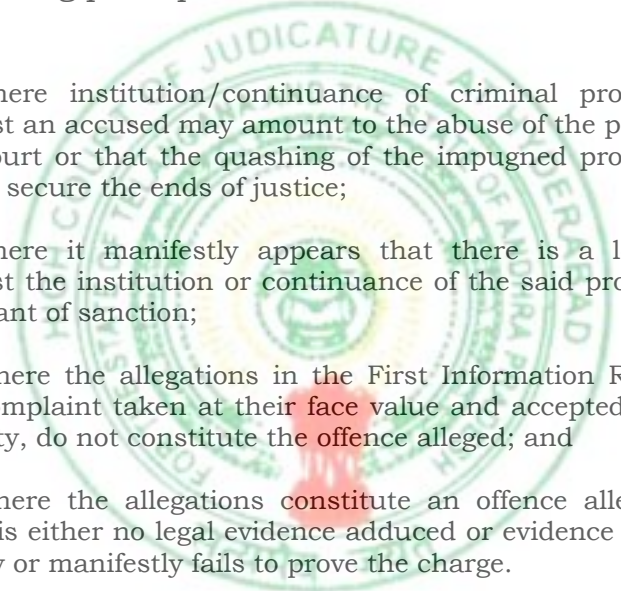
The main contention of the learned counsel for the petitioners is that accused No.1 is employee in Infosys, accused Nos.4 to 5 are residents of Karnataka State, accused Nos.6 and 11 are the residents of Chittoor District, accused Nos.7 to 10 are residents of Hyderabad, hence they are no way concerned with the offence and they were falsely implicated in the present case.

Virtually, the plea raised by the learned counsel for the petitioners is "alibi" and the evidence to be adduced to prove that the petitioners are not present at the scene of offence and as they were present somewhere else, there is no possibility of their presence at the scene of offence is a question of fact to be decided at the end of trial though such fact is relevant under Section 11 of the Evidence Act. But at this stage, it is difficult to quash the proceedings on the sole ground of alibi, which is a disputed question of fact to be decided.

It is also contended that about 20 cases were registered on the complaint made by the respondent No.2, hence the petitioners are suffering both financially and physically. But that by itself is not a ground to quash the proceedings at this stage.

The jurisdiction of this Court under Section 482 of Cr.P.C. is limited, this Court can exercise such power only to give effect to any order passed under the Code or to prevent abuse of process of Court or to meet the ends of justice.

In “**R.P. Kapur v. State of Punjab**”¹, the Apex Court laid down the following principles:

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- (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.

Later, in “**State of Haryana v. Bhajan Lal**”² the Apex Court considered in detail the powers of High Court under 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

¹ AIR 1960 SC 866

² 1992 Supp (1) SCC 335

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 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.

According to guideline Nos. 2, 3, 4, 5 and 7 formulated in “**State of Haryana v. Bhajan Lal**” (referred above), if the

allegations made in the charge sheet or F.I.R., taken on their face value, would not constitute any offence or absurd or if the charge sheet is filed to wreck vengeance against the accused, abusing process of the Court, the Court may exercise the inherent jurisdiction under Section 482 of Cr.P.C.

Moreover, in the present case, it is the contention of the petitioners that they were not present at the scene of offence at the time of offence and as they were present somewhere else, there is no possibility of their appearance at the scene of offence; such disputed question of fact cannot be decided at this stage.

Therefore, I find no ground to quash the proceedings in P.R.C.No.5 of 2016 on the file of Judicial Magistrate of First Class, Palamaner at this stage. Consequently, the petition is liable to be dismissed as it is devoid of merits.

In the result, the petition is dismissed. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

04.12.2017

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