

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8250 of 2017

ORDER:

This petition is filed under Section 482 of the Criminal Procedure Code to quash the proceedings in Crime No.286 of 2017 of Tirupathi East Police Station, Tirupathi Urban District, registered for the offences punishable under Sections 307, 497 IPC and Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act), against petitioner based on the report dated 15.07.2017 lodged by the 2nd respondent.

2. It is alleged in the report that he is a member of the scheduled caste and his wife is working at Alipiri Tollgate as Security Guard and that the petitioner-Sabarinath allegedly developed illicit intimacy with the 2nd respondent's wife in his absence at his residence and when he was on duty, the petitioner used to stay with his wife and when he questioned about the same, the petitioner attacked him with a knife to kill him, while abusing him by raising his caste viz. 'oraye malanakodaka', but he averted the said incident. As such the petitioner allegedly committed the offence punishable under Section 3(1)(r) of the Act.

3. The main contention of learned counsel for the petitioner is that the alleged incident of abusing in the name of caste is not within the public view and thereby, it would not attract the offence punishable under Section 3(1)(r) of the Act. An allegation is also made that he attempted to kill the petitioner by raising his caste name and the same is not based on any material and prayed to quash the proceedings.

4. No doubt, the allegations made in the report lodged with the police that the incident allegedly occurred is at his residence and the presence of any persons was not stated. Taking the absence of presence of any other persons, he lodged report with the police and contended that it is not within the public view. The complaint is only an intimation to the police about the commission of cognizable offence, to set the criminal law into motion. The complaint need not contain the minute particulars since it is not encyclopaedia of facts. Therefore, mere failure to state that the insult is within the public view and the report lodged with the police to set the criminal law into motion is not a ground to quash the proceedings at this stage, for the offence punishable under Section 3(1)(r) of the Act.

5. The other contention raised by learned counsel for the petitioner is that there is no allegation against this petitioner that he made an attempt to kill him, but this contention is without any basis. In fact, in the complaint itself, he specifically stated that the 2nd respondent went to duty on 08.07.2017 at about 08.30 p.m and returned home and saw his wife and the petitioner in the house, then the petitioner tried to attack the 2nd respondent with knife saying 'orey malanakodaka kill you', and he tried to kill and later, the petitioner locked them in the house. The specific allegation against the petitioner is sufficient to constitute an offence *prima facie* punishable under Section 307 IPC. Therefore, at this stage, it is difficult to quash the proceedings.

6. The power of this Court under Section 482 Cr.P.C can be exercised sparingly in exceptional circumstances to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In **State of**

Haryana v. Bhajan Lal¹, the 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.

(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

¹ 1992 Supp. (1) SCC 335

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.

7. If guidelines 2 and 3 are applied to the present facts of the case, there is material on record to show that *prima facie* the petitioner allegedly committed such offence, that too it is not appropriate stage to quash the proceedings as the power under Section 482 Cr.P.C. should not be exercised by the High Court to stifle the legitimate prosecution, in view of law declared by the Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**²” 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

² (2005) 13 SCC 540

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.

8. In “***Kurukshetra University v. State Of Haryana***³”, the Supreme Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C and observed as follows:

“It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Cr.P.C, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

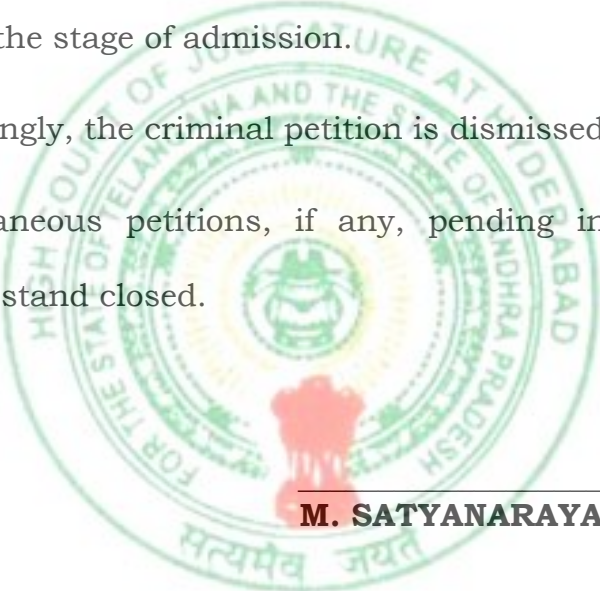
9. Therefore, in view of the law declared by the Apex Court in both the judgments referred supra and when investigation is foetus stage, this Court cannot interfere with the process of investigation

³ AIR 1977 SC 2229

and quash the proceedings by exercising inherent power under Section 482 of Cr.P.C. That apart, in the present case, there are specific allegations in the report lodged with the police to attract offence punishable under Section 307 IPC and with regard to the offence punishable under Section 3(1)(r) of the Act, there is no allegation that the insult was within the public view. At this stage, this Court cannot express any opinion since the investigation is not yet commenced. Therefore, I find no merit in the contention raised by learned counsel for the petitioner to quash the proceedings and consequently, the criminal petition is liable to be dismissed at the stage of admission.

10. Accordingly, the criminal petition is dismissed.

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



M. SATYANARAYANA MURTHY, J

04.12.2017
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