

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10365 OF 2016

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in Crime No.286 of 2015 on the file of Chaitanyapuri Police Station, Ranga Reddy District.

The facts of the case are that on 05.05.2015 at 14:00 hrs, the second respondent/Sub Inspector of Police, Chaitanyapuri Police Station, Ranga Reddy District conducted a surprise check on the premise, receiving an information that prostitution was going on in the house of the first petitioner bearing Flat No.301, Lakshminarasimha Nilayam, Chaitanyapuri and found that the petitioners 1 & 3 involved in sexual intercourse. On examination, the first petitioner revealed that as her husband went to Bahrain, she was staying along with her two sons in the said flat for the past three months. She also stated that the prostitution was organized by the second petitioner to meet their financial needs. Panchanama was conducted and an amount of Rs.15,000/- and three cell phones were seized. Based on the complaint Crime No.286 of 2015 was registered on the file of Chaitanyapuri Police Station under Section 3,4 & 5 of The Immoral Traffic (Prevention) Act, 1956 (for short 'Act').

The only contention before this Court is that the Sub Inspector of Police is incompetent to raid the first petitioner's house under Sections 5, 6 & 15(2) of the Act and thus, he has violated the procedure prescribed under the Act.

Learned Public Prosecutor supported the case of the respondents.

According to Section 15(2) of the Act, the Special Police Officer or the trafficking police officer, as the case may be, shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do.

Subsection (4) of Section 15 states that the Special Police Officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein.

But, Subsection (5) of Section 15 states that the Special Police Officer or the trafficking Police Officer, as the case may be, after removing the person under sub-section (4) shall forthwith produce him before the appropriate Magistrate.

According to Section 13 of the Act, 'Special Police Officer' and 'Advisory Body' are defined as follows:

1. There shall be for each area to be specified by the State Government in this behalf a Special Police Officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.
2. The Special Police Officer shall not be below the rank of an Inspector of Police.

But here, the second respondent who conducted a raid in person after securing mediators is not a Special Police Officer

appointed by the Government. Therefore, he is incompetent to conduct such raid. Further, in view of the mandate provided under Section 15 of the Act, that only a Special Police Officer or a trafficking Police Officer appointed by the Government are alone authorized to conduct the search and seizure of the premises, as such the second respondent has exceeded his jurisdiction.

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. This 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

¹ 1992 Supp. (1) SCC 335

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 the present case, an incompetent person conducted a search and lodged complaint. In view of the guideline no.6 laid down in the above judgment, the proceedings are liable to be quashed.

In the result, the criminal petition is allowed by quashing the proceedings in Crime No.286 of 2015 on the file of Chaitanyapuri Police Station, Ranga Reddy District.

Consequently, miscellaneous petitions, if any, pending in this Petition shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

04.01.2017
SP