

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 7814 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings in C.C.No. 23 of 2017 on the file of the Court of II Additional Judicial Magistrate of I Class, Bhimavaram, West Godavari District (for short, 'the Court below').

2. Respondent No. 2 – Danthuluri Atchyutharamaraju (L.W.1) filed a private complaint before the Court below raising several contentions mainly contending that he is in peaceful possession and enjoyment of the land in an extent of Ac. 2.38 cents; that the petitioners trespassed into his land and openly proclaimed that rowdies from Telangana State would take away his head and the head of his tenant Chinimilli Ravi Kumar (L.W.2); that they also tried to obtain signatures of L.W.1 on a blank whitepaper forcibly and on shouting for help, one Mandru Yesuraju (L.W.5) and some others came to his rescue; that on seeing them, the petitioners fled away and that therefore the petitioner committed offence punishable under Sections 384, 447, 506 (2) read with Section 34 of the Indian Penal Code (for short, 'I.P.C.'). The Court below, instead of taking cognizance, referred the complaint to the Station House Officer, Undi Police Station, by exercising power under Section 156 (3) Cr.P.C. On the basis of reference, the police registered a case in crime No. 135 of 2016, issued F.I.R. and investigated into the matter. During the course of investigation, the police examined as many as seven witnesses, recorded their statements under Section 161 Cr.P.C. and collected evidence. After completion of investigation, charge sheet was filed against the petitioners for the offence punishable under Sections 447 and 506 (2) read with Section 34 I.P.C.

3. The present petition is filed under Section 482 Cr.P.C. on the grounds that the dispute regarding possession is pending on the file of this Court and this Court granted an *interim* order directing both parties to maintain *status quo* but L.W.1 filed the present complaint without any basis; that fixing a board that the land is subject matter of a civil litigation does not amount to criminal trespass and that civil proceedings are converted into criminal by abusing the process of law.

4. During hearing, Sri S.R.Sanku, learned counsel for the petitioners, would contend that when A.S.No. 405 of 2016 is pending and obtained *interim* stay *vide* orders dated 20-06-2016 in A.S.M.P.No. 923 of 2016, question of the alleged trespass would not arise and there is nothing on record to establish *prima facie* that the petitioners committed any offence and therefore prayed this Court to quash the proceedings.

5. Sri K.Sairam Murthy, learned counsel for respondent No. 2, contended that petitioner No. 1 filed O.S.No. 134 of 2012 on the file of the Court of III Additional District Judge, Bhimavaram (for short, 'the trial Court'), against his mother and another for specific performance of agreement of sale dated 07-01-1992. The said suit was dismissed holding that respondent No. 2 is in possession and enjoyment of the property for the last ten years from the date of purchase and disbelieved the possession of petitioner No. 1. Aggrieved thereby, petitioner No. 1 filed the abovementioned appeal before this Court. When the trial Court found that respondent No. 2 is in possession and enjoyment of the subject property, fixing a board and threatening to take away the heads of respondent No. 2 and his tenant would certainly constitute the offence punishable under Sections 447 and 506 I.P.C. and therefore requested to dismiss the petition.

6. Considering rival contentions and perusing the material available on record, the point that arises for consideration is

"Whether the allegations made in the charge sheet on their face value would constitute the offence punishable under Sections 447 and 506 read with Section 34 I.P.C., if not, whether the proceedings in crime No. 135 of 2016 of Undi Police Station are liable to be quashed?"

7. The facts narrated hereinabove, more particularly the allegations in the charge sheet about commission of offence, are sufficient to constitute the offence punishable under Section 447 I.P.C. for the reason that the trial Court after full-fledged trial in O.S.No. 134 of 2012 recorded a specific finding that petitioner No. 1 failed to establish his title against the vendor of respondent No. 2 and held that respondent No. 2 is in possession and enjoyment of the subject property for the last ten years prior to filing of the suit and disbelieved the case of petitioner No. 1. When this Court directed both parties to maintain *status quo* in A.S.No. 405 of 2016, the findings in O.S.No. 134 of 2012 remain undisturbed. In any view of the matter, at the stage of deciding petition under Section 482 Cr.P.C., this Court is required to go into the final report filed under Section 173 Cr.P.C. and statements filed along with documents to find out whether *prima facie* case is made out. Curiously, learned counsel for the petitioners did not produce any statements recorded by the police during investigation including evidence collected by the investigating agency. Moreover, learned counsel for respondent No. 2 filed copy of the complaint lodged with the police and statements of the witnesses recorded by the police under Section 161 Cr.P.C. during investigation. The consistent statement of respondent No. 2 clearly discloses that the petitioners along with others came to the scene of offence on the date of alleged occurrence, trespassed into the land, fixed a board that the schedule land is subject matter in litigation pending before this Court and

threatened that rowdies from Telangana State would take away the heads of respondent No. 2 and his tenant. Such threat and trespass would directly amount to the offence of criminal intimidation and criminal trespass as defined under Sections 503 and 441 I.P.C. respectively *prima facie*.

8. The powers of this Court under Section 482 Cr.P.C. are limited and this Court can exercise such powers only to implement the orders passed under the code or to prevent abuse of process of law or to meet the ends of justice. The Apex Court in ***State of Haryana Vs. Bhajanlal***¹ laid down seven guidelines which are as follows:

- "(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*

¹ 1992 Supp. (1) SCC 335

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."*

As per guidelines 2 and 3, if the allegations made in the complaint if taken on their face value would not constitute any offence, the Court may exercise power and quash the proceedings. Similarly, as per guideline No. 7, if the Court finds that the allegations made in the complaint are to wreak vengeance against the accused as an abuse of process of the Court, the Court may exercise such power to curtail the proceedings at the threshold. In the case on hand, there are civil disputes between the parties to the proceedings. According to learned counsel for the petitioners, the motive behind filing the private complaint is an arm twisting method to bring the petitioners to their terms and when the complaint is motivated, the Court can exercise power and quash the proceedings. Whereas learned counsel for respondent No. 2 contended that the petitioners trespassed into the subject land taking advantage of *interim* order only to deprive the enjoyment of the property by respondent No. 2. Motive is a double edged weapon and it can be used either to foist a false case or to commit such an offence and it is not a substantive piece of evidence. Based on such alleged motive attributed by one to the other, it is difficult to exercise power under Section 482 Cr.P.C. to quash the proceedings.

9. On overall analysis of the material available on record, I find no material to exercise inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings in C.C.No. 23 of 2017 on the file of the Court below. Consequently, the petition is liable to be dismissed.

10. The criminal petition is accordingly dismissed at the stage of admission. At the end, learned counsel for the petitioners requested this Court to dispense with the appearance of petitioner Nos. 2 and 4 as they are women but this Court while exercising power under Section 482 Cr.P.C. cannot pass such an order. Petitioner Nos. 2 and 4 are permitted to file an application either under Section 205 Cr.P.C. or under Rule 37 of Criminal Rules of Practice and Circular Orders to dispense with their appearance before the Court below. If such an application is filed, the Court below is directed to dispose of the same in accordance with law. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 24-11-2017.

JSK

M.SATYANARAYANA MURTHY, J.