

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION No.1455 of 2017****ORDER:**

This Criminal Petition under Section 482 Cr.P.C. is filed to quash the proceedings in C.C.No.216 of 2010 pending on the file of Judicial First Class Magistrate, Amalapuram, East Godavari District, registered for the offences punishable under Sections 452, 352, 427 and 506 IPC.

Respondent No.2/*de facto* complainant lodged a report with police alleging that the petitioner abused him as "Antira Vaguthunnavu Champesta Lanja Kodaka" and pulled him out and then Lws. 2 and 3, who were working in his printing press, rescued him from the hands of the petitioner and that the petitioner threatened him with dire consequences in case he does not vacate the premises bearing No.8-4-2/2 at Machiraju Street, Amalamaram, belonging to Guda Sita Ramanjaneyulu, the brother of the accused, and different suits are pending before different Courts, but the act committed by the petitioner i.e., threatening to get the complainant vacated from the schedule premises with dire consequences uttering the words stated above would constitute an offence, according to the respondent No.2/complainant.

On the strength of the report given by the complainant, the SHO registered a case in Cr.No.61 of 2010 against this petitioner for the offences 452, 352, 427 and 506 IPC and issued FIR against this petitioner. The Sub Inspector of police took up the investigation and during course of investigation, he examined Lws. 1 to 6, recorded the statements of the witnesses under Sections 161 Cr.P.C. and after

completion of entire investigation, filed charge sheet before the concerned Court in the year 2010.

It is the contention of the petitioner in person is that the petitioner is a practising advocate at Amalapuram and other Courts and on the date of incident, he was readily available in the Principal Junior Civil Judge's Court and filed a suit with out of Order, but without filing an application for grant of interim injunction Order Section 39 Rules (1) & (2) C.P.C and the Prl. Junior Civil Judge returned the plaint raising an objection as to the maintainability of the suit and the petitioner allegedly took back the plaint duly signing in the concerned register at 4.15 pm and thereby the question of his appearance at the scene of offence and committing such an act i.e., threatening the complainant with dire consequences to vacate the premises by the complainant and abusing him does not arise.

During hearing, petitioner in person reiterated the contention that he was physically present in the Court and virtually raised a plea of alibi and whatever material produced before this Court to establish that he was present in the court at the time of incident is relevant under Section 11 of Evidence Act. At best, to accept the plea of alibi, the burden of proof is on the petitioner to prove that he was present somewhere else and not possible for him to appear at the scene of offence. Therefore, the plea of alibi is purely a disputed question of fact and such question cannot be decided while exercising power under Section 482 Cr.P.C., as the powers of this Court are limited to give effect to the orders passed by the trial Court and to prevent abuse of process of law or to secure the ends of justice. Keeping in view, the

scope of Section 482 Cr.P.C., the Apex Court in *State of Haryana v. Bhajanlal*¹, laid down the following seven guidelines:

(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 uncontroverted 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 and 3, the Court can exercise inherent jurisdiction to quash the proceedings, if the allegations made in the FIR or in the complaint did not disclose the facts to constitute an offence *prima facie*; or, the allegations made in the complaint or FIR are highly improbable.

The petitioner raised a special plea of alibi, which is a disputed question of fact, and such disputed question of fact has to be decided only during the course of trial either by eliciting something in the cross examination of prosecution witnesses or by adducing independent evidence, but, at this stage, on the ground of alibi, the proceedings cannot be quashed as it is a purely disputed question of fact.

¹ 1992 Supp (1) SCC 335

The Calender Case is of the year 2010 and the petitioner being an Advocate protracted the proceedings for more than seven years for one reason or the other and it is a Pre-2012 matter and in view of the guidelines issued by the Apex Court on judicial side and the circulars issued by this Court in terms of the judgment, the Magistrate is directed to dispose of this Petition as expeditiously as possible, in any event not less than three months from the date of receipt of a copy of this Order.

Accordingly, this Criminal Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 14.12.2017

Note: Issue C.C. by 21.12.2017.

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