

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Petition No.1108 of 2011

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, ('the Code', for short), is filed by the petitioners-A1 to A4 requesting to quash the proceedings against them in PRC.No.1 of 2011 on the file of the Court of the learned X Additional Sessions Judge, Machilipatnam.

2. I have heard the submissions of *Sri T.D.Pani Kumar*, learned counsel for the petitioners-A1 to A4, and of the learned Public Prosecutor (AP) representing the 1st respondent-State. The 2nd respondent-party-in-person was called absent on 10.08.2017, 17.08.2017 and 07.09.2017; and, no submissions are made by her in the matter.

3. The case of the petitioners-A1 to A4 in support of the request made in this petition, in brief, is this: - 'Sri Varalakshmi Polytechnic College is a private unaided polytechnic institution. The petitioners are the Principal, Secretary, Correspondent and Office Superintendent of the said institution. On the report of the 2nd respondent/informant/LW1 [hereinafter, 'informant/LW1'], the case in Crime No.119 of 2009 was registered by the Station House Officer, Chilakapaudi Police Station, on 16.06.2009, against the petitioners-A1 to A4 for the offences punishable under Section 3(i)(ix)(x) and (xi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 ['the Act', for short]. After investigation a charge sheet was filed opining that, on 15.06.2009, the informant/LW1 along with Meka Gangadhara Rao, Bedipogu Gopi Krishna, Md.Mesan, LWs4 to 6, approached the petitioners-A1 to A4 and requested to issue first year marks list of her son, P.Uday Bhaskar/LW3, who appeared for examinations in three subjects in the month of April, 2008 and that at that time, the petitioners-A1 to A4 instead of telling the truth abused

her (LW1) by touching her caste and humiliated and pushed her from the chamber of A1 in the presence of LWs.4 to 6 and that the petitioners-A1 to A4 committed the offences aforementioned. The averments in the report of LW1 as well as the charge sheet are invented and false. LW3, the son of the informant/LW1 has joined the institution, on 22.06.2007. The classes commenced from 26.07.2007. He attended the college on 09.07.2007. He was very irregular in attending to classes and secured only 51% of attendance. Hence, he was kept in the detained list along with the other such students having less attendance. The husband of LW1, that is, the father of LW3 made a false complaint to the District Collector alleging that LW3 is having full attendance. The leaders of SCs & STs community made dharna before the District Collector, Machilipatnam, to cancel the detained list of 66 students and enquiry was ordered by the Collector. The District Welfare Officer visited the institution and inspected the attendance register and concluded that there is no fault of the institution in recording the attendances of the students. The father of LW3 made a complaint under Human Rights Act to the learned Additional District Judge-cum-Special Judge, Machilipatnam, to direct the institution to issue hall ticket and permit LW3 to write the examination. The said petition was rejected as not maintainable. The informant/LW1 and her husband and their son-LW3 threatened the 1st accused that they will commit suicide. Therefore, A1 lodged a report with the police station, Chilakalpudi, on 25.03.2008. Thereafter, LW3 filed a writ petition in W.P.No.6979 of 2008 before this Court and obtained *ex parte* interim orders for securing hall ticket and for attending the remaining examinations of the first year. However, this Court directed not to declare result pending disposal of the writ petition. As directed in the writ orders, LW3 attended some of the 1st year examinations. Subsequently, in the first week of June, 2008, the institution filed its counter. In that writ petition a number of miscellaneous petitions were filed and ultimately the writ petition was dismissed, on 17.02.2009, as withdrawn, by

granting liberty to approach a Civil Court. On 30.03.2009, the informant/ LW1 came to the institution and caused nuisance and obstructed the students who attended the institution to write the examinations. Therefore, A1 made a complaint against her. During the pendency of the writ petition also, the informant/ LW1 tried to bring political pressure on the management of the institution. After dismissal of the writ petition, the informant/ LW1 approached the Deputy Superintendent of Police, Krishna District, for issuance of marks memo of her son. In spite of the orders of the High Court in the writ petition not to declare the result, the Superintendent of Police and Deputy Superintendent of Police called the 1st accused and brought pressure upon him to issue marks memo to LW3. In fact the accused are no way concerned with marks and declaration of results. Secondary Board of Technical Education is the competent authority to issue marks list. In the circumstances, A1 made a representation to the said Board. The Secretary of the Board intimated the institution that the declaration of the result of LW3 does not arise. The same was intimated to the Superintendent of Police and Deputy Superintendent of Police and also the informant/ LW1. Despite the said facts, the Superintendent of Police and Deputy Superintendent of Police called the 1st accused every day and threatened that they will lodge a criminal case against him if the result is not released. Then the 1st accused made a representation to the Deputy Superintendent of Police, on 10.06.2009, and intimated that the informant/ LW1 is pressurising to issue marks list of her son and is threatening to lodge a false complaint under the provisions of the Act and requested the police to advise the informant/ LW1 and her husband to approach appropriate forum. Thereafter, the present false report was lodged by the informant/ LW1. The provisions of the enactment which was passed with avowed objective are being misused for obtaining the marks list of the Son (LW3) of the informant/ LW1. The date of the alleged incident is not disclosed in the complaint/ report. The contents of the report are vague. The alleged incident

has not taken place in public view. The elements of the penal provisions are not attracted to the case on hand.'

4. The informant/ LW1 has not filed any counter.

5. Learned counsel for the petitioners advanced arguments in line with the pleadings of the petitioners-A1 to A4.

6. Learned Public Prosecutor brought to the notice of this Court the contents of the report of the informant/ LW1 and the charge sheet.

7. I have given earnest and thoughtful consideration to the facts and submissions. The son of the informant/ LW1, that is, P.Uday Bhaskar (LW3) secured a seat in reserved quota in Sri Varalakshmi Polytechnic Institution, Chilakalapudi. It is appropriate to note that the case of the informant/ LW1 is this: - 'The seat was allotted to some other person but with great difficulty the son of the informant/ LW1 obtained the seat at the intervention of the District Collector. Therefore, the management of the institution bore grudge against the son of the informant/ LW1. In the said circumstances, the informant/ LW1 and her son/ LW3 applied for transfer certificate, no objection certificate, caste certificate and conduct certificate of LW3. At the time of issuing the said certificates they were abused by their caste. Later, LW3-the son of the informant/ LW1 was admitted in Gudlavalleru college. He completed second year and entered third year. When the informant/ LW1 went to the institution for securing the marks list of her son/ LW3, she was abused by saying that necessary certificates were already issued to her son to pursue education; and, she was abused by saying 'malana kodakallara, meeke intha ahankaramu vunte agravarnamulalo putti oka samsthaku adhipatini ina nenu raji padatana Courtlo kuda meeku vyatikerakamuga chesi ikkada civil courtku marchi mimmulani ibbandupalu chestanu'. (The above sentence in inverted commas is the transliteration of Telugu version of the abuses etcetera). Then the

informant/ LW1 pleaded not to play with her son's life and fell on their feet. Then they stated that if the informant/ LW1 touches them they will be polluted and further humiliated them and stated that they are untouchables. They also stated that they have given certificates to merely enable the son of the informant/ LW1 to pursue second year; but, they will see to cause all possible damage to their lives. The principal, correspondent and Secretary insulted them. Her son was subjected to discrimination and, therefore, her son suffered mental agony and used to say that it is better to die. Even without caring that the informant/ LW1 is a lady, the Principal, Correspondent, Secretary and Office Superintendent came upon her and pushed her out with their hands. Without giving marks list for two years and they harassed the dalit family of the informant/ LW1. They must be arrested immediately. After the son of the informant/ LW1 entered third year, the Principal of the institution informed that he (LW3) was detained. Earlier no such information was furnished. All these acts are being done as the informant/ LW1 and her son are dalits. They are proclaiming that wherever the informant and her son go they will make bad propaganda against them and that the informant and her son cannot do anything to them and that they will see that the work of the informant/ LW1 and her son LW3 will not be done.'

8. Learned counsel for the petitioners, while submitting the chronology of events, which are stated in the case of the petitioners and which are already stated supra, and while pointing out the contents of the first information report which are also stated supra, would submit that the said report on the face of it makes it manifest that the report was filed with false averments only to harass the accused, who discharged their lawful duties being in the management of the institution, and that the said report is motivated and is intended to pressurise the accused and make them yield to the illegal demands of the informant/ LW1 and her son/ LW3 and that the informant/ LW1 is misusing the provisions of the enactment to achieve her ends and wreck vengeance as

the petitioners-accused merely discharged their duties and put the name of the son of the informant/ LW1 in the detained list of the students who secured less attendance.

9. Before proceeding further, it is profitable to refer to the undisputed legal position obtaining. A charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him under a particular penal provision of law. In case the prosecution fails in its primary duty to show a *prima facie* case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith under Section 227 CrPC. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge or at the time of considering the request made by the accused for quashing the proceedings, the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others* [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In *Union of India v. Prafulla Kumar Samal and another*

[1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

9.1 As per Section 2(a) of the Act, 'atrocities' means an offence punishable under Section 3. According to Oxford English Reference Dictionary, 'atrocities' means an extremely wicked cruel act especially one involving physical violence or injury. As per the provisions of the Act, an act or omission on the part of a person, who does not belong to Scheduled Caste or Scheduled Tribe, will fall within the definition of atrocities if the same is punishable under Section 3. It is necessary to refer to Section 3 of the Act, which reads as under:

Section 3-Punishments for offences of atrocities

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-
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(i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;

(ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

(iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

(vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government; (vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) gives any false or frivolous information to any public servant, and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Caste or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-
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(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a

Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

10. All the allegations in the complaint even if taken into consideration make it manifest that the date, time and place of incident are not stated in the report. Even in the charge sheet, the time of the alleged offence is not mentioned. But, it is stated that the alleged incident occurred in the chambers of A1 in the presence of LWs 4 to 6. The investigating officer did not examine any member of staff of the institution except LWs 4 to 6, who are alleged to be present at the time of the incident. Even in the report, the informant/ LW1 did not make a mention of the names of LWs 4 to 6 and did not state that they were present along with her at the time of the alleged incident. Therefore, the ingredients of the information lodged with the police which is vague and lacks

in material particulars and the contents of the charge sheet taken on their face value do not satisfy the constituents of the penal provision and there is no material brought on record to *prima facie* show that the accused intentionally insulted or intimidated with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. On the other hand it is manifest that they discharged their official duties. A perusal of the charge sheet also discloses that LW3 the son of the informant/LW1 attended engineering maths examination, on 02.04.2008; Physics examination, on 04.04.2008; and Chemistry examination, on 09.04.2008; and, his result was withheld by State Board of Technical Education and Training, A.P., Hyderabad, till the date of the filing of the charge sheet. The said aspect discloses that there is no justification on the part of the informant/LW1 in demanding the institution to furnish the marks list when the State Board of Technical Education and Training, A.P., withheld the result of LW3-the son of the informant/LW1. From time to time the accused, while discharging their duties, furnished the necessary information to the District Collector and the Police officers concerned; and, further, A1, the Principal, lodged Reports from time to time complaining about the acts of nuisance and harassment and also stated about threats being given by the informant-LW1 and her family to involve the accused in false criminal cases. The investigation revealed that the information that was furnished is correct and the charge sheet also reflects that result of LW3, the Son of LW1, was withheld by State Board of Technical Education and Training, A.P. Hyderabad, and the Secretary of the Board intimated the institution that the declaration of the result of LW3 does not arise. Hence, the facts borne out by record on wholesome consideration disclose that the petitioners-accused - never furnished false or frivolous information to any public servant, and thereby caused such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe; intentionally insulted or intimidated the

informant/LW1 with intent to humiliate her, she being a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; or assaulted or used force to the informant/LW1 with intent to dishonour or outrage her modesty. On the other hand the accused gave correct information to the District Collector and Police officers and it turned out after investigation that the information furnished was correct. Further, the accused furnished all certificates viz., transfer certificate, no objection certificate, caste certificate and conduct certificate of LW3 long before the present alleged incident and they could not furnish the marks list for valid reasons stated by them, which are supported by the result of investigation. On consideration of the entire gamut of the matter right from the inception, i.e., from the time of mentioning of the name of LW3, the Son of the informant-LW1 in the detention list of students, who did not have required percentage of attendance, and till the lodging of the report by the informant-LW1 the said report makes it abundantly clear that there is strong motive for the informant-LW3 and that with that motive behind, the report was filed with false averments only to harass the accused, who discharged their lawful duties being in the management of the institution and that the said motivated report is intended to pressurise the accused and make them yield to the illegal demands of the informant/LW1 and her son/LW3 and that the informant/LW1 is misusing the provisions of the enactment to achieve her ends and wreck vengeance as the petitioners-accused merely discharged their duties and put the name of the son of the informant/LW1 in the detained list of the students who secured less attendance. Thus, on consideration of the allegations in the report and the contents of the charge and that of the supporting material on their face value, it is noticeable that there is no material or semblance of evidence or a *prima facie* case, much less a strong case to frame a charge and proceed against the petitioners-A1 to A4 and therefore, the request made in the petition by the petitioners-Accused 1 to 4 deserves due consideration.

11. It is necessary to refer to the ratios in the following precedents wherein the Supreme Court laid down the indicia with regard to the power under Section 482 of the Code that may be exercised by the High Court.

The Supreme Court in *R.P. Kapoor v. State of Punjab*¹, held as follows:

“Cases may also arise where the allegations in the F.I.R. or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged. In such cases, no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.”

In *State of Haryana v. Bhajanlal*² the Supreme Court after having analysed the entire case law on the subject point has laid down certain indicia with reference to which, a High Court may in exercise of powers under Article 226 of the Constitution of India or under Section 482 Cr. P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice.

In *State of Karnataka v. L. Muniswamy*³, the Supreme Court observed that the wholesome power under Section 482 Cr. P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed.

A Bench of three Hon'ble Judges of the Supreme Court in *Inder Mohan Goswami v. State of Uttaranchal*⁴, after examining the scope of Section 482 of the Code, observed that inherent powers under Section 482 should be exercised for the advancement of justice and that if any abuse of the process leading to

¹ 1960 AIR 862

² 1992 AIR 604

³ 1977 AIR 1489

⁴ (2007) 12 SCC 1

injustice is brought to the notice of the Court, then the Court would be fully justified in preventing injustice by invoking the inherent powers of the Court.

11. This Court examined the entire issue involved keeping in view the limited scope of interference and the restricted ambit of jurisdiction and also the precedential guidance in the above decisions and the decision in *State of Rajasthan v. Fatehkaran Mehdu*⁵. On consideration of the broad probabilities of the case, this Court holds that the petitioners-A1 to A4 made out valid and sufficient grounds and that allowing the criminal proceedings to continue would be an abuse of the process of the court and that the ends of justice require that the proceedings against the petitioners-A1 to A4 ought to be quashed.

12. In the result, the Criminal Petition is allowed and the proceedings against the petitioners-A1 to A4 in PRC.No.1 of 2011 are quashed. Their bail bonds, if any, shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

15.09.2017
Vjl

M. SEETHARAMA MURTI, J

⁵ 2017 (1) ALD (Crl) 842 (SC)