

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10216 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in F.I.R No.136 of 2017 on the file of Pochampalli Police Station for the offences punishable under Sections 447, 427, 323, 506 & 109 r/w 34 IPC, registered, based on the complaint lodged by the second respondent dated 03.10.2014 at 11:00 hours.

It is alleged that, at the instance of the present petitioner, the other accused trespassed into the land and beat the defacto complainant/second respondent with hands and threatened to kill him in case any action is taken.

The facts of the case in nutshell are that the second respondent and one Goddali Jangaiah were in possession of land in an extent of Ac.2-20 guntas each in Sy.No.166 in Kanumukkula Village and while the matter stood thus, on 02.10.2017 at about 02:00 PM, one Kusukuntla Ramachandra Reddy and one Venkat Reddy interfered into their land and broke the stone fencing and threatened with dire consequences at the instigation of the petitioner herein. Further, the second respondent lodged a complaint with the police. On the strength of the complaint, the police registered F.I.R in Crime No.136 of 2017 against the petitioner and two others for the offences mentioned supra.

The main contention of the learned counsel for the petitioner is that, the petitioner and the other accused were the original owners of the property and their legal heirs are in possession and enjoyment of the property. It is submitted that the defacto

complainant was never in possession and that the present complaint was lodged as a counter blast, as Kusukuntla Ramachandra Reddy lodged a complaint against the petitioner on the same day at 03.10.2017 at 11:30 hours, making serious allegations against the defacto complainant, more particularly, about trespassing into their land, etc, as such the petitioner cannot be proceeded for the offences punishable under Sections 447, 427, 323, 506 & 109 r/w 34 IPC.

At the end, learned counsel for the petitioner contended that the petitioner is a practicing advocate and only because he supported the other accused, he is also arrayed as an accused falsely. Therefore, requested this Court to quash the proceedings.

The first and foremost contention raised by the learned counsel for the petitioner is that, the land belongs to one Kusukuntla Venkatayya and his family members and produced bunch of Adangals commencing from the year 2011 onwards in Sy.No.166/A, AA, E, EE, etc. As seen from the entries made in the adangals, pahanis and pattedar passbooks, the names of Kusukuntla Venkatayya and his family members were entered. Therefore, based on the entries made in the adangals, learned counsel for the petitioner requested this Court to quash the proceedings.

The entries made in the revenue records would not confer any title to the property and at best, they are prepared by the Village Assistant or Village Revenue Officer in discharge of their duties to which the former is unconcerned. The adangals and pahanis at best, would disclose the person in possession, may be a *prima facie* proof of possession. But, at this stage, before

completion of investigation, this Court cannot decide whether the defacto complainant is the owner of the land and he was in possession of the land in Sy.No.166 in an extent of Ac.2-20 cents. Even otherwise, such fact cannot be appreciated while exercising power under Section 482 Cr.P.C. Therefore, on that ground, the proceedings cannot be quashed.

The second ground urged before this Court is that, the report was lodged as a counter blast to the report lodged by Kusukuntla Ramachandra Reddy on the same day. As seen from the report, lodged by the second respondent, it was lodged at 11:00 hours on 03.10.2017, making serious allegations against all the accused, including the petitioner that at his instigation, the other accused trespassed into the land and caused injuries and intimidated them criminally. But, Kusukuntla Ramachandra Reddy lodged complaint on the same day at 11:30 AM i.e. ½ hour later. Therefore, the question of lodging the report with the police by the defacto complainant as a counter blast to the complaint thirty minutes earlier to lodging complaint by Kusukuntla Ramachandra Reddy does not arise and it is improbable. Hence, on that ground, proceedings cannot be quashed against the petitioner.

The third ground raised by the learned counsel for the petitioner is that, when the allegations made in the complaint would not disclose any offence, muchless an offence punishable under Sections 447, 427, 323, 506 & 109 r/w 34 IPC. Even if the offences are taken on its face value, the proceedings are liable to be quashed. The petitioner is only a practicing advocate who is advising Kusukuntla Ramachandra Reddy and others and he

cannot be made liable for the offence punishable under Sections 447, 427, 323, 506 & 109 r/w 34 IPC. Further, the offences allegedly committed by the petitioners are punishable under Sections 447, 427, 323, 506 & 109 r/w 34 IPC.

The main allegation made against the petitioner is that he abated the other accused for trespass etc.

Section 109 I.P.C deals with punishment of abetment and if the act abetted is committed in consequence and where no express provision is made for its punishment. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Section 107 I.P.C defines Abetment of a thing as a person abets the doing of a thing, who Instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Intentionally aids, by any act or illegal omission, the doing of that thing.

Here, the allegation made against this petitioner is that, he instigated the other accused to commit offences punishable under Sections 447, 427, 323, 506 & 109 r/w 34 IPC. Therefore, he is liable for punishment under Section 109 I.P.C. if, the allegations in the report are true and subject to proof of the act done by the petitioner during trial. Hence, at this stage, it is difficult to conclude that the allegations made in the complaint would not disclose any offence.

Merely because the petitioner is a practicing advocate, no special privilege to him to get the proceedings quashed by invoking inherent jurisdiction under Section 482 Cr.P.C can be afforded.

In **State of Haryana v. Bhajan Lal**¹ this Court considered in detail the scope of 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 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.

¹ 1992 Supp. (1) SCC 335

(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 **R.P. Kapur v. State of Punjab**², the Apex Court held as follows:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

In view of the guidelines laid down by the Apex Court in the judgments referred supra, if the facts on its face value are taken into consideration, it constitutes an offence, *prima facie*, if proved. The Court cannot interfere, except when the Court comes to a conclusion that it is an out come of abuse of process of law.

Therefore, when the allegations made in the charge sheet disclosed commission of an offence punishable under the provisions of the Indian Penal Code, this Court cannot exercise its inherent power to quash the proceedings.

In **State of Orissa v. Saroj Kumar Sahoo**³, the Supreme Court had an occasion to deal with the scope of Section 482 and held that the inherent powers under Section 482 Cr.P.C should not

² AIR 1960 SC 866

³ (2005) 13 SCC 540

be exercised by the High Court to stifle a legitimate prosecution. The Apex Court also held that 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. The Supreme Court also held that there is no hard and fast rule laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Further, it was also held that while exercising jurisdiction under Section 482 of 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.

The Court can value the material and documents on record, but it cannot appreciate evidence. The Court can not record evidence to conclude whether the material produced is sufficient or not for convincing the accused. Therefore, the limited purpose of appreciating of facts is only to come to a conclusion, to proceeding against the accused for the alleged offence committed by the accused. Thus, the limited jurisdiction under Section 482 of Cr.P.C can be exercised only in exceptional circumstances.

In **Kurukshetra University And Anr. v. State Of Haryana**

And Anr⁴, 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 CrPC, 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.”

In view of the law declared by Apex Court, when investigation was not commenced, the Court cannot quash the proceedings, since complete material is not before the Court. Hence, in view of the judgments in **Saroj Kumar Sahoo**¹ & **Kurukshetra University**², the proceedings cannot be quashed at this stage.

In view of my foregoing discussion, I find no ground to quash the proceedings at this stage.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:03.11.2017

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⁴ AIR 1977 SC 2229