

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.9898 of 2017

ORDER

This criminal petition under Section 482 Cr.P.C., is filed to quash the proceedings in Crime No.59 of 2017 of Utkoor Police Station, Mahaboobnagar District, registered for the offences punishable under Sections 452, 323, 353 read with Section 34 IPC and under Section 3(1)(r)(s) of SCs & STs (POA) Act, 2015, against the petitioners/A1, A4 to A11.

2. The case of petitioners is that the police registered the above crime against them due to a quarrel during Ganesh immersion procession. The allegations made in the complaint on its face value would not attract any offence much less the offences punishable under Sections 452, 323, 353 read with Section 34 IPC and under Section 3(1)(r)(s) of SCs & STs (POA) Act, 2015.

3. A bare reading of the complaint dated 30.08.2017, it is clear that on 30.08.2017, when a procession was proceeding in the street of village, another procession came in opposite direction and there was a wordy altercation between two groups. In the meanwhile, the villagers, namely, Bijwar Anji, Uppari Mahesh, Pulimamidi Srinu, Pulimamidi Anji, Erukali Ramu, Mahamud, Balaraju Goud and other accused raided the house of de-facto complainant, abused them raising their caste name while questioning that how dare to obstruct the procession and fisted on the body of the de-facto complainant and others. In the meanwhile, one Constable, by name, Murali Krishna, who was discharging his duties made an attempt to pacify

the situation, but he was obstructed while discharging his duties by abusing him in filthy language. Thus, the petitioners are allegedly committed the offences punishable under Sections 452, 323, 353 read with section 34 IPC and under Section 3(1)(r)(s) of SCs & STs (POA) Act, 2015. On the strength of the complaint, the above crime was registered and it is pending for investigation.

4. At the stage of admission, learned counsel for petitioners submitted that there was a petty quarrel due to procession of Ganesh immersion and the allegations made in the complaint would not attract the alleged offences on its face value.

5. No doubt, the quarrel ensued only due to procession of Ganesh immersion, but the investigation in this case is not yet commenced. In such case, this Court should not exercise power to stifle legitimate prosecution. 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. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage, as laid by the Supreme Court in **State of Orissa and another V. Saroj Kumar Sahoo**¹.

¹ 2006(2) ALT (Crl.) 16

6. Similarly, in **Kurukshetra University v. State of Haryana**², the Apex Court, while deciding a similar case of quashing FIR even before completion of investigation, opined as follows:

“It surprises in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, 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 FIR. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim and caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases”

7. If these principles are applied to the present facts of the case, when the investigation is not yet completed, this Court cannot exercise such jurisdiction to quash the proceedings and it amounts to arbitrary exercise of power.

8. In view of the principles laid down in two judgments, when the investigation is not yet completed, this Court cannot exercise such power, more particularly, facts are incomplete and hazy and such power can be exercised only in rarest of rare cases. The allegation made in the FIR on its face value discloses commission of cognizable offences. Therefore, I find no grounds to exercise power under Section 482 Cr.P.C., to quash the proceedings and consequently, the criminal petition is liable to be dismissed.

9. At this stage, learned counsel for petitioners requested to direct the police concerned to follow procedure under Section 41-A Cr.P.C. In fact, this Court need not issue any direction in view of the

² (1977) 4 SCC 451

direction issued by the Apex Court in **Arnesh Kumar v. State of Bihar**³ and if the police failed to follow such procedure, it would amount to contempt as held by the Apex Court in the said judgment. Therefore, the police are bound to follow the procedure under Section 41-A Cr.P.C.

10. The Criminal Petition is accordingly dismissed at the stage of admission with the above direction.

11. Miscellaneous petitions, if any, pending in this petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

30th October, 2017

sj



³ 2014(2) ALT (Crl.) 457 (SC)