

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10551 OF 2017

ORDER:

This criminal petition is filed Accused No.3 in Crime No.21 of 2017 on the file of Kakatiya University Police Station, Warangal Commissionarate, registered against him for the offences punishable under Sections 427 & 447 r/w 34 IPC.

The defacto complainant lodged a report on 23.01.2017 with the Station House Officer, Kakatiya University, Warangal, alleging that he purchased a plot of an extent of 586 sq.yds in Sy.No.108, situated at Jawahar Colony on 25.11.2013 under document bearing No.9457/2013, the defacto complainant became the owner of the property and he continued in possession of the property. Thereafter, there were disputes with regard to title. On 26.10.2016, one Thallapalli Vijaya Kumar S/o Thomas sent legal notice to the defacto complainant in respect of the said plot, to which the defacto complainant got issued reply to the legal notice through his counsel and filed caveat petition before the Court.

On 27.11.2016, the defacto complainant found that Tallapalli Vijayakumar, his father Thallapalli Thomas and Mandala Raghuma Reddy encroached into his plot and demolished the compound wall criminally, and thereby, committed offences punishable under Sections 427 & 447 r/w 34 IPC.

The main contention of the learned counsel for the petitioner before this Court is that, the person who committed the above offences is Mandala Raghuma Reddy, but not Mandadi Raghuma

Reddy i.e. the present petitioner. Taking advantage of variation in the surname of both the persons, learned counsel for the petitioner contended that the petitioner is not the person who encroached into the plot and due to pending civil litigation, the present case is falsely lodged against the petitioner and prayed to quash the proceedings in Crime No.21 of 2017.

On a perusal of the report lodged with the police, one Mandala Raghuma Reddy along with others removed the compound wall and encroached into the property of the defacto complainant. Whether the person who entered into the property is Mandala Raghuma Reddy or Mandadi Raghuma Reddy is not the question and it is to be decided only during investigation. That apart, the allegations made in the complaint disclosed *prima facie* commission of offences punishable under Sections 427 & 447 r/w 34 IPC. In such case, this Court cannot exercise its inherent jurisdiction under Section 482 Cr.P.C and quash the proceedings.

In **State of Haryana v. Bhajan Lal**¹ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This 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.

¹ 1992 Supp. (1) SCC 335

(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.

(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.

Even if the guidelines laid down by the Apex Court are applied to the present facts, the proceedings cannot be quashed, since, the allegation in F.I.R, on its face value constitute an offence.

In any view of the matter, the main contention of the learned counsel for the petitioner is that the petitioner is Mandadi Raghuma Reddy but not Mandala Raghuma Reddy and in case this petitioner did not encroach the land of the defacto complainant and the Investigating Agency comes to any such conclusion, the Investigating Agency is directed to proceed against the person who actually encroached into the property, but not against this petitioner.

With the above observation, the criminal petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:14.11.2017

SP