

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9190 OF 2016

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in C.C.No.20 of 2015 on the file of the Judicial First Class Magistrate, Mahabubnagar, for the offences punishable under Sections 504 and 506 of the Indian Penal Code (IPC).

Petitioner is the accused in the said Calendar Case. Police registered case in Crime No.244 of 2014 for the offences punishable under Sections 504 and 506 IPC based on the report lodged by the third respondent making serious allegations against the petitioner to attract the offences punishable under Sections 504 and 506 IPC.

The only ground urged before this Court is that the offences punishable under Sections 504 and 506 IPC are non-cognizable and the police are incompetent to investigate into the said offences without obtaining prior permission from the Magistrate having jurisdiction over the area.

During the hearing, counsel for the petitioner reiterated the same whereas counsel for the respondent requested this Court to dismiss the petition while permitting the respondent to proceed with the trial without raising any specific contention.

In view of the specific ground urged before this Court, it is necessary to advert to the First Schedule (Classification of Offences) under Section 320 Cr.P.C. According to the First Schedule, the offence punishable under Section 504 IPC i.e. insult intended to provoke breach of the peace is non-cognizable, bailable

and punishable with imprisonment for two years, or fine, or both. Similarly, the offence under Section 506 IPC i.e. criminal intimidation is non-cognizable, bailable and punishable with imprisonment for two years, or fine, or both. But as per G.O.Ms.No.732 dated 05.12.1991, the offence punishable under Section 506 IPC is made non-bailable. Though the G.O. was passed long back, no amendment was effected in Column Nos.4 and 5 of the First Schedule of the Code of Criminal Procedure. The G.O. remained in force only for a period of six months and by the date of the alleged offence i.e. 20.10.2014, the G.O. has elapsed. Therefore, the G.O. would not come in the way of granting relief.

Section 155 Cr.P.C. deals with information as to non-cognizable cases and investigation of such cases. Clause (2) thereof made it clear that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Thus, the police officer has to obtain permission from the Magistrate having jurisdiction over the area to try the offence or commit the case for trial before proceeding to investigate the offences punishable under Sections 504 and 506 IPC. Here, the police registered crime for the offences punishable under Sections 504 and 506 IPC on receipt of report from the third respondent. No prior permission was obtained as required under Section 155(2) Cr.P.C. The case was investigated into and charge sheet was filed before the Magistrate concerned. On this ground alone, proceedings shall not be continued against the petitioner since the investigation is vitiated by irregularity and the question of trial would not arise in such Calendar Case when the police are incompetent to investigate and file charge sheet

before the Magistrate concerned. Therefore, taking cognizance of the offence by the Magistrate on the basis of police report without complying with Section 155(2) Cr.P.C. is a serious irregularity which vitiates entire proceedings. The powers of this Court under Section 482 Cr.P.C. are limited and this Court can exercise such power to give effect to the orders to prevent abuse of process of Court and meet the ends of justice.

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

¹ 1992 Supp. (1) SCC 335

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.

In view of the guidelines above, when the procedure adopted by the police is irregular, the trial cannot be proceeded with by the Magistrate since the police are incompetent. Therefore, the proceedings in C.C.No.20 of 2015 on the file of the Judicial First Class Magistrate, Mahabubnagar, for the offences punishable under Sections 504 and 506 IPC are hereby quashed.

In the result, the Criminal Petition is allowed quashing the proceedings against the petitioner in C.C.No.20 of 2015 on the file of the Judicial First Class Magistrate, Mahabubnagar, for the offences punishable under Sections 504 and 506 IPC. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

18th December 2017
RRB