

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9947 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.79 of 2017 on the file of Kandukur Rural Police Station, Prakasam District, for the offences punishable under Sections 323, 506, 509 r/w 34 I.P.C.

The petitioners 1 & 2 are the in-laws of the second respondent and petitioners 3 to 5 are the relatives of petitioners 1 & 2. It is the case on hand that the husband of the second respondent left her quite some time back, and the second respondent, along with her father visited the house of the petitioners 1 & 2 in search of her husband on 02.10.2017 at about 08:15 hrs, when the second respondent and her father visited the house of her mothering-law/A-1, all the petitioners/A-1 to A-5 abused in vulgar language and beat them with hands and kicked with legs and threatened to kill them. On raising cries, the neighbours of the locality came and rescued them from the hands of the petitioners. Hence, the second respondent lodged a complaint on the same day i.e. on 02.10.2017 at 21:30 hrs.

The first and foremost contention raised by the learned counsel for the petitioners is that there were civil disputes between the parties. W.P.No.1784 of 2017 was filed by the minor daughters of the second petitioner, seeking various reliefs, where, the husband of the second respondent i.e. Podapati Keshava Rao was arrayed as fourth respondent in the said writ petition. On

24.01.2017, this Court passed an order making certain observations regarding the marital disputes between the parties and also with regard to Section 498-A IPC and Domestic Violence Act, and issued a direction not to deport the petitioners.

Learned counsel for the petitioners contended that, in fact a matrimonial dispute is pending between the second respondent and her husband. Further, the second respondent, with an evil intention to grab the property foisted the present case as a counter blast to Crime No.78 of 2017 as well as Crime No.151 of 2017. Therefore, question of commission of offences by the petitioners would not arise and no ordinary prudent man would believe commission of such offences, as the disputes between the parties and the allegations made in the complaint are improbable to the natural circumstances. Taking into consideration the facts and circumstances of the case, the civil disputes and the marital disputes between the second respondent and her husband, as stated in the complaint cannot be investigated by the Investigating Agency and requested this Court to quash the proceedings, since this complaint was lodged as a counter blast.

Learned counsel for the petitioners reiterated the grounds urged in the petition while contending that the allegations referred supra, if taken into consideration would not constitute out an offence and that apart, the Court has to take into consideration, of all the circumstances, including lodging of a complaint earlier, disputes between the parties, lodging of a complaint against the second respondent by the first petitioner which is Crime No.78 of

2017 for the offences punishable under Sections 448 & 323 IPC and requested this Court to quash the proceedings in Crime No.79 of 2017.

Learned Public Prosecutor for the State of Andhra Pradesh would submit that the investigation in this case is in progress and at this stage, the proceedings cannot be quashed. It is also submitted that, the facts are incomplete and hazy and thereby, this Court cannot exercise its inherent power under Section 482 Cr.P.C and quash the proceedings in Crime No.79 of 2017.

On verification of material filed along with this petition, it appears that there were several serious marital disputes between the parties not only in India, but also in Germany and an allegation is made against the petitioners that they abused in filthy language and beat the defacto complainant/second respondent and her father, when they visited the house of the petitioners to find out whether the husband of the second respondent was available in the petitioners house.

It is the contention of the learned counsel for the petitioners that when a complaint was lodged for the offences committed by the second respondent punishable under Sections 448, 323 r/w 34 I.P.C in Crime No.78 of 2017, that occurred at 08:30 AM on 02.10.2017, the question of interference and commission of offence punishable under Sections 323, 506, 509 r/w 34 I.P.C in Crime No.79 of 2017 does not arise at 08:15 AM. No doubt, there are two complaints against one another. But, the gap of occurrence is only 15 minutes. According to the complaint of the second respondent,

the petitioners committed offences punishable under Sections 323, 506, 509 r/w 34 I.P.C at 08:15 AM in Crime No.79 of 2017, and whereas, according to the complaint of the first petitioner, the second respondent committed offences punishable under Sections 448 & 323 r/w 34 IPC, which is the subject matter of Crime No.78 of 2017 lodged by the first petitioner which occurred at 08:30 AM on the same day i.e. on 02.10.2017. But, lodging report with the police with regard to time is at variance.

The second respondent lodged report with the police at 09:30 PM, whereas, the first petitioner lodged her report at 06:00 P.M. But, the delay alone is not a ground and if the delay is explained in lodging the F.I.R. with the police during trial, the delay is insignificant. Therefore, on the ground of delay, it is difficult to quash the proceedings.

Yet, another contention raised by the learned counsel for the petitioners is that the complaint was lodged as counter blast to the complaint vide Crime No.78 of 2007. Undoubtedly, there is a gap of three hours and thirty minutes in lodging the complaint and the complaint in Crime No.79 of 2017 lodged by the first petitioner in Crime No. 78 of 2017 was earlier to the complaint lodged by the second respondent. But, the time of occurrence is almost one and the same.

At this stage, learned counsel for the petitioners contended that the two offences were committed by the second respondent, one at 07:30 AM and the other at 08:30 AM on the same day.

In the complaint lodged with the police in Crime No.78 of 2017 dated 02.10.2017, it is disclosed that the second respondent along with others, trespassed into the shopping complex of the first petitioner, locked all the shops, insulted and abused them in filthy language. Thereupon, Crime No.151 of 2017 was registered by the petitioners herein against the second respondent and others. On coming to know about registration of the above crime, the second respondent along with others, once again went to shopping complex of the first petitioner and threatened them. Further, when one of the owner of a tea shop in the complex opposed the second respondent and others, one Somineni Ganga Rao, who was accompanying the second respondent threatened and sent him away by abusing in filthy language.

The other incident at 08:30 AM took place on the same day where the second respondent allegedly trespassed into the house and caused simple hurt voluntarily. But, as seen from the F.I.R No.79 of 2017 dated 02.10.2017, the police corrected the time of offence in column no.3-A and it was mentioned as 08:15 AM. Therefore, the offences alleged committed by the petitioners and the second respondent appears to be case and counter committed at the same place, but within a gap of 15 minutes. The presence of the injured persons in this crime i.e. the second respondent, her father and others is not disputed, in view of the allegations leveled by the second respondent against the first petitioner dated 02.10.2017 in the complaint. Therefore, it is a question of fact to be decided, but if both the cases are case and counter and at this

stage, it is difficult to conclude that the allegations made in the complaint are false. The main contention before this Court is that no prudent man will accept the allegations made in the complaint. But, that cannot be a ground to quash the proceedings.

In **State of Orissa v. Saroj Kumar Sahoo**¹, 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 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

¹ (2005) 13 SCC 540

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 are 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 Anr**², 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 &

² AIR 1977 SC 2229

Kurukshetra University², the proceedings cannot be quashed at this stage.

However, this order will not preclude the petitioners from filing an application to renew his request at appropriate time.

In the result, the criminal petition is dismissed.

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

JUSTICE M.SATYANARAYANA MURTHY

Dated: 30.10.2017

SP

