

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.11108 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.201 of 2017 on the file of Gajulamandyam Police Station, Tirupathi Urban, registered for the offences punishable under Sections 341 I.P.C and Sections 3 (1) (r) (s) of SCs & STs (POA) Amended Act, 2015 against the petitioner who is the husband of the deceased.

2) The respondent No.2 lodged the report dated 08.11.2017 with the SHO, Gajulamandyam alleging that on 05.11.2017 at about 12.00 noon, when the 2nd respondent was proceeding on motor cycle towards Gajulamandyam petrol bunk, he was restrained by the petitioner herein and when watching the same by all, the petitioner called his as "era mala na kodaka" and due to fear, the 2nd respondent went to the house of the relatives near to that place. On receipt of the said complaint, the police registered the Crime No.201 of 2017 for various offences referred supra.

3) The contention of the learned counsel for the petitioner is that the petitioner was examined as RW.2, he filed affidavit of examination in chief in O.E.P. No.151 of 2016 in the month of July, 2017, thereby, the 2nd respondent bore a grudge against the petitioner and lodged the report before the police taking advantage of his case and that is sheer abuse of process of law and requested this Court to quash the proceedings against the petitioner.

4) The offence allegedly took place on 08.11.2017. Whereas the petitioner was examined in chief by filing an affidavit under Order LXVII Rule 4 as per the Amended Act 22/2002 of C.P.C in the month of July, 2017 in O.E.P. No.151 of 2016 and therefore, a gap between filing affidavit and lodging the complaint is about four months. In such a case, it is difficult to accept the contention that the report was outcome of his examination before the Court in O.E.P. No.151 of 2016. However, at the stage of FIR, the petitioner filed the criminal petition under Section 482 Cr.P.C, this Court is required to verify the allegations made in the report lodged with the police and if the allegations made in the complaint, on its face value, would not constitute an offence, it amounts to abuse of process of Court. In such circumstances, this Court exercising the power under Section 482 Cr.P.C can quash the proceedings.

5) The law is settled that as to when such inherent powers under Section 482 Cr.P.C. can be exercised and cannot be exercised, in various perspective pronouncements of the Apex Court. The leading case on this aspect is “**State of Haryana v. Bhajanlal**”¹, wherein the Apex Court laid down the following seven guidelines:

“(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

¹ 1992 Supp.(1) SCC 335

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."

6) But in view of the gap between the alleged examination of petitioner as RW.2 in O.E.P. No.151 of 2016 in O.S. No.507 of 2012 before the Principal Junior Civil Judge, Tirupati and the date of alleged occurrence, it is difficult to hold at this stage, the report was lodged with the police to wreck vengeance against the petitioners by respondent No.2. More over, the allegations made in the complaint if accepted on face value would constitute an offence under provision of SC/ ST POA Act. That apart, the Court is not required to appreciate the evidence on record while deciding

the application under Section 482 Cr.P.C, but to verify and find out whether the allegations made in the FIR would constitute an offence or not as observed by me in the earlier, such allegations would constitute a prima facie an offence punishable under the provisions of Act. When investigation is not yet commenced and the facts are incomplete, the Court cannot quash the proceedings exercising inherent jurisdiction under Section 482 Cr.P.C.

7) In **State of Orissa v. Saroj Kumar Sahoo**², 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

² (2005) 13 SCC 540

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 material produced is sufficient or not for convicting the accused.

8) 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 convicting the accused. Therefore, the limited purpose of appreciating of facts is only to come to a conclusion, to proceed 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.

9) In **Kurukshetra University And Anr. v. State Of Haryana And Anr**³, 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.”

If the principles laid down in the above judgments are applied to the present facts of the case, when the investigation is

³ AIR 1977 SC 2229

not completed and total facts are not placed before the Court, this Court cannot exercise the jurisdiction under Section 482 Cr.P.C to quash the proceedings. Hence I do not find any ground to quash the proceedings at this stage.

10) In the result, the criminal petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:20.11.2017
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