

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10835 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings in C.C.No. 155 of 2017 on the file of the Court of Additional Judicial Magistrate of I Class, Bobbili at Vizianagaram District (for short, 'the Court below').

2. Respondent No. 2 filed a private complaint before the Court below who in turn took cognizance against the petitioners-accused Nos. 1 to 3 for the offence punishable under Sections 448, 323 and 506 of the Indian Penal Code (for short, 'I.P.C.') and ordered summons. The specific contention raised before this Court is that there are absolutely no allegations to attract the offence punishable under Sections 448, 323 and 506 I.P.C. against the petitioners and that the complaint was filed only to defame the petitioners. In the absence of specific allegations against the petitioners, the proceedings against the petitioners in C.C.No. 155 of 2017 shall not be continued and requested this Court to quash the proceedings at this stage.

3. In view of the specific contention raised by learned counsel for the petitioners, it is appropriate to extract para No. 5 of the complaint and it is extracted hereunder for better appreciation:

"5. While so on 29-01-2017 at about 4 p.m. when the complainant stayed in her house, the A1 to A3 came there and high handedly trespassed into her house and asked her whereabouts L.W.1. Then the complainant questioned the high handed action of the A1 to A3 and to leave her house. Then the A1 to A3 warned her how dare to her husband to obtain injunction order against them over the above said land that unless she would instruct her husband to withdraw the above suit, they would not allow the complainant and her husband to live in Bobbili. Then the complainant requested the A1 to A3 not to dictate terms to her

to withdraw the suit by her husband. Then the A1 to A3 pounced upon the complainant and beat her with their hands. On that moment the L.W.1 while brining L.W.2 to L.W.4 to his house with a view to discuss about rates of wages about spray of insecticide over the mango plants on the above said land, heard the cries of the complainant with fear and panic and all o them witnessed the offences committed by the A1 to A3 and rescued the complainant from the hands of the accused. Then the L.W.2 to L.W.4 admonished the A1 to A3. Then the A1 to A3 threatened the complainant and L.W.1 with dire consequences stating that unless the L.W.1 would withdraw the above suit, they would not allow her and L.W.1 to live in Bobbili."

As could be seen from the allegations made in para No. 5 of the complaint, as reproduced above, there are specific allegations against the petitioners about trespassing into the house, threatening by the petitioners that they would not allow the complainant and her husband to live in Bobbili and beat her with hands. These allegations are suffice to constitute the offence punishable under Sections 448, 506 and 323 I.P.C. *prima facie* respectively.

4. The main contention of learned counsel for the petitioners is that there is any amount of inconsistency in the sworn statement recorded by the Court below on 20-02-2017 and would draw the attention of this Court to the said statement. However, the discrepancy in the sworn statement recorded by the Court below at the time of taking cognizance would not go to the root of the case. Therefore, the discrepancy pointed out by learned counsel for the petitioners is insignificant. The undisputed facts are that respondent No. 2 filed O.S.No. 92 of 2016 on the file of the Court of Principal Junior Civil Judge, Bobbili, for grant of permanent injunction; that she also obtained *ad interim* injunction on 29-04-2017 restraining the petitioners from interfering with her peaceful possession and enjoyment and that despite subsistence of *ad interim* injunction, the petitioners allegedly trespassed into the subject property and beat her with hands while threatening that they would not allow her to live in Bobbili. Therefore, such acts would *prima*

facie constitute the offence punishable under Sections 448, 323 and 506 I.P.C. respectively. In such case, this Court cannot quash the proceedings by exercising inherent jurisdiction under Section 482 Cr.P.C.

5. The powers of this Court under Section 482 Cr.P.C. are limited and this Court can exercise such powers only to implement the orders passed under the Code or to prevent abuse of process of law or to meet the ends of justice. The Apex Court in ***State of Haryana Vs. Bhajanlal***¹ laid down seven guidelines which are as follows:

- "(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 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

¹ 1992 Supp. (1) SCC 335

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."*

As per guidelines 2 and 3, if the allegations made in the complaint if taken on their face value would not constitute any offence, the Court may exercise power and quash the proceedings. Similarly, as per guideline No. 7, if the Court finds that the allegations made in the complaint are to wreak vengeance against the accused as an abuse of process of the Court, the Court may exercise such power to scuttle the proceedings at the threshold. In the case on hand, there are civil disputes between the parties to the proceedings. According to learned counsel for the petitioners, the motive behind filing the private complaint is an arm twisting method to bring the petitioners to their terms and when the complaint is motivated, the Court can exercise power and quash the proceedings. Whereas learned counsel for respondent No. 2 contended that the petitioners trespassed into the subject land to deprive the enjoyment of the property by respondent No. 2. Motive is a double edged weapon and it can be used either to foist a false case or to commit such an offence and it is not a substantive piece of evidence. Based on such alleged motive attributed by one to the other, it is difficult to exercise power under Section 482 Cr.P.C. to quash the proceedings.

6. On overall analysis of the material available on record, I find no ground to exercise inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings in C.C.No. 155 of 2017 on the file of the Court below. Consequently, the petition is liable to be dismissed.

7. At the end, learned counsel for the petitioners requested this Court to dispense with the appearance of petitioner Nos. 2 and 3 as they are woman and senior citizen respectively but this Court while exercising power under Section 482 Cr.P.C. cannot pass such an order. Petitioner Nos. 2 and 3 are permitted to file an application either under Section 205 Cr.P.C. or under Rule 37 of Criminal Rules of Practice and Circular Orders to dispense with their appearance before the Court below. If such an application is filed, the Court below is directed to dispose of the same in accordance with law.

8. With the above observation, the criminal petition is dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 24-11-2017.
JSK

M.SATYANARAYANA MURTHY, J.

