

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9942 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.71 of 2017 on the file of Iragavaram Police Station, West Godavari District, for the offences punishable under Sections 186, 341, 506 r/w 34 I.P.C.

The second respondent/defacto complainant who is the Secretary of Repaka Gram Panchayat lodged a compliant against the peititoners/A-1 & 2 alleging that the petitioners came on motorcycle and tried to interfere with the development activities in the Rapaka Puntha, Poramboke in R.S.No.89/A, when one Veeravalli Venkata Reddy, Junior Assistant-cum-Bill Collector was supervising the development activity in the said puntha. While the activity stood thus, the petitioners filed W.P.No.19936 of 2017 against Panchayat, District Collector and others, with regard to claiming right in land in R.S.No.4/2A, 4/2B of Iragavaram Village and further disclosed that the survey number given by them are not correct and the puntha is stated in R.S.No.89/A (89/1A) is within the limits of Rapaka Revenue Village but not Iragavaram Village. The present criminal petition is filed on the ground that, the petitioners filed W.P.No.19936 of 2017 and obtained interim orders in their favour to the respondents not to interfere with the possession and enjoyment of the petitioners house bearing No.4/3A Iragavaram Village and Mandal, pending writ petition. Though, there is interim direction in favour of the petitioners

granted by this Court, the second respondent came to the petitioners house on 30.06.2017 along with anti-social elements and demolished the house of the petitioners. Hence, the petitioners lodged a complaint with the police on 30.06.2017 at 09:30 P.M. Basing on the complaint, the police registered F.I.R. No.70 of 2017 under Sections 447, 427, 324 r/w 34 IPC against the second respondent and others, in which the second respondent was arrayed as Accused No.3. Further, though there is a specific direction issued by this Court in W.P.No.1936 of 2017 dated 22.06.2017, the second respondent demolished the house by violating the order passed by this Court and as a counter blast, the second respondent lodged a complaint. Therefore, the proceedings cannot be continued on that ground. Learned counsel for the petitioner also contended that the Secretary of Gram Panchayat, Rapaka is incompetent, since he was not the victim on account of alleged act of the petitioners and finally contended that the land in dispute is a punta, which is the subject matter of the complaint and it is within Iragavaram Gram Panchayat limits, but not in Rapaka. Therefore, the complaint cannot be proceeded for the offences referred supra.

Learned counsel for the petitioner questioned about the competency of the Secretary of the Gram Panchayat to lodge a complaint with the police for various offences referred supra and the complaint was lodged as a counter blast to the complaint lodged by the petitioners and that too the property i.e. puntha is within the limits of Iragavaram and not a part of Rapaka, thereby

the proceedings are liable to be quashed, since the allegation in complaint do not disclose any commission of the offences and if the allegations in the complaint are taken on its face value do not disclose any offences and prayed for dismissal of the petition.

Learned Public Prosecutor for the State of Andhra Pradesh contended that the petitioner being the secretary of the Gram Panchayat is incompetent to lodge a complaint for commission of a cognizable offence and on the ground of incompetency, the proceedings cannot be quashed. Learned Public Prosecutor also would draw attention of this Court with reference to the allegations made in the complaint and representation to contend that the property in dispute in writ petition is totally different from the property referred in the complaint. Therefore, on that ground of passing order in writ petition, the present proceedings in crime cannot be quashed.

In view of the rival contentions, it is necessary to refer certain provisions in Cr.P.C to find out whether this petitioner is competent to lodge the complaint. The word 'complaint' is defined under Section 2(d) of Cr.P.C. "*complaint*" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. But, Section 2(d) is not applicable and it is not a complaint lodged with the Magistrate. However, it is a report lodged with the police regarding commission of cognizable offence by the petitioner, punishable under Sections

It is an elementary principle of law that any person who had knowledge about occurrence of cognizable offence can lodge report with the police or pass on information to the police with a view to take further action. The primary object of lodging report is to set the criminal law into motion and it may not be possible to give every minute detail in such report and as to the person who witnessed the incident or having come to know about commission of cognizable offence is competent to lodge a report with the police under Section 154 Cr.P.C. But, it is only the first information about occurrence of commission of cognizable offence. Therefore, the contention of the learned counsel for the petitioner that the second respondent is incompetent to report to the police about commission of cognizable offence is without any merit. On this ground, the proceedings in Crime No.71 of 2017 cannot be quashed.

The other contention raised before this Court is that, inspite of the petitioner filing W.P.No.19936 of 2017 and obtaining orders in his favour on 22.06.2017, the second respondent demolished the buildings H.No.4-3/1 in R.S.No.4/2A, 4/2B in an extent of Ac.0.03 cents situated at Iragavaram Village & Mandal, West Godavari District and lodged a complaint, which is the subject matter in W.P.No.19936 of 2017. There is no dispute with regard to filing of writ petition and lodging of report. In fact, the second respondent himself annexed copy of the order in W.P.No.19936 of 2017 to the report lodged with the police. So far as registration of Cr.No.70 of 2017 is concerned, it was registered on 10.07.2017 i.e.

on the same day when the present crime was registered. Therefore, non-disclosure of information lodged by this petitioner against the second respondent is not a ground to conclude that it is a counter blast.

The other contention raised by the learned counsel for the petitioner is that, when there is a restraint order in W.P.No.19336 of 2017, the interference with the property and lodging complaint by the second respondent is nothing but abuse of process of the Court.

No doubt, the order was passed by this Court in W.P.No.19936 of 2017 which is the subject matter of the property of H.No.4-3/1 in R.S.No.4/2A, 4/2B in an extent of Ac.0.03 cents situated at Iragavaram Village & Mandal, West Godavari District. Whereas, the property which the second respondent is claiming as Rapaka puntha stated in R.S.No.89/A (89/1A) is within the limits of Rapaka Revenue Village but not Iragavaram Village. Therefore, *prima facie*, the subject matter of the property allegedly interfered with the development work and the subject matter in the writ petition are totally different and distinct *prima facie*. Therefore, on the strength of the alleged filing of writ petition claiming right in respect of H.No.4-3/1 in R.S.No.4/2A, 4/2B in an extent of Ac.0.03 cents situated at Iragavaram Village & Mandal, West Godavari District it is difficult to hold that the present report is lodged as an abuse of process of the Court.

As seen from the allegations made in the complaint, the petitioners came on motorcycle and tried to interfere with the

development activities in the Rapaka Puntha, Poramboke in R.S.No.89/A, when one Veeravalli Venkata Reddy, Junior Assistant-cum-Bill Collector was supervising the development activity in the said puntha and also threatened the Bill collector, who is supervising the development activity. The said act of threatening would constitute offence mentioned supra. In any view of the matter, the investigation is not yet commenced and at this stage, the Court cannot exercise inherent power 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

¹ (2005) 13 SCC 540

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 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 Anr²**, 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.”

² AIR 1977 SC 2229

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 Sahoo¹ & Kurukshetra University²**, the proceedings cannot be quashed at this stage.

It is also contended that the allegations made in the complaint on 10.07.2017 disclosed that the petitioners are trying to interfere with the development activities in the Rapaka Puntha, Poramboke in R.S.No.89/A. But, it would not attract any offence. Moreover, on the date of alleged date of incident, only the second petitioner/A-2 came on motor cycle and threatened the Bill Collector to kill him while supervising the developmental activity.

No doubt, the allegations in the first paragraph of the complaint disclosed that they are attempting to interfere with the developmental activities and in such case, Sections 186, 341, 506 r/w 34 I.P.C are the alleged offences, committed by the petitioners. But, on that ground alone, the proceedings cannot be quashed, since, the F.I.R is only an information about commission of cognizable offence and it need not contain minute details. The Investigating Agency is found no material, they will not proceed against the petitioner surely. Therefore, I find no ground to quash the proceedings in Crime No.71 of 2017 on the file of Iragavaram Police Station, West Godavari District, for the offences punishable under Sections 186, 341, 506 r/w 34 I.P.C and consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

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

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

JUSTICE M. SATYANARAYANA MURTHY

Date:30.10.2017

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