

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10002 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioners/accused 1 to 3 in Crime No.162 of 2017 on the file of Podalakur Police Station, Sri Potti Sriramulu Nellore District, for the offences punishable under Sections 447, 427, 352 IPC and Section 3(2)(va) of SC/ST (POA) Act (for short 'Act')

The second respondent/defacto complainant lodged complaint with the police alleging that he belongs to Scheduled Tribe, residing at Prabhagiripatnam. It is stated in the complaint that previously the government assigned an extent of land admeasuring Ac.3.08 cents in Sy.no.128/2-1 under D-Form Patta to the father of the defacto complainant. The Mandal Tahsildar along with the Surveyor visited the land and drawn the boundaries also. It is alleged in the complaint that the wood plantations from the land of the defacto complainant have been plucked out by the petitioners/accused 1 to 3 on 02.08.2017 at 08:30 a.m by force and on receiving information about the same, wife of the defacto complainant went to the scene of occurrence and found the accused 1 to 3 along with some other labourers plucking the wood plantations. When questioned about removing the plantations, the accused 1 to 3 responded to the wife of the defacto complainant that they have no right over the land whatsoever. On the strength

of the complaint, the police registered a case in Crime No.162 of 2017 and issued F.I.R for the offences stated supra.

The present criminal petition is filed on the ground that the wife of the first petitioner by name Ananthaneni Jhansi was granted patta on 20.01.2008 in an extent of Ac.2-00 cents of land in Sy.No.128/1-2 situated in Prabhagiripatnam Village, Podalakur Mandal and since the date of grant of patta, Smt. Jhansi was in possession and enjoyment to the said land and pursuant to grant of patta. Further, the Joint Collector, Nellore, though, cancelled the patta, an appeal is pending before the Chief Commissioner of Land Administration vide reference No.BCW1/101/2017 dated 29.08.2017. It is finally contended that the alleged act of the petitioners/accused 1 to 3 would not fall within Section 3(2)(va) of the Act and sought to quash the proceedings in Crime No.162 of 2017.

During hearing, Sri A. Sudhakara Rao, learned counsel for the petitioners would contend that the alleged offence committed by the petitioners would not fall within Section 3(2)(va) of the Act. The learned counsel would draw the attention of this Court to the schedule of offences under Section 3(2)(va) of the Act and contended that, since the offences punishable under Sections 447, 427, 352 IPC are not included in the schedule, Section 3(2)(va) is not applicable, therefore, the proceedings are liable to be quashed. It is further contended that the other offences allegedly committed by the petitioners are petty offences and they are bailable and requested this Court to quash the proceedings.

Whereas, the learned Public Prosecutor for the State of Andhra Pradesh contended that the investigation is not yet commenced and this Court cannot express its opinion, as the allegations would attract the specific offence registered against the petitioner and if the investigating agency finds that the above mentioned offences would not fall within the schedule, the investigating agency may take appropriate steps to delete those offences at the time of filing charge sheet. It is also submitted that this Court cannot exercise its inherent jurisdiction at this stage when investigation is not yet commenced.

The petitioner allegedly committed the offences punishable under Sections 447, 427 and 352 I.P.C.

Section 447 I.P.C deals with punishment for criminal trespass, according to it, whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. The punishment prescribed for offence punishable under Section 352 I.P.C is imprisonment of three months, or with fine or both. The punishment prescribed for offence punishable under Section 427 I.P.C is imprisonment of two years, or with fine or both. Therefore, all the above mentioned offences i.e. Sections 447, 427 and 352 I.P.C are bailable.

Whereas, the offence allegedly committed by the petitioners is under Section 3(2)(va) of the Act, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine. Therefore, the offence under Section 3(2)(va) is punishable both under the

provisions of Indian Penal Code and also liable to pay fine, under SC/ST (POA) Act, if included in the schedule, annexed to the Act under Section 3(2)(va).

The alleged offences committed by the petitioners are punishable under Sections 447, 427 and 352 I.P.C. Section 447 I.P.C is included in the schedule as last to third item, annexed to Act, under Section 3(2)(va) of the Act. Therefore, the contention that the offence would not attract Section 3(2)(va) of the Act is without any substance. The other two offences under Sections 427 & 352 I.P.C are not included in the schedule. But, still, the offence punishable under Section 447 I.P.C is included and such person is liable for punishment both under Section 447 IPC, so also under Section 3(2)(va) of the Act. Therefore, on this ground, the proceedings cannot be quashed.

The other allegations made in the complaint would disclose an offence punishable under Sections 447, 427 and 352 I.P.C, *prima facie*. Therefore, when such allegations disclosed *prima facie* commission of offences referred above in the complaint against the petitioners, the proceedings cannot be quashed.

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,

¹ (2005) 13 SCC 540

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 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 appreciation of facts is only to come to a conclusion whether the 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 judgments in **Saroj Kumar Sahoo**¹ & **Kurukshetra University**², the proceedings cannot be quashed at this stage, as the investigation in the present case is not yet commenced and complete facts are not before the Court, and this Court cannot exercise its inherent power under Section 482 Cr.P.C to quash the proceedings. Therefore, it is difficult for this Court, at this stage to quash the proceedings.

Learned counsel for the petitioners contended that an appeal is pending before the Chief Commissioner of Land Administration. But, pendency of appeal is not a ground to quash the proceedings at this stage. Therefore, I find no ground to quash the proceedings and the criminal petition is liable to be dismissed.

However, the Station House Officer, Podalakur Police Station, Sri Potti Sri Ramulu Nellore District is directed to follow the procedure laid down under Section 41-A of Cr.P.C and guidelines formulated by the Apex Court in **“Arnesh Kumar v.**

² AIR 1977 SC 2229

State of Bihar and another³". It is needless to mention that the Supreme Court made it clear that violation of guidelines in **Arnesh Kumar** case amounts to Contempt of Court. Therefore, the Investigation Agency is bound to adhere to the guidelines issues in **Arnesh Kumar** case.

In the result, the criminal petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:31.10.2017

SP



³ (2014) 8 SCC 273