

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.11798 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.43 of 2W016 of Hussainialam Police Station, Hyderabad, registered for the offences punishable under Sections 448, 427, 506 read with 34 IPC.

Basing on the report lodged by the 2nd respondent-Smt Ameena Kausar on 23.02.2016 alleging that the petitioners trespassed in to the house bearing door No.20-3-387, Moosabowli and started demolishing the building in spite of the stay granted on 22.02.2016 by the Court in I.A.No.8 of 2016 in O.S.No.105 of 2016 and threatened the women, who are staying in the house are elderly and senior citizens, aged about 75 years and they also threatened to kill the *de facto* complainant and others, if they do not leave the house immediately.

The main contention of the petitioners before this Court is that the 2nd petitioner admitted was in the hospital on 22.02.2016 at about 11.00 am and discharged on 28.02.2016, whereas the offence allegedly took place on 23.02.2016. Thereby, participation of these petitioners in the occurrence of the said incident is impossible. The another ground urged by the petitioners is that they are the original owners having purchased the property under registered sale deed dated 16.01.2016 from Mirza Qadeer Baig, thereby question of criminal trespass into the house by them, does not arise.

According to the counsel for the petitioners, the 2nd petitioner was admitted in the hospital on 22.02.2016 at about 11.00 am and

discharged on 28.02.2016 and produced photo copy of the discharge summary issued by the Medicare Hospital, which discloses that the 2nd petitioner was admitted on 22.02.2016 and discharged on 28.02.2016 and that the 2nd petitioner was treated for a long time of six days in the same hospital, whereas, the offence allegedly took place on 23.02.2016 at about 11.50 a.m.

Learned counsel for the petitioners drew the attention of this Court to the FIR, which is registered as Crime No.38 of 2016 of Hussainialam Police Station for the offences punishable under Sections 147, 148, 307, 427 read with 149 of IPC and the time of occurrence was 22.45 hours on 21.02.2016, but the information was received at 02.30 p.m. on 22.02.2016. Therefore, according to the contention of learned counsel for the petitioners, the present crime is counter to the earlier crime registered against the 2nd respondent.

The 2nd petitioner was admitted in the hospital at 11.00 am on 22.02.2016 and lodging report at 02.30 p.m on 22.02.2016 is improbable to the natural circumstances and in fact, it is impossible for a person, who is undergoing treatment as inpatient to lodge report with the police. Therefore, the alleged admission in to the hospital on 22.02.2016 and discharge on 28.02.2016 is a question of fact to be decided. Though, such evidence is relevant under Section 11 of the Indian Evidence Act to prove the absence of the 2nd petitioner at the scene of occurrence and the said question cannot be decided while deciding the application under Section 482 Cr.P.C. since such finding has to be recorded only during trial. Hence, on this ground, the criminal proceedings cannot be quashed.

The other ground urged by the petitioners is that the 2nd petitioner is the absolute owner of the house having purchased under registered sale deed on 16.01.2016 and whereas the 2nd respondent allegedly filed a suit and obtained interim injunction on 22.02.2016 vide I.A.No.8 of 2016 in O.S.No.105 of 2016 i.e. subsequent to obtaining registered sale deed. But this Court cannot record a fact finding that the petitioner is the owner of the property based on the registered sale deed by quashing the proceedings against these petitioners.

As seen from the material available on record, though report was lodged long back in the month of February, 2016, the investigation is not yet commenced. As per the material produced before this Court by the petitioners and at this stage when the investigation is not yet commenced, this Court cannot exercise jurisdiction under Section 482 Cr.P.C. to quash the criminal proceedings against the petitioners in view of the law declared by the Apex Court in **State of Orissa v. Saroj Kumar Sahoo**¹ and **Kurukshetra University and another v State Of Haryana and another**² the Apex 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

¹ (2005) 13 SCC 540

² AIR 1977 SC 2229

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 & Kurukshetra University** referred supra, the criminal proceedings cannot be quashed at this stage as lacks merits.

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

In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

30.11.2017
kvrn



M.SATYANARAYANA MURTHY,J