

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12670 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.397 of 2017 on the file of Judicial Magistrate of First Class, Adilabad, registered for the offences punishable under Section 341 read with 149 of Indian Penal Code (for short "I.P.C.") and under Section 3 (12) of A.P.T.N.Act.

Respondent No.2 lodged report with the police and the same was registered as a case in Crime No.07 of 2013 on the file of Adilabad I Town Police Station for the offences punishable under Section 341 read with 149 of I.P.C. and under Section 3 (12) of A.P.T.N.Act. Police after registering crime, issued F.I.R. and investigated into the offence, examined 14 witnesses and recorded their statements under Section 161 of Cr.P.C. After completion of investigation, police filed charge sheet against the petitioner – accused No.7 and some other accused.

Learned counsel for the petitioner contended that the address and name of the father of the petitioner was wrongly mentioned in the charge sheet and in fact the name of the father of the petitioner is 'Abdul Gaffar', but it was mentioned in the charge sheet as 'Adbul Faheem' and that the petitioner did commit no offence much less the offence punishable under Section 341 read with 149 of I.P.C. and under Section 3 (12) of A.P.T.N.Act. On the basis of mentioning wrong address and name of the petitioner, learned counsel for the petitioner requested this Court to quash the proceedings.

Identity of the petitioner is not in dispute, but mentioning of wrong address or name of the father of the petitioner is not sufficient

to quash the proceedings by exercising power under Section 482 of Cr.P.C.

The allegations made in the charge sheet would *prima facie* constitute offence punishable under Section 341 read with 149 of I.P.C. and under Section 3 (12) A.P.T.N.Act.

Learned counsel for the petitioner filed the statements recorded by the police under Section 161 of Cr.P.C. during investigation and the said statements also disclosed about the participation of the petitioner in Rastha Roko in protest against the surrender and arrest of MIM MP Asaduddin Owaisi at Sangareddy, that amounts to causing inconvenience to public, hence I find *prima facie* material against the petitioner to conclude that the petitioner along with some others wrongly restrained the by-passers to move in a specific direction. Moreover, wrongly mentioning of address and name of the petitioner is not a ground to quash the proceedings.

The jurisdiction of this Court under Section 482 of Cr.P.C. is limited, this Court can exercise such power only to give effect to any order passed under the Code or to prevent abuse of process of Court or to meet the ends of justice.

In “**R.P. Kapur v. State of Punjab**¹”, the Apex Court laid down the following principles:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

¹ AIR 1960 SC 866

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Later, in “***State of Haryana v. Bhajan Lal***²” the Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

- (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.

² 1992 Supp (1) SCC 335

(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.

According to guideline Nos. 2, 3, 4, 5 and 7 formulated in “**State of Haryana v. Bhajan Lal**” (referred above), if the allegations made in the charge sheet or F.I.R., taken on their face value, would not constitute any offence or absurd or if the charge sheet is filed with a view to wreck vengeance against the accused, abusing process of the Court, the Court may exercise the inherent jurisdiction under Section 482 of Cr.P.C.

In the present case, the material collected during investigation including statements of witnesses recorded by the police under Section 161 of Cr.P.C. *prima facie* disclosed commission of offence punishable under Section 341 read with 149 of I.P.C. and under Section 3 (12) of A.P.T.N.Act, by the petitioner.

Hence, I find that it is not a fit case to quash the proceedings. At the end, learned counsel for the petitioner requested this Court to dispense with the appearance of the petitioner before the trial Court, except on the dates his presence is required, either under Rule 37 of Criminal Rules of Practice and Circular Orders or under Section 205 of Cr.P.C. But this Court cannot exercise such discretionary power, it for the Magistrate to exercise such power depending upon the facts

and circumstances of the case. Therefore, the petitioner is at liberty to file application either under Section 205 of Cr.P.C. or under Rule 37 of Criminal Rules of Practice and Circular Orders, on filing such application, the Magistrate is directed to dispose of the same as expeditiously as possible, in accordance with law.

With the above direction, the petition is dismissed. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

20.12.2017
Ksp

