

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.11503 of 2017

ORDER:

Petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.50 of 2017 on the file of Additional Judicial First Class Magistrate, Vikarabad for the offences punishable under Sections 354 and 506 IPC, registered on the basis of the complaint lodged by respondent No.2.

Respondent No.2 lodged a report with police on 04.01.2017 making serious allegations, more particularly, that, on 02.01.2017 when she went to her newly constructed house for curing plastering, the petitioner – accused, noticing that she was alone at the house, caught hold of her hand, pulled her towards him, despite her resistance and requested police to give protection to her as she is apprehending danger to her life and chastity.

On the strength of the same, police registered a crime against the petitioner for the offences punishable under Sections 354 and 506 IPC, and issued FIR and took up investigation.

During the course of investigation, statements under Section 161 Cr.P.C. of respondent No.2 – de facto complainant, Sri K.Chandrasekhar, husband of respondent No.2, Sri Durgayolla Rajeshwari, Smt Chuduva Swarupa, Smt K.Narayana and Sri K. Narayana were recorded. In her

statement, respondent No.2 narrated the alleged incident, and the said fact is supported by other witnesses. The investigation agency collected sufficient material to proceed against the petitioner and filed final report under Section 173 Cr.P.C. The specific allegations made in the charge sheet would disclose commission of cognizable offence and the allegations, if taken on its face value, would constitute offence under Sections 354 and 506 IPC.

The main contention of the petitioner is that there are disputes both civil and criminal between the parties and, on account of disputes, filing of writ petitions, suits etc, respondent No.2 bore grudge and lodged a false complaint.

No doubt, the material produced would disclose pendency of disputes both civil and criminal. But, while deciding an application under Section 482 Cr.P.C, the Court has to verify the allegations made in the charge sheet and, if the charge sheet discloses commission of any offence, *prima facie* this Court cannot exercise inherent jurisdiction. The Court may exercise such inherent jurisdiction in rarest of rare cases to give effect to the orders passed by the Court and to prevent abuse of process of Court and to secure ends of justice. But, in the present facts of the case, the material produced before this Court, including the statements recorded by police, and the allegations in the charge sheet would, *prima facie*, disclose commission of cognizable offence punishable under

Sections 354 and 506 IPC. Therefore, this petition cannot be allowed quashing the proceedings in C.C.No.50 of 2017 even by applying the principles laid down in **State of Haryana v. Bhajan Lal**¹. The following 7 guidelines are reiterated as under:

(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 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.

¹ 1992 Supp. (1) SCC 335

The other contention raised before this Court is that the petitioner is not in the village as on the date of incident and went to Pune. But, however, he did not produce any material to establish the same. *Prima facie*, if he is out of village, it is for him to prove the plea of alibi during trial since evidence adduced in support of such plea is relevant under Section 11 of the Indian Evidence Act but it is a question of fact to be decided by the Trial Court, during trial and whether there is any possibility to reach the village. Such finding must be based on evidence. But, at this stage, this Court cannot say that he was out of village on that date and time of incident. Hence, it is not a ground to quash the proceedings since it is question of fact and finding to be recorded by the Magistrate only after recording evidence.

In view of the foregoing discussion, I find no ground to quash proceedings in C.C.No.50 o 2017 on the file of Additional Judicial First Class Magistrate, Vikarabad.

In the result, the Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:23.11.2017
 usd

