

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 11743 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") to quash the proceedings in C.C.No. 480 of 2017 on the file of the Court of learned VI Metropolitan Magistrate at Bheemunipatnam (for short, 'the Court below').

2. The specific allegation made against the petitioner-accused No. 4 that substituting the photo of accused No. 1 with the photo of respondent No. 2-*de facto* complainant and forging the signature of the latter is sufficient to constitute the offence if proved during trial. The present petition is filed on the ground that the petitioner was not arrayed as accused in the F.I.R. but after completion of investigation filed charge sheet arraying him as accused No. 4.

3. During hearing, learned counsel for the petitioner would submit that there was no specific allegation against the petitioner in the report lodged with the police which is the basis for setting criminal law into motion but this contention is without any substance in view of the specific allegation made in the second page of the report lodged with the police that the petitioner and his wife *i.e.* accused No. 1 affixed photos on sale deed along with other accused conspired together and used the said document as genuine one. Merely because the name of the petitioner was not referred to and no specific allegation was made against the petitioner in the report lodged with the police, this Court cannot quash the proceedings when the investigating agency collected material to rope the petitioner with the offence. The statements recorded by the police during investigation also disclosed that the petitioner and his wife took major part in

affixing photos in the place of respondent No. 2. Dandu Radha Krishnam Raju, Addagarla Subba Rao and Vammi Vijaya Chandhra Sahu (L.Ws.2 to 4) also stated before police that the petitioner along with his wife forged the signature of respondent No. 2 and created documents. Similarly, the statements of other witnesses also disclosed participation of the petitioner in the crime. Based on the evidence collected during investigation including the statements recorded under Section 161 Cr.P.C., the police filed charge sheet arraigning the petitioner since he allegedly affixed photo of accused No. 1 in the place of respondent No. 2 with the connivance of other accused. Therefore, at this stage, when certain allegations are made, pointing out complicity of the petitioner, this Court cannot exercise its inherent jurisdiction under Section 482 Cr.P.C.

4. The power of this Court under Section 482 Cr.P.C. is limited and such power can be exercised in three circumstances, namely; (1) to give effect to the orders passed under the Code; (2) to prevent abuse of process of the Court and (3) to secure ends of justice. Keeping in view the main object of incorporating Section 482 Cr.P.C., the Apex Court in **State of Haryana Vs. Bhajanlal**¹ laid down seven guidelines which are as follows:

- "(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

¹ 1992 Supp. (1) SCC 335

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."*

According to guideline Nos. 2 and 3, when the allegation made in the complaint or charge sheet, if taken on its face value, does not constitute an offence punishable under the provisions of penal law, the Court can exercise its inherent jurisdiction to quash the said proceedings. In the case on hand, the allegations made in the charge sheet coupled with the evidence collected during investigation including the statements recorded by the police disclosed the active participation of the petitioner in commission of the offence. Therefore, I am not inclined to exercise the inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings at this stage. Hence, the petition is liable to be dismissed.

5. Accordingly, the criminal petition is dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 05-12-2017.

JSK

M.SATYANARAYANA MURTHY, J.