

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.1056 OF 2018

ORDER:

This criminal petition is filed by the petitioners/accused Nos.1 to 5 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in S.T.C.No.256 of 2017 on the file of the Judicial First Class Magistrate at Kollapur, registered for the offence punishable under Section 160 of Indian Penal Code (for short "I.P.C.")

Petitioner Nos.1 to 3/accused Nos.1 to 3 herein are first party and petitioner Nos.4 and 5/accused Nos.4 and 5 are second party to the incident. It is the case of the prosecution that K.Srinivasulu, PC 2648 received a Dial 100 call information on 24.07.2016 afternoon at about 12.30 hours that some people gathered and fighting each other at Thellaralapally thanda, upon which police visited the said place, where the petitioners herein gathered and causing disturbance to the public peace and tranquility and on seeing the police, they fled away. Thereafter, K.Ramachandrudu, PC 2644 and K.Srinivasulu, PC 2648 came to the police station and lodged report. Basing on the said report, police investigated into and filed charge sheet.

Sri P.Bhaskar, learned counsel for the petitioners contended that the allegations in the charge sheet do not disclose commission of offence and that there was no fight between two group to constitute offence punishable under Section 160 of I.P.C. and he placed reliance on the judgments of this Court rendered in **"C.Subbarayudu v. State of A.P."**¹ **"Magam Chinna**

¹ 1996 Cri.L.J. 1472

Subbarayudu v. State² and judgments of Madras High Court rendered in “***P.Rami Reddy v. Chintha Chinna Narasi Reddy***”³ and “***Pushpa v. Ravi***”⁴.

Based on the principles laid down in the above judgments, learned counsel for the petitioners requested this Court to quash the proceedings as there was no fight between two groups and in the absence of any material to establish that there was fight between two groups and causing disturbance to public peace and tranquility the proceedings against the petitioners are liable to be quashed.

The powers of this Court under Section 482 of Cr.P.C. are limited and this Court can exercise power under Section 482 of Cr.P.C. only to give effect to the orders passed under the Code, to prevent abuse of process of Court or to meet the ends of justice.

In “***State of Haryana v. Bhajan Lal***”⁵ the Apex Court considered in detail the powers of High Court under Section 482 of Cr.P.C. 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 1975 (1) ALT 332 (S.B.)

³ AIR 1938 Madras 924

⁴ 2007 Cri.L.J. 4747

⁵ 1992 Supp (1) SCC 335

(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.

Keeping in view the guidelines laid down by the Apex Court in “***State of Haryana v. Bhajan Lal***” (referred supra), it is the duty of this Court to examine that the allegations made in the

charge sheet, if accepted on its face value, would constitute any cognizable offence.

Here, the case of the prosecution is that two groups are fighting in public place causing disturbance to public peace and tranquility. If the allegations made in the charge sheet are accepted on its face value, they would satisfy the ingredients of offence of “Affray” as defined under Section 159 of I.P.C., punishable under Section 160 of I.P.C.

Learned counsel for the petitioners relied on judgments of this Court and Madras High Court, all the judgments deals with the essential ingredients of offence “Affray”.

In “**C.Subbarayudu v. State of A.P.**” (referred supra) this Court held that “the offence of Affray is a fight i.e. a bilateral act, in which two parties participate and it will not amount to an affray when the party who is assaulted submits to the assault without resistance. Again, there must be a definite disturbance of the public peace due to the fight in the public place to make the offence affray. Mere causing inconvenience to the public is not sufficient. These necessary ingredients are lacking in the accusation and the accused was acquitted.”

Similar view was expressed by this Court in “**Magam Chinna Subbarayudu v. State**” (referred supra).

In “**P.Rami Reddy v. Chintha Chinna Narasi Reddy**” the Madras High Court held that “to constitute an affray there must be a fight. Fighting connotes necessarily a contest or struggle for mastery between two or more persons against one another. A struggle or a contest necessarily implies that there are two sides

each of which is trying to obtain the mastery, so that unless there is some violence offered or threatened against one another, there could be no fight but only a mere assault or beating.”

Similar view was expressed by the Madras High Court in “***Pushpa v. Ravi***” (referred supra).

Even if these principles are applied to the facts of the present case, in view of the specific allegations made against the petitioners herein i.e. members of first party and second party fought with each other and caused disturbance to public peace and tranquility, which constitute offence under Section 160 of I.P.C. *prima facie*. Therefore, I find no ground to quash the proceedings at this stage. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

11.09.2018
Ksp