

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.7943 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.967 of 2016 pending on the file of VII Metropolitan Magistrate, Cyberabad at Hayathnagar, Ranga Reddy District, registered for the offences punishable under Sections 448, 323 and 506 IPC.

The 1st respondent, who lodged report with the police was registered as Crime No.549 of 2016 for the above offences, issued F.I.R. and taken up investigation. During investigation, the investigating agency examined as many as three witnesses and recorded their statements under Section 161 Cr.P.C. After completing entire investigation, the investigating officer filed charge sheet having come to the conclusion that there was a *prima facie* material against the accused to proceed further in Court of law.

The investigation discloses that the *de facto* complainant – Smt Nurzath Farzana, LW.2 – Smt Rumana Almas are mother and daughter. A1 is the husband of the complainant and A2 is the elder son of the complainant. As there were some family disputes, the accused and LWs1 and 2 are residing separately. While so, on 08.07.2016 at 22.00 hours A1 along with A2 criminally trespassed into the house of the complainant, in her absence by broke open the doors. When the complainant returned to the home, she questioned the same, the accused abused her in filthy language and demanded to withdraw the maintenance case, beat her with hands and also taken away Rs.20,000/- from the house of the 1st respondent.

The statements recorded by the police under Section 161 Cr.P.C. clearly discloses that in the absence of 1st respondent in her house

keeping the door locked, the petitioners, who are husband and son the 1st respondent broke open the locks and entered into the house and when the 2nd respondent questioned the same, the petitioners abused in filthy language and demanded to withdraw the maintenance case filed before the concerned Court and beat her with hands. LW.2 is the eye witness to the incident, who is no other than the daughter of the 1st petitioner and sister of the 2nd petitioner and daughter of the 1st respondent, who is residing along with her mother in the same house. LW.2 specifically stated about the incident. Therefore, the material on record though discloses that the petitioners trespassed into the house of the 1st respondent and abused her in filthy language while demanding to withdraw maintenance case and beat her with hands. Therefore, the act of the petitioners to enter into the house after broke open the lock attracts the offence punishable under Section 448 IPC. The word 'house breaking' is defined under Section 445 IPC as follows:

"445. House breaking.—A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say—

(First) —If he enters or quits through a passage by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

(Secondly) —If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

(Thirdly) —If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

(Fourthly) —If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

(Fifthly) —If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

(Sixthly) —If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-

trespass. Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section. Illustrations

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

The criminal trespass is defined under Section 441 IPC and house trespass is defined under Section 442 IPC. According to Section 442 IPC, whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit 'house-trespass'. Therefore, to constitute the offence punishable under Section 448 IPC, there must be a criminal trespass as defined under Section 442 IPC.

Here in this case, the 1st respondent is residing in house bearing H.No. 5-5-972, Hakeemabad, Chintalkunta, Vanasthalipuram, Hyderabad and the petitioners entered into the house by brake open the doors and caused injury on the body of the 1st respondent would attract offence punishable under Sections 445 and 442 IPC punishable under Section 448 IPC. Therefore, I find *prima facie* material against the petitioners for the offence punishable under Section 448 IPC.

The other offence allegedly committed by the petitioners is punishable under Section 323 IPC i.e. causing hurt. The word 'hurt' is defined under Section 319 IPC. The statements of LWs1 and 2 is suffice to support the case of the prosecution, though it is not a substantive piece of evidence at this stage.

The other offence allegedly committed by the petitioners is Section 506 IPC i.e. criminal intimidation. Since the petitioners demanded the 1st respondent to withdraw the maintenance case pending before the Court and making such demand while causing injuries would constitute the offence defined under Section 503 IPC, which is punishable under Section 506 IPC. Therefore, the material available on record, *prima facie*, sufficient to proceed against the petitioners for the offence punishable under Section 506 IPC.

One of the contentions of learned counsel for the petitioners is that earlier complaint filed against the petitioners is subject matter of C.C.No.173 of 2012, which ended in acquittal on 20.03.2018 and another C.C.No.765 of 2010 and O.S.No.2345 of 2010 was disposed of on 08.03.2017. The disposal of earlier C.C and O.S. are nothing to do with the present petition since the incident took place on 08.07.2016 at about 22 hours and it is subsequent to disposal of the earlier cases.

Hence, this Court cannot exercise inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings at this stage and at best, this Court can exercise power under Section 482 Cr.P.C only in few circumstances as enumerated by the Apex Court in **State of Haryana v Bhajanlal**¹. The Apex Court laid down the following seven guidelines:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and

¹ 1992 Supp(1) SCC 335

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."

Applying the above principle to the facts of the case, this Court cannot exercise power under Section 482 Cr.P.C. to stifle the legitimate prosecution at this stage when the material available on record discloses the commission of offence and consequently, the criminal petition is liable to be dismissed.

Learned counsel for the petitioners at this stage, requested the Court to recall NBW pending against the petitioners, but this Court cannot

exercise power under Section 70(2) Cr.P.C while deciding petition under Section 482 Cr.P.C.

Accordingly, the criminal petition is dismissed. However, liberty is given to the petitioners to appear before the Court below and file appropriate application to recall non bailable warrants explaining the reasons for their absence on the date of adjournment and on such application is filed after serving notice on the respondent, the Magistrate concerned is directed to dispose of the said application on the same day in accordance with law.

Pending miscellaneous petitions, if any, in this petition shall stand dismissed in consequence.

Date: 04.07.2018.
kvrn

M.SATYANARAYANA MURTHY, J

