

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.1839 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in F.I.R.No.47 of 2018 on the file of Palakoderu Police Station, West Godavari District, registered for the offences punishable under Sections 447 and 429 read with 34 of Indian Penal Code (for short "I.P.C.").

The petitioner Nos.1 and 2 herein are accused Nos.1 and 2 and respondent No.2 is the complainant, who lodged written report with the police, which reads thus:

"On 01.09.2017 my wife namely Smt.Ramadevi has taken lease of some land of AC.14.34 cents situated at Survey No.115/3,5,8 for 5 years per each year the lease amount of Rs.5,73,600/- from Sri Bhoopathiraju Prudiviraju resident at present at Hyderabad. The said entire lease land I am looking after the said lease land and on 27.11.2017 on the said land we have taken steps for fish tank and purchased 25 lakhs francis seeds after that it has been grownup approximately the rate for KG the matter is like this on 19.01.2018 morning at 6.00 I have gone to the said fish tank all the said Frans were died immediately I have send my workers namely Venkateswara Rao and Prasad they have searched in the said tank on 21.01.2018 evening at 4.00 PM in the said tank northside some position tablets were found and some persons were dumped the said position tablets in the fish tank due to that all the fishes were expired due to that we have suffered financial loss to the tune of 85 lakhs after that I have enquired who are real persons grudge on us after that I came to now the Bangalore town resident of our village person Mr.Chekuri Siddardha Raju to him and our family some differences were there. Due to that he have developed grudge on us hence he ahs dropped the said position tablets in the fish tank due to that I have suffered financial loss to the tune of 85 lakhs by him.

Hence, please take action against the said Ch.Siddardha Raju because he has dropped the position tablets in the Frans tank and due to that I have suffered huge financial loss hence take action against him and do justice to me."

The present petition is filed to quash the proceedings in F.I.R.No.47 of 2018 on the file of Palakoderu Police Station, West Godavari District on the following three (3) grounds.

- (1) There is delay of 10 days in lodging the report with the police.
- (2) Source of information was not disclosed in the complaint.
- (3) Petitioner No.1 is away to the place of occurrence i.e. at Bangalore, whereas the alleged incident took place at Palakoderu.

Therefore, commission of offence by the petitioner No.1 does not arise.

The first and foremost ground raised by the petitioner is that there is delay of 10 days in lodging the report.

The delay is one of the grounds, which can be taken at the time of trial. If the prosecution is able to explain the reasons for delay, the delay in lodging the report is not a ground to acquit the accused. Therefore, the delay of 10 days in lodging the report is not relevant at this stage; consequently, on this ground the proceedings cannot be quashed.

The second ground urged before this Court is that the source of information was not disclosed by the defacto complainant in the complaint itself.

No doubt, it is stated in the complaint that the complainant came to know about the incident, but the F.I.R. under Section 154 of Cr.P.C. is only information to the police about the commission of cognizable offence to set the criminal law into motion and the F.I.R. need not contain all the minute details as it is not encyclopaedia of facts. Therefore, failure of the complainant to disclose source of

information in the complaint, is not a ground to quash the proceedings.

The third ground urged before this Court is that the petitioner No.1 was away to the place of offence and he was at Bangalore. Virtually, learned counsel for the petitioners raised a plea of *alibi*. According to Section 11 of Indian Evidence Act, the facts, which are not relevant otherwise become relevant. Section 11 of Indian Evidence Act, reads thus:

“11. When facts not otherwise relevant become relevant

∴-- Facts not otherwise relevant are relevant --

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.”

In view of Section 11 of Indian Evidence Act, the petitioners are entitled to produce evidence to prove that the petitioner No.1 was away to the scene of offence on the date of occurrence though it is not relevant fact, but it will become relevant. Therefore, the plea of *alibi* is a question of fact to be decided only at the end of trial and the burden is on the petitioner No.1 to substantiate the same. Hence, the plea of *alibi* is not a ground to quash the proceedings at this stage.

Undisputedly, investigation in the present case is at the fetus stage, in such case, it is difficult to quash the proceedings as held in “**State of Orissa v. Saroj Kumar Sahoo**¹”, wherein the Apex Court held that the inherent powers under Section 482, Cr. P.C. should not be exercised by the High Court to stifle a legitimate prosecution. The High Court, being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire

¹ (2005) 13 SCC 540

facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. While exercising jurisdiction under Section 482 of the Cr. P.C., it is not permissible for the Court to act as if it was a trial court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

In “**Kurukshetra University v. State Of Haryana²**”, the Supreme Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C and observed as follows:

“It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the CrPC, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

In view of the law declared by the Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**” and “**Kurukshetra University v.**

² AIR 1977 SC 2229

State Of Haryana” (referred supra) when the investigation is at fetus stage, this Court cannot interfere with the process of investigation and quash the proceedings by exercising power under Section 482 of Cr.P.C. Consequently, the petition is liable to be dismissed.

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

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

JUSTICE M. SATYANARAYANA MURTHY

13.06.2018
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