

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.8144 OF 2017

ORDER

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings against the petitioners who were arraigned as accused 1 to 4 in C.C. No.93 of 2017 pending on the file of XI Metropolitan Magistrate, Cyberabad, L.B.Nagar.

The second respondent herein lodged a complaint with the police alleging that on 14.10.2016 at 10.00 a.m. when she along with her husband went to their flat in second floor situated at New Royal School building, Karmanghat, to clean the said flat, the petitioners herein picked up quarrel with her, beat with hands, dragged by holding her hand and threatened with dire consequences to kill her, if she once again entered into the second floor. On the strength of these allegations, the police registered a case against the petitioners in Crime No.720 of 2016 for the offences punishable under Sections 354, 323, 506 read with 34 of the Indian Penal Code, 1860 (for short 'I.P.C.'), investigated into and filed charge sheet.

The investigation disclosed that the petitioners, the *de facto* complainant and her husband are having plots in Vishnu Complex situated at Karmanghat X roads, Saroor Nagar. The husband of A.1 is running a school in the same building i.e. Vishnu Complex, Karmanghat X roads under the name and style New Royal School. A.2 and A.3 are working as teachers and A.4 is a Security Guard in the said School. The investigation further disclosed that there were some property disputes between the

husband of the defacto complainant and husband of A.1. On 14.10.2016 at about 10.00 a.m. the defcto complainant and her husband went to their flat situated at second floor, New Royal School building, Karmanghat, to clean the said flat, in the meantime, A.1 & A.4 picked up quarrel with them and beat with hands, A.4 caught hold the hand of the *de facto* complainant, pushed on the ground and A.2 & A.3 came to the place and argued with the husband of the *de facto* complainant and threatened them with dire consequences. Thus, A.1 to A.3 have committed offences punishable under Sections 323 and 506 of I.P.C. and A.4 has committed offences punishable under Sections 354, 323 and 506 of I.P.C.

Challenging the charge sheet, the present criminal petition is filed on the ground that there were civil disputes between the husband of A.1 and the husband of the *de facto* complainant, they were settled and executed a settlement deed on 11.03.2012, agreeing that either of the party to the settlement deed shall not interfere in their respective school activities, thereafter the *de facto* complainant and her husband filed a civil suit in O.S. No.645 of 2015 to restrain the first petitioner herein and her husband from interfering with the schedule premises shown in the suit schedule i.e. a) Unit bearing No.4, first floor, admeasuring 1874 sq.ft., b) Unit bearing No.108, first floor, admeasuring 1652 sq.ft. (c) Unit bearing No.2, first floor, admeasuring 1874 sq. ft., d) Unit bearing No.106, first floor, admeasuring 1652 sq.ft. and e) Unit bearing No.206, second floor, admeasuring 1652 sq.ft., all (a) to (e) units are located in Sri Vishnu House. But the said Suit was dismissed after full-fledged trial. After disposal of the Suit, to wreck

vengeance against the petitioners, the present complaint is lodged, wherein the police investigated into and filed charge sheet and therefore, the petitioners prayed to quash the proceedings in C.C. No.93 of 2017.

This Court ordered notice to the second respondent/ *de facto* complainant and the counsel for the petitioners also filed proof of service. But none appeared before this Court on behalf of the second respondent/ *de facto* complainant.

During hearing, learned counsel for the petitioners mainly contended that there were civil disputes between the husband of the first petitioner and the *de facto* complainant and her husband with regard to running school and they were settled under settlement deed referred supra. Moreover, a civil suit filed by the second respondent/ *de facto* complainant and her husband was ended in dismissal by Decree and Judgment dated 03.03.2017 passed by the I Additional Senior Civil Judge, Ranga Reddy District, L.B.Nagar, and after dismissal of the suit only the present complaint is lodged to wreck vengeance against the petitioners and there were no details in the written report lodged with the police about the place and time of occurrence etc., but the police after completion of investigation filed charge sheet without any material and requested this Court to quash the proceedings.

The basis for filing charge sheet against the petitioners is report lodged with the police dated 14.10.2016. In the report itself it is mentioned as assault and abuse in the premises of Vishnu Complex, Kharmnghat and specific allegation made in the complaint disclose the time and date of offence and whereas subject on the top of the complaint disclosed the scene of offence.

However, when the investigation is complete and filed charge sheet, the allegations made in the report lodged with the police by the complainant is insignificant as it is only an information to the police about the commission of offence to set the criminal law into motion and it need not contain minute details, since it is not an encyclopedia of facts. Therefore, failure to mention the details like scene of offence etc., is not a ground to quash the proceedings. The petitioners did not file the statements of witnesses recorded by the police under Section 161(3) Cr.P.C. for perusal of this Court, though it forms part of the charge sheet or final report under Section 173 Cr.P.C. If the allegations made in the final report, excluding the statements recorded under Section 161(3) Cr.P.C. and the documents collected during investigation by the police, disclosed that the petitioners committed offences punishable under Sections 354, 323, 506 r/w.34 of I.P.C., the documents collected during investigation and the statements recorded by the police during investigation under Section 161(3) Cr.P.C. have to be verified to find out whether these petitioners committed any offence much less offence, punishable under Sections 354, 323, 506 r/w.34 I.P.C. while deciding the criminal petition filed under Section 482 Cr.P.C., but this Court is disabled to verify the statement recorded by the police under Section 161(3) Cr.P.C., as they are not placed on record by the petitioners for perusal of this Court to decide whether there is *prima facie* material to proceed against the petitioners or not. Therefore, it is difficult for me to decide the present criminal petition to quash the proceedings at this stage without verifying the statements recorded by the police during investigation.

The other contention raised by the counsel for the petitioners is that though the complaint is bereft of details, they lost suit for injunction in O.S.No.645 of 2015 on the file of I Additional Senior Civil Judge and the complaint is with a view to wreck vengeance due to spite and the property covered by the civil suit and scene of offence is one and the same, though there was settlement between both parties that they shall not interfere with the school affairs of both.

The said suit was dismissed on 03.03.2017, but the present complaint was lodged on 14.10.2016 almost 5 months prior to dismissal of the suit and apart from that the subject property of the suit schedule in O.S.No.645 of 2015 is the first floor of the building of Vishnu complex, the Schedule consists of (a) to (e) are different units viz., 4, 108, 2, 106, 206 with different extents. But dismissal of the suit pertaining to property in first floor would not come in the way of the second respondent/ *de facto* complainant to lodge a report, more particularly, when she was beaten by these petitioners while threatening with dire consequences. The allegations made in the charge sheet and the complaint are consisting that these petitioners beat with hands and pulled her on the ground while threatening with dire consequences. Therefore, when the complaint discloses commission of offence by the petitioners, it is difficult to exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings.

This Court can exercise its power under Section 482 Cr.P.C. only to implement the orders passed under the Code, to prevent abuse of process of the Court and to meet the ends of justice. In **State of Haryana and Others v. Bhajan Lal** the Apex Court laid

down the following guidelines to exercise power under Section 482 Cr.P.C.

(a) 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;

(b) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) Where the uncontroverted 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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 guidelines laid down by the Apex Court in the above judgment, even if the allegations made in the complaint accepting on its face value constitutes the offence, the Court cannot quash the proceedings. But here it is the contention of the petitioners that the complaint was lodged with an intention to wreck vengeance against the petitioners due to settlement of disputes by settlement deed.

The learned counsel for the petitioners also drawn the attention of this Court to the judgment in O.S. No.645 of 2015 on the file of I Additional Senior Civil Judge. At paragraph 33 of the judgment it was concluded that the plaintiffs are not in possession, but filed suit without seeking cancellation of Ex.B.2 settlement deed and observed as follows:

"The plaintiffs who are not in possession have filed this suit and they have not pleaded and proved the cancellation of the Ex.B.2 settlement deed or even questioned anywhere. The conduct of the plaintiffs that they wanted to see the school of the defendants closed somehow...."

But the said judgment will not come in the way to the prosecution to proceed with the trial of the matter, since the complaint was lodged 5 months prior to the judgment in O.S. No.645 of 2015. The question to wreck vengeance against the petitioners due to spite by the second respondent will not arise since the suit is not disposed of by the date of lodging the report. The motive may be relevant under Section 8 of the Indian Evidence Act, 1872, but it is double edged weapon that pendency of civil suit may be one of the causes to commit the offence or to foist a false

case against the petitioners, but at this stage in the absence of filing of statements recorded by the police under Section 161(3) Cr.P.C, it is difficult to exercise power under Section 482 Cr.P.C. to quash the proceedings.

Hence, applying the guidelines laid down by the Apex Court in **Bhajanlal's** case referred supra, I find no ground to quash the proceedings at this stage. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

Dt.25.06.2018
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M. SATYANARAYANA MURTHY, J

