

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.14773 OF 2014

ORDER:

This criminal revision petition is filed under Section 482 of Cr.P.C to quash the proceedings in Crime No. 575 of 2014 on the file of Sanath Nagar Police Station, Cyberabad for the offences punishable under Sections 420, 406, 447, 506 IPC & 156(3) Cr.P.C.

The second respondent filed private complaint under Section 200 of Cr.P.C before the XXIX Metropolitan Magistrate Cyberabad at Kukatpally alleging that the petitioner started business and the second respondent joined in the business as a partner and after developing the business for sometime, the petitioner allegedly compelled him to withdraw from the partnership business however at the end, they decided to dissolve the business and the amount was settled. As per the settled amount the petitioner allegedly agreed to pay Rs.4,40,000/- towards full and final settlement and also the petitioner executed money bond on Rs.100/- non-judicial stamp paper on 28.08.2014 agreeing to pay the said the amount within 23 days. But the petitioner did not pay the amount within the stipulated time.

While the matter stood thus, on 13.10.2014 at 10 p.m. the petitioner along with some anti-social elements, criminally entered into the house of the complainant and picked up quarrel with the complainant and demanded to return the above said money Bond and also warned that if the complainant used the said document before any authority, he would see the end of the complainant and

also abused the complainant in most filthy language.

The Magistrate referred the complaint to the police for investigating and filing report. On receipt of reference, the police registered crime and issued FIR which is now under challenge before this Court on three grounds.

The **first ground** is that the dispute is purely civil in nature and the second respondent has given colour of criminal offence for the civil litigation and therefore, proceedings are liable to be quashed against this petitioner.

The **second ground** is that the allegations made in the complaint would not constitute offences punishable under Sections 420, 406, 447, 506 IPC & 156(3) Cr.P.C, thereby, F.I.R is liable to be quashed.

The **third ground** is that is the petitioner allegedly agreed to pay Rs.4,40,000/- and executed a money Bond, at best the remedy available to the second respondent is to file a suit and recover the amount in a Civil Court.

During hearing, learned counsel for the petitioner reiterated the contentions raised in the petition and contended that, when the petitioner allegedly trespassed into the house of the complainant, the second respondent picked-up quarrel, thereby Section 447 IPC has no application and prayed to quash the proceedings in the above crime. It is also contended that report was lodged with the police against the second respondent herein and registered F.I.R which is the subject matter of Crime No.688 of 2014, as such filing of a private complaint is a counter blast.

This court ordered notice to the second respondent and

notice was also served, proof of service was also filed, but none appeared for the second respondent.

The second respondent admittedly filed private complaint against this petitioner for the offences referred supra and the specific allegations in paragraph 2 and 3 discloses that the petitioner and second respondent carried on partnership business and the account was settled due to different reasons, dissolving the partnership firm. Further, the petitioner executed a money bond and agreed to pay Rs.4,40,000/- towards full and final settlement within 23 days from the date of its execution, i.e. on 28.08.2014. But, the petitioner did not repay the said amount as agreed under the bond. So far as the non payment of amount within the stipulated period in the bond would not constitute an offence *prima facie*, but it may give rise to cause of action for filing a civil suit.

The other allegation made in the second and third paragraph of the complaint is that, on 13.05.2014 at 10.00 p.m, the accused along with some anti-social elements criminally trespassed into the house of the complainant and picked up quarrel with the complainant and demanded to return the said money bond dated 28.08.2014 and also warned that if the complainant used the said document before any authority, he will see the end of the life of complainant and also abused the complainant in filthy language.

The first paragraph of the complaint is criminal trespass, which is punishable under Section 442 IPC. The allegations made in the second and third paragraph of the complaint made it clear

that the petitioner along with some anti-social elements entered into the premises of the second respondent and picked-up quarrel, demanded to return the money Bond while warning him not to use the said bond before any authority, threatening him to see his end. Undoubtedly, this would constitute an offence within the definition of criminal trespass *prima facie* as defined under Section 441 IPC which is punishable under Section 442 IPC.

The petitioner abused the complaint in filthy language and also threatened him with dire consequences, if he used the document before any authority. This would fall within the definition of criminal intimidation defined under Section 503 IPC which runs as follows.

“Criminal Intimidation:- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.”

The offence under section 503 IPC is punishable under section 506 IPC.

Overall consideration of entire material on record and the allegations made in paragraphs 2 & 3 made out *prima facie* case against this petitioner for the two offences i.e Section 442 & Section 506 IPC. But while deciding an application under Section 482 Cr.P.C, this court cannot express its opinion based on the allegations that which would attract a particular offence.

But, in view the contention raised by the learned counsel for the petitioner, this Court is forced to express its opinion as to the nature of offence. However, it is for a limited purpose to express its opinion as to the nature of offence. The Investigation Agency, if found any material, may file final report under Section 173 Cr.P.C for any offence after collecting necessary evidence. Hence, the proceedings against this petitioner cannot be quashed on the second ground.

The third ground raised before This Court is that this is purely a civil litigation is converted into criminal offence and the petitioner can recover the amount. But, so far as enforcement of agreement is concerned, the second respondent is entitled to file a suit and recover the amount. But trespassing into a house and threatening the complainant with serious consequences is totally a serious offence under the provisions of Indian Penal Code, as discussed above, availability of civil remedy alone is not a ground to quash the proceedings. Hence on this ground the proceedings cannot be quashed.

Lastly, it is contended that the complaint was filed as a counterblast as the petitioner lodged a report with the police which is the subject matter of Crime No. 688 of 2014. The complaint was lodged on 22.09.2014, whereas, the private complaint was lodged on 16.10.2014. But, at this stage, it is difficult to decide whether filing of a private complaint is an abuse of process of the Court or whether the petitioner himself trespassed into the house and committed such offence, since, motive attributed to the petitioner is a double edged weapon which can be used either to foist a false

case or commit such an offence by either of the parties and it is not a substantive piece of evidence. Hence, I am afraid to quash the proceedings on the third ground.

In any view of the matter, the power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The powers of this Court under Section 482 Cr.P.C are limited and the allegations made in the complaint, if constitutes an offence on its face value, the Court cannot exercise its power under Section 482 Cr.P.C to quash the proceedings. Such power can be exercised to give effect to the orders passed by the Court and to prevent abuse of the process of the Court or to meet the ends of justice, such power cannot be exercised as a matter of routine. But, while deciding such application the Court has to apply its mind to the facts and verify whether those allegations would attract any of the offences either under IPC or under penal law on its face value.

In **State of Haryana v. Bhajan Lal**¹ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This 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 1992 Supp. (1) SCC 335

(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 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.

In **State of Orissa v. Saroj Kumar Sahoo**², the Supreme Court had an occasion to deal with the scope of Section 482 and 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 Apex Court also held that 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 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. The Supreme Court also held that there is no hard and fast rule laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Further, it was also held that while exercising jurisdiction under Section 482 of 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.

² (2005) 13 SCC 540

In **Kurukshetra University And Anr. v. State Of Haryana**

And Anr³, 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.”

Applying the principles laid down in the above judgment, this Court cannot quash the proceedings at this stage when the facts are incomplete and hazy, irrespective of the magnitude of law and fact involved in the matter.

Therefore, at this stage, I am unable to quash the proceedings and the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

However, the observations made herein above, if any, are for limited purpose to dispose of the present criminal petition. It is left open to the Investigating Agency to take appropriate steps after completion of the investigation.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.06.2018

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³ AIR 1977 SC 2229