

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.4280 of 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in C.C.No.533 of 2014, pending on the file of Judicial Magistrate of First Class, Dhone, registered for the offences punishable under Sections 323, 506, 509 read with 34 IPC.

The petitioners are A1 and A2 and the 2nd respondent is the complainant before the police, who lodged report alleging that the petitioners and others committed the offences. On the strength of the complaint the police registered a Crime No.81 of 2014 of Jaladurgam Police Station, Kurnool District for the above offences, issued FIR and thereafter, took investigation. During investigation, the police examined LWs.1 to 4. i.e. Harijana Rasipogula Eswaramma, Harijana Rasipogula Pedda Sunkanna, Baliya Paramesh, Harijana Ramudu and B.Satish Kumar under Section 161 (3) Cr.P.C. On the strength of the evidence collected during investigation, the police filed charge sheet having concluded that the petitioners *prima facie* committed the above offences.

The present petition is filed under Section 482 Cr.P.C. on the ground that the petitioners are innocent of any offence and they were falsely implicated on baseless allegations. It is also contended that the dispute is purely civil in nature and the complaint was filed with an oblique motive and malicious intention and based on concocted story and thereby the fixitious proceedings against the

petitioners cannot be allowed and sustained and that the complaint was lodged to wreck vengeance against the petitioners and based on such allegations investigation is taken up and filed final report. Therefore, none of the allegations made in the complaint would not constitute the above offences and prayed to quash the charge sheet.

During hearing, learned counsel for the petitioners contended that the charge sheet does not disclose the investigation done by the police and in the charge sheet, the conclusions of the police were not recorded whether these petitioners committed any offence or not and in the absence of any proper investigation, the proceedings in Calendar Case. are liable to be quashed and prayed the quash the proceedings. It is also contended that a counter case is pending against the 2nd respondent in Crime No.84 of 2014 and after completion of investigation charge sheet was filed against the 2nd respondent and the same was registered as C.C.No.533 of 2014.

Learned Public Prosecutor opposed the petition on the ground that when the investigation completed, the evidence collected by the investigating agency disclose the commission of offence and in the absence of any material to conclude that it was registered and investigated into to wreck vengeance, this Court cannot exercise power under Section 482 Cr.P.C. and prayed to dismiss the petition.

The genesis for filing the charge sheet is written complaint lodged by the 2nd respondent with the police on 25.08.2014 duly signed by the 2nd respondent-Rasipogula Eswaramma making serious allegations causing injuries on her body by Anand Abhilash

and Arjun Mahesh and that the police recorded statements of witnesses.

The 2nd respondent in her statement made clear that the petitioners caused injury on her back and abused her in filthy language while questioning as to why scolded and beating on her back with hand and on seeing the same her husband came there. The petitioners and others pushed him on the ground and in the meanwhile one Balija Ramesh and Ramudu separated them. While leaving the place, they threatened with dire consequences to see their end. LW.2 Pedda Sunkanna stated about the role played by the petitioners and his intention on noticing the incident and Balija Ramesh and Ramudu stated to the police what they witnesses more particularly about the injury.

Based on the statements recorded by the police under Section 161(3) Cr.P.C., the investigating agency concluded that the petitioners committed the above offences. The contention that the police did not investigate and charge sheet is silent with regard to the investigation done is not sustainable in view of the material produced by the petitioners more particularly, the statements recorded by the police.

The other contention that the petitioners also lodged report with the police, which is subject matter of C.C.No.84 of 2014, which relates to the incident that occurred on 28.03.2014. These two incidents pointed out by learned counsel for the petitioners would not constitute case and counter case arising out of the same incident, but these incidents are occurred on two different dates i.e.

28.03.2014 and 25.08.2014. Failure to mention about the pending case in the charge sheet or in the material collected is not a ground to quash the proceedings.

The other contention raised by learned counsel for the petitioners is that the allegations made in the complaint would not constitute any offence and the case was filed against the petitioners to wreck vengeance. As seen from the material on record, more particularly the charge sheet, constitute the offence and whereas the incident occurred only subsequent to the incident, which the petitioners complained on 23.08.2014 and when the petitioners lodged report against the 2nd respondent and others based on incident occurred on 23.08.2014, the possibility of commission of this offence cannot be ruled out since the motive is double edged weapon, which can be used to foist a false case or to commit an offence in view of the enmity between the parties. Therefore, motive is only relevant, but it is not a substantive piece of evidence under Section 8 of the Evidence Act. At this stage, it is difficult to decide whether the case was foisted with a view to wreck vengeance against the petitioners.

The power of this Court under Section 482 Cr.P.C can be exercised sparingly in exceptional circumstances to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In ***State of Haryana v. Bhajan Lal***¹ the Court considered in detail the provisions of Section 482 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 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 to 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.

The Apex Court in **Mrs Dhanalakshmi vs. R. Prasanna Kumar & Others**² held that the jurisdiction of this Court is limited and this Court cannot appreciate evidence available on record while exercising power under Section 482 Cr.P.C.

Therefore, based on material on record as discussed above, applying the law laid down by the Apex Court, it is difficult to quash the proceedings at this stage. Hence, I find no grounds to quash the proceedings.

Accordingly, the criminal petition is dismissed at the stage of admission.

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

JUSTICE M. SATYANARAYANA MURTHY

11.06.2018
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² AIR 1990 SC 494