

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4355 OF 2018

ORDER:

This Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings in S.C. No.20 of 2018 on the file of Special Sessions Judge, SCs/STs Court, Ananthapuramu, registered against the petitioners for the offence punishable under Section 506 read with 34 of the Indian Penal Code, 1860 (for short 'I.P.C.') and Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention Of Atrocities) Act 1989 (Amendment Act, 2015) (for short 'the Act').

The main allegation made against the petitioners is that they insulted the first respondent herein raising his caste name. Basing on the complaint lodged by the first respondent, the Station House Officer, Lepakshi Police Station, registered a case in Crime No.51 of 2016 and investigated into. During investigation, the police examined as many as 18 witnesses and filed charge sheet having concluded that there is, *prima facie*, material against the petitioners for the offence punishable under Sections referred above.

The present petition is filed on two grounds. The first ground is that there is a delay of one year in lodging the complaint since the incident took place about one year ago prior to filing of this complaint and the second ground is that there was civil disputes between the father of the petitioners and the first respondent, which was decided in favour of the petitioners' father and appeal filed against it was ended in dismissal and execution petition is pending for execution of the decree against the first

respondent and that a report was lodged against the first respondent as he obstructed the petitioners' father in execution of the decree in O.S. No.1941 of 2001, the present complaint lodged against these petitioners is an afterthought and there was no reference in the complaint with the police with regard to this incident.

The first ground urged by the petitioners before this Court is that the delay in lodging the report is one of the circumstances and if the prosecution is able to explain the reason for delay in lodging the report, during trial, the court can record conviction, subject to finding reliable evidence on record to establish the offence, but the delay by itself is not a ground to quash the proceedings. Therefore, on the ground of delay, the proceedings pending before the Sessions Judge cannot be quashed.

The other ground is that the suit filed by the father of the petitioners was decided in his favour and later appeal preferred by the first respondent was dismissed, but when the execution petition was filed, the first respondent resorted to file this litigation and hence sought for quashment of the proceedings in S.C. No.20 of 2018.

Merely because the allegations gives rise to civil dispute, and to a criminal offence, the court cannot quash the proceedings. In **Vijayander Kumar & Ors vs State Of Rajasthan & Anr**¹ the Apex Court held that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a

¹ 2014 (3) SCC 389

ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not.

In **Devendra and Others vs. State of Uttar Pradesh and Another**² the Apex Court had considered the scope of Section 482 to quash the F.I.R., when the dispute between the parties is purely civil in nature, quashment of the F.I.R. is justifiable and in the same judgment, the Apex Court distinguished the civil wrong and criminal wrong. But in any view, the point raised before this Court is that due to civil dispute, a complaint was lodged by the first respondent. Whether the first respondent lodged a report with the police is an abuse of process of the Court or not is the question of fact to be decided by this Court. It appears from the record that the voluminous evidence collected by the investigating agency during investigation *prima facie* discloses that there is material to proceed against the petitioners for the offence under Sections referred above and hence it is difficult to decide that whether the complaint was lodged to wreck vengeance against these petitioners or as an abuse of process of law.

Even otherwise the Court can exercise power under Section 482 Cr.P.C. only in exceptional circumstances, but not as a matter of routine. While quashing the criminal proceedings exercising power under Section 482 Cr.P.C., the Court has to follow the guidelines laid down by the Apex Court in **STATE OF HARYANA V. BHAJAN LAL**³, which are as follows:

(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

² (2009) 7 SCC 495

³ 1992 Supl. (1) SCC 335

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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.

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In the recent judgment in **Girish Kumar Suneja v. C.B.I**⁴ the Apex Court held that the Court can exercise power under Section 482 Cr.P.C. to quash the criminal proceedings in exceptional circumstances and in rare cases in the interest of justice, to avoid an abuse of process of the Court.

In the present case there is absolutely nothing to conclude that the first respondent lodged a report as an abuse of process of the court, as no material is produced before this Court except F.I.R and charge sheet. Therefore, I am unable to exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings at this stage, since the questions raised before this Court are purely question of fact which are to be decided during trial only. Hence, I find no ground to quash the proceedings in S.C. No.20 of 2018 exercising power under Section 482 Cr.P.C. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date:04.06.2018
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⁴ AIR 2017 SUPREME COURT 3620