

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.4532 OF 2018

ORDER:

This petition is filed by the petitioners/A-1 to A-6 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") in connection with Crime No.15 of 2018 on the file of Lingasamudram Police Station, Lingasamudram, Prakasam District.

The allegation made against these petitioners in the complaint is that, they caused damage to a plaque which belongs to the Government i.e. public and the same was witnessed by some of the villagers. Based on such complaint, the police registered the above crime and issued F.I.R and the same is at the stage of investigation.

Learned counsel for the petitioners contended that Section 4 of the Prevention of Damage to the Public Property Act, 1984 (for short 'the Act') is not applicable to the facts of the present case, as no damage was caused to the public property by fire or explosive substance and at best, Section 3 of the Act alone is applicable. Further, it is submitted that, I.A.No.1 of 2018 in W.P.No.8051 of 2018 was filed by one Malleboyina Kondala Rao and 8 others and obtained an interim order.

But, such defense is not available at this stage for the alleged damage caused to the plaque. Moreover, the stage of investigation is not known.

In **State of Orissa v. Saroj Kumar Sahoo**¹, 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

¹ (2005) 13 SCC 540

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.

The Court can evaluate the material and documents on record, but it cannot appreciate evidence. The Court can not record finding to conclude whether the material produced is sufficient or not for convicting the accused. Therefore, the limited purpose of appreciation of facts is only to come to a conclusion, whether any material is available to proceed against the accused for the alleged offence committed by the accused. Thus, the limited jurisdiction under Section 482 of Cr.P.C can be exercised only in exceptional circumstances.

At this stage, when the investigation is not commenced and when the facts are incomplete and hazy, the Court cannot exercise its

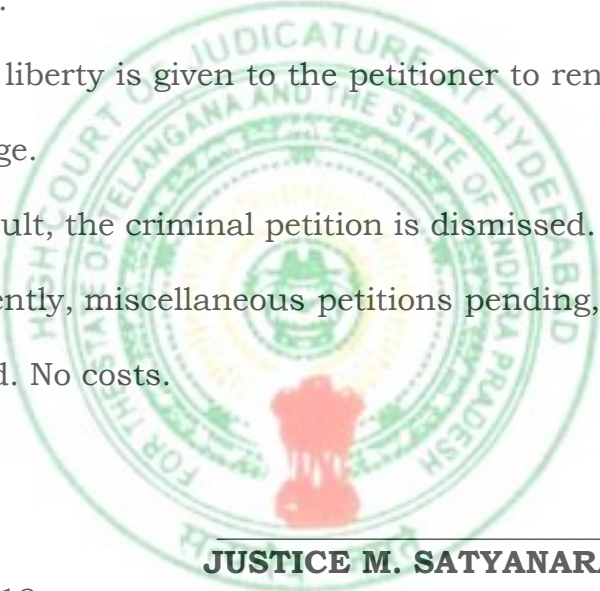
inherent jurisdiction normally to stifle the legitimate prosecution and refrain from expressing its opinion and *prima facie* decision when the facts are incomplete.

Here, in this case, investigation is not commenced and facts are incomplete. Therefore, it is difficult to express any opinion whether Section 3 or Section 4 of the Act is applicable or both are applicable. Therefore, I am of the considered view that it is not the appropriate case to exercise jurisdiction under Section 482 Cr.P.C, in view of the law declared by the Apex Court in **State of Orissa v. Saroj Kumar Sahoo** (referred supra) and consequently, the criminal petition is liable to be dismissed.

However, liberty is given to the petitioner to renew his request at appropriate stage.

In the result, the criminal petition is dismissed.

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



JUSTICE M. SATYANARAYANA MURTHY

Dated:01.05.2018

SP