

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 4591 OF 2018

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") by the petitioners-accused Nos. 1, 2, 5 and 6 to quash the proceedings in C.C.No. 457 of 2017 on the file of the Court of I Additional Judicial Magistrate of I Class at Jagtial (for short, 'the Court below') registered for the offence punishable under Section 341 read with Section 34 of IPC.

2. The Sub Inspector of Police, Jagtial Town Police Station, Jagtial District, lodged a report making serious allegations against the petitioners and other accused that on 10-06-2017 at about 3.30 p.m. at new bus stand chowrastha, the petitioners and accused Nos. 3 and 4 burnt the effigy of Prime Minister of India Sri Narendra Modi; that on receiving information, he along with his staff reached the scene of offence and on noticing the arrival of police, the petitioners and other accused tried to leave the scene and that with the help of his staff, he identified the petitioners and accused Nos. 3 and 4 as the persons responsible for wrongfully restraining public from passing through new bus stand chowrastha.

3. The main contention of learned counsel for the petitioners is that no independent witness was examined and none of the persons, whom the petitioners allegedly restrained from moving, were examined; that basing on the evidence of police officials, filing of charge sheet is illegal and that making protest by burning the effigy of Prime Minister of India is a fundamental right guaranteed under the Constitution of India and such protest would not constitute

the offence punishable under Section 341 of IPC and therefore prayed to quash the proceedings against the petitioners.

4. As seen from the allegations made in the report and the charge sheet, the petitioners and accused Nos. 3 and 4 participated in the protest and in the protest, the effigy of Sri Narendra Modi, Prime Minister of India, was burnt and in that process, they obstructed public from passing through new bus stand chowrastha. The statements recorded by police during investigation under Section 161 of Cr.P.C. also disclosed that the petitioners obstructed public from moving towards new bus stand chowrastha. Section 341 of IPC prescribes punishment for wrongful restraint and Section 339 of IPC defines the word wrongful restraint and according to it, whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. Taking into consideration the definition of the word wrongful restraint under Section 339 of IPC, the act of the petitioners and accused Nos. 3 and 4 restraining public from entering into new bus stand chowrastha would *prima facie* constitute the offence punishable under Section 341 read with Section 34 of IPC.

5. The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise such inherent jurisdiction only to give effect to the orders passed under the Code or to prevent abuse of process of the Court or to secure ends of justice. Keeping in mind the power of this Court under Section 482 Cr.P.C., the Apex Court in ***State of Haryana Vs. Bhajanlal***¹ laid down seven guidelines which are as follows:

"(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*

¹ 1992 Supp. (1) SCC 335

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 ***R.P. Kapur Vs. State of Punjab***², the Apex Court laid down the following principles:

- "(i) *Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;*

² AIR 1960 SC 866

- (ii) *Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;*
- (iii) *Where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and*
- (iv) *Where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."*

Turning to the case on hand, the petitioners and accused Nos. 3 and 4 allegedly restraining public from passing through new bus stand chowrastha would *prima facie* constitute the offence punishable under Section 341 of IPC. Learned counsel for the petitioners would contend that except recording of statements of police officials, no independent witness was examined and on this ground alone, the proceedings can be quashed but this contention cannot be accepted at this stage since it is a question of appreciation of evidence by the Court below after completion of trial only. If the Court below after completion of trial finds that the evidence of police officials is not inspiring confidence, then it may acquit the accused but that is not a ground to quash the proceedings and it would not fall within the ambit of any of the guidelines laid down by the Apex Court in **Bhajanlal** (1st *supra*). I, therefore, find no ground to quash the proceedings at this stage and the petition is liable to be dismissed.

6. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 05-06-2018.
JSK

M.SATYANARAYANA MURTHY, J.