

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.4646 of 2018

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in Crime No.133 of 2017 of Devanakonda Police Station, Kurnool District, registered for the offence punishable under Sections 323, 354 IPC and Section 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015, on various grounds.

The petitioners are A1 and A2 in the above crime, who are children of Talari Ramudu and they are claiming that they are owners of the property as it was assigned to the first petitioner long ago and continuing in possession, having obtained pattedar pass books and his name was entered into revenue records. But the 2nd respondent claiming that she is in possession and enjoyment of the property having obtained assignment and Xerox copy of assignment alone was given to him, since then, she is continuing in possession and enjoyment of the property.

The main contention raised by the petitioners is that the incident allegedly occurred on 12.12.2017 at 10.30 AM, but the report was lodged on 26.12.2017 that there is abnormal unexplained delay, which is fatal to the prosecution case. The other ground is that the first petitioner is in possession and enjoyment of the property being beneficiary and continuing in possession of the property and the question of abusing the 2nd respondent by raising his caste name does not arise.

During hearing learned counsel for the petitioners, besides reiterating the grounds urged in the petition would submit that in **Dr. Subhash Kashinath Mahajan v State of Maharashtra and another**¹ the Apex Court issued certain directions to comply with before registering

¹ 2018 Law Suit (SC) 233

crime and if the said directions were not complied with by the police, the said proceedings can be quashed.

The 2nd respondent lodged report on 26.12.2017 alleging that the land in Survey Nos.19 and 20/2A/2B was assigned to him being member of the scheduled caste and is continuing in possession and enjoyment of the property. While he was cultivating the same on 12.12.2017 at about 10.30 AM, the petitioners abused him in filthy language raising his caste name 'mala' and attacked him while questioning as to why he gave complaint and pulled the mangalasutram of Smt Shankamma and caused injuries on the body of the *de facto* complainant.

The main contention of the petitioners is that the land was assigned to the 1st petitioner, to establish the same *prime facie* the petitioner filed Xerox copies of D form patta issued in his favour. The land in dispute as per complaint is situate in Survey No.20/2B/1B to an extent of Ac.3.40 cents and it is difficult to conclude that whether the said land is assigned to the *de facto* complainant/2nd respondent or not. However, the consistent case of the 2nd respondent is that the land in Survey No.21/2A and 2B was assigned to him, but it consists of Ac.10.00, whereas, the 1st petitioner is claiming to be in possession in an extent of Ac.3.40 cents under the assignment in Survey No.20/2B/1B. Therefore, the identity of the land in question has to be decided and whether the 2nd respondent is in possession and enjoyment of the land assigned. The 2nd respondent being member of the scheduled caste was abused by the petitioner in the name of his caste would amount to insulting within the public view, which would attract offence punishable under the provisions of SC & ST (POA) Act. Therefore, at this stage, it is difficult to quash the proceedings.

The other ground raised before this Court is that there is delay of 14 days in lodging the report. As per the allegations made in the report, the incident occurred on 12.12.2017 at 10.30 AM and complaint was

received on 26.12.2017 i.e. almost 14 days one hour after the incident. The delay itself is not a ground to quash the proceedings as the delay can be explained during trial. Hence, the proceedings cannot be quashed on this ground.

Though review petition is pending before the Apex Court against **Dr. Subhash Kashinath Mahajan's** judgment, the law declared by the Apex Court holds good and non compliance of directions is a ground to quash the proceedings as per the contention of learned counsel for petitioners.

The scope of Section 482 Cr.P.C is limited and this Court can exercise its inherent jurisdiction only to give effect to the orders passed under the Code to prevent abuse of process of the Court and to secure the ends of justice. In **State of Haryana v Bhajanlal**², the Apex Court laid down the following seven guidelines:

“(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.

² 1992 Supp(1) SCC 335

(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 present case would not fall within the ambit of any of the guidelines, but in view of the judgment of the Apex Court in **Dr. Subhash Kashinath Mahajan's** referred supra, the 1st respondent is directed to follow the procedure prescribed.

With the above direction, the criminal petition is disposed of.

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

04.06.2018
kvrm

M. SATYANARAYANA MURTHY, J