

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 4654 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings against the petitioner-accused No. 7 in S.C.No. 216 of 2016 on the file of the Court of learned II Additional District Judge, West Godavari District at Eluru, registered for the offences punishable under Sections 302 and 149 read with Section 109 of IPC arising out of crime No. 171 of 2014 of Ganapavaram Police Station.

2. The present petition is filed on the ground that the above crime was registered against accused Nos. 1 to 6 initially and later, basing on the confessional statement of other accused, the petitioner was shown as accused No. 7 in this case and thus there is absolutely no material against the petitioner to connect with the above offences.

3. During hearing, learned counsel for the petitioner would contend that except the confessional statement of co-accused, there is absolutely nothing on record to connect the petitioner with the above offences and the confessional statement of co-accused or extra judicial confession can never be the basis for recording conviction in such serious crime and prayed to quash the proceedings against the petitioner.

4. It is an undisputed fact that the above crime was registered against accused Nos. 1 to 6 initially and accused No. 4 died before filing charge sheet and therefore the case against accused No. 4 is abated. The basis for registration of crime against the petitioner is the confession of one Kasi Krishna and the extra judicial confession of accused No. 3 made before Village Revenue

Assistant on 30-12-2014. The extra judicial confession made by accused No. 3 before VRA would disclose that with the help of the petitioner, the deal was settled with hired assassins to kill his mother-in-law. This extra judicial confession, if inspires confidence, can form the basis for conviction after completion of trial but at this stage, it is difficult to hold that the confessional statement is not true and apart from that, it is a question to be decided only at the end of trial and at this stage, this Court cannot venture to decide the genuineness or otherwise of the extra judicial confession made before VRA regarding direct involvement of the petitioner in the above crime. Therefore, the extra judicial confession made before VRA is sufficient to proceed against the petitioner with trial and if, for any reason, the Court finds at the end of trial that the extra judicial confession is not genuine and valid, the Court shall record its finding acquitting the petitioner for the said offences.

5. The jurisdiction under Section 482 of Cr.P.C. can be exercised only in exceptional circumstances where there is absolutely no ground to proceed against the petitioner and where the allegations made in the charge sheet on their face value would not constitute any offence. The Apex Court in ***State of Haryana Vs. Bhajanlal***¹ laid down seven guidelines for quashment of proceedings 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 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.*

¹ 1992 Supp. (1) SCC 335

- (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."*

Here in this case, the allegations made in the charge sheet coupled with the extra judicial confession made before VRA is suffice to *prima facie* conclude that the petitioner also directly involved in the above crime playing direct role in commission of the murder of mother-in-law of accused No. 3. Yet, another contention of learned counsel for the petitioner is that the petitioner was falsely implicated only to wreak vengeance against him but there is nothing on record to support the said contention.

6. In view of my foregoing discussion, I am not inclined to exercise power under Section 482 of Cr.P.C. to quash the proceedings and consequently, the criminal petition is liable to be dismissed.

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

Date: 07-06-2018.

JSK

M.SATYANARAYANA MURTHY, J.