

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.5253 of 2018

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed to quash the proceedings in FIR No.104 of 2018 on the file of Nadigama Police Station, Krishna District, registered for the offence under Section 506 IPC and Section 3 (1) (r), 3(1) of SCs and STs (POA) Act.

The petitioners are accused Nos. 1 to 5, who belongs to upper caste, and respondent No.2 is a member of Scheduled Caste, who lodged a report dt. 02.11.2017 with the police alleging that these petitioners insulted him in the name of his caste and threatened with consequences, but the police did not take any action on his report. Thereupon, he addressed a Letter Dt. 15.12.2017 to the National Commission for Scheduled Caste complaining inaction of the Police in registering the crime against these petitioners and the same was forwarded to the concerned Police by Letter dt. 02.01.2018 and on the strength of the same, the police registered the above said crime and issued FIR.

The main contention in the present petition is that the contents of the representation does not disclose commission of any offence, muchless an offence punishable under Sections 3 (1) (r), 3 (1) (s) of SCs and STs Act and registration of crime against these petitioners without any complaint is an illegality and that apart the alleged incident did not occur within the public view and thereby the proceedings are liable to be quashed against these petitioners.

During hearing, learned counsel for the petitioners would contend that in the absence of any complaint, the Station House Officer, is not

supported to register any crime against these petitioners and that the alleged incident did not occur within the public view to attract the offences punishable under Sections 3 (1) (r) and 3 (1) (s) of SCs and STs (PoA) Act.

In addition to the above, the learned counsel for the petitioners would draw the attention of this Court to other complaint dt. 11.04.2018 registered by the police, which is a subject matter of Crime No.103 of 2018 dt. 11.04.2018. On the strength of the above crimes, he contended that the incident covered by both the crimes are one and the same, but the police registered different crimes for one incident and prayed to quash the proceedings by exercising power under Section 482 Cr.P.C.,

As seen from the material on record, the representation was sent by respondent No.2 to the National Scheduled Caste Commission on 15.12.2017 complaining inaction of the concerned police officials in registering the crime and the same was forwarded to the concerned District Collector and Superintendent of Police by the Chairman of the Commission and on receipt of the representation along with the letter from the Commission, a crime was registered against these petitioners. There is a specific averment in the representation that a copy of the report was submitted to the Commission for taking necessary action. But another crime No.103 of 2018 was registered for the offences under Sections 3 (1) (r), 3 (1) (s) of SCs and STs (POA) Act only on 11.04.2018 based on the incident occurred at 1500 hours. Whereas, the Crime No.104 of 2018 was registered for different offences punishable under Sections 506 IPC and Section 3 (1) (r), 3 (1) (s) of SCs and STs (POA) Act, but the date and time of incident were mentioned as prior to 11.04.2018 at 1530 hours. FIR does not disclose whether the offence covered by two crimes occurred on the same date and time, but the counsel for the petitioners

contended that two crimes were registered for one alleged incident. At this stage, it is difficult to conclude that two different crimes were registered for the same offence. But, I am sure that if the investigating agency concludes that the incident covered by Crime No.103 and 104 of 2018 are one and the same, it may file a charge sheet clubbing both the crimes.

The other contention raised in this petition is that the incident of insulting the *de facto* complainant/respondent No.1 herein did not occur within public view. But, as seen from the material available on record, a copy of the complaint was not placed on record and more curiously, a contention was raised in the petition that without any complaint to the Police, the Police registered the crime against these petitioners. The police will not register crime for any offence, unless they receive any information either in writing or orally about commission of cognizable offence. But, based on the contention that no complaint was lodged, the Court cannot quash the proceedings at this stage since the investigation is at fetus stage.

Another ground urged in this petition is that the incident did not take place within public view. The basis for registration of the crime is only the complaint lodged by respondent No.2 and it is only an information to the Police about commission of cognizable offence, but it need not contain minute details, since, it is not an encyclopaedia of facts. When *prima facie* material is available against the petitioners that the incident did take place in the public view, the Court cannot exercise its inherent power to quash the proceedings.

In “*State of Orissa v. Saroj Kumar Sahoo*¹”, the Apex Court held that the inherent powers under Section 482, Cr.P.C. should not be exercised by

¹ (2005) 13 SCC 540

the High Court to stifle a legitimate prosecution. 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. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. While exercising jurisdiction under Section 482 of the 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. Hence, the power under Section 482 Cr.P.C. cannot be exercised as a matter of routine and the Court shall take into consideration of the facts alone to find out those allegations made in the complaint would constitute any penal statute and if the Court finds that those allegations were sufficient to proceed against these petitioners, the Court cannot exercise its inherent power to quash the proceedings.

In “*State of Haryana v. Ch. Bhajan Lal*”² the Apex Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

- (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

² AIR 1992 SC 604

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.

(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.

Section 482 of the Code of Criminal Procedure itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely:

- (i) to give effect to an order under the Code of Criminal Procedure;
- (ii) to prevent an abuse of the process of Court; and
- (iii) to otherwise secure the ends of justice.

It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, the Apex Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 of the Code of Criminal Procedure. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but, the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the Complaint or Charge sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offences alleged.

In "*R.P. Kapur v. State of Punjab*³", 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;
- (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.

Yet another difficulty to exercise such power in this case is that the investigation is not commenced as per the material on record and more

³ AIR 1960 SC 866

particularly when a serious crime under special enactment is registered against these petitioners, the inherent jurisdiction under Section 482 Cr.P.C should not be exercised by the High Court to stifle a legitimate prosecution. 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. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. While exercising jurisdiction under Section 482 of the 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.

In view of the law declared by the Apex Court, when the investigation is not completed, this Court cannot exercise such inherent jurisdiction to quash the proceedings in FIR No.104 of 2018 on the file of Nandigama Police Station, Krishna District. However, it is made clear that the investigating officer would take appropriate action on the two F.I.Rs if the incident in both the crimes is one and the same.

In view of my foregoing discussion, it is not appropriate stage to exercise inherent jurisdiction as the investigation is not yet commenced. Therefore, the petition is devoid of merits and deserved to be dismissed.

Accordingly, this Criminal Petition is dismissed. However, liberty is given to the petitioner to renew their request at appropriate stages.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 05-06-2018
eha



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



Crl.P. No.5253 of 2018

Dt. 05-06-2018

eha