

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CrI.P.Nos.4742 and 6243 of 2017

ORDER

Since both these petitions arise out of Cr.No.136 of 2017 of Nagarampalem Police Station, Guntur Urban, registered for the offences punishable under Sections 417, 468, 471 read with Section 34 IPC, it is expedient to dispose of these two petitions by common order.

2. These two petitions are filed by petitioners/A1 and A2 respectively, under Section 482 Cr.P.C., to quash the proceedings in the aforesaid crime against them.

3. The first respondent lodged a report on 25.05.2017 with the police alleging that on 13.07.1989, one Athipatla China Pullaiah and his children have partitioned their properties through an unregistered partition deed. In the year 1990, said Pullaiah had transferred his share of property in favour of his wife China Lakshamma through registered will. A1 is attestor of the said will. Later, after expiry of her husband, China Lakshamma has registered the said land by conveyance in favour of her daughter B. Manchala, who is the wife of first respondent, in the year 2006 and since then, the first respondent and his wife are in peaceful possession and enjoyment of the property. It is further alleged that A1 and A2, with an intention to grab the said property, forged the signatures of late Athipatla China Pullaiah, fabricated a fake document and filed a petition before the RDO, Guntur, but the same was dismissed. Later, the

accused filed a revision before the Joint Collector, Guntur. Since both the accused are causing lot of problems, the first respondent lodged the present complaint against them.

4. The present petitions are filed by petitioners A1 and A2 contending that the dispute is purely civil in nature as it is the subject matter of suit in O.S.No.302 of 2015 pending on the file of Principal Junior Civil Judge, Mangalagiri, and the suit is being contested by the wife of first respondent and therefore, the proceedings cannot be continued against them and prayed to quash the proceedings.

5. Learned counsel for petitioners contended that A1 being attester of the will is not liable to be prosecuted for the alleged creation of document in view of the law declared by the Apex Court in **Mohd. Ibrahim v. State of Bihar**¹ and therefore, A1 is not liable to be proceeded for the offence punishable under Section 468 of IPC., if really his role is only limited to the extent of attesting the will allegedly executed by late Athipatla China Pullaiah bequeathing the property in favour of his wife China Lakshamma.

6. The allegations in the complaint are clear that the petitioners are created not only the said document but also created other documents by forging the signature of late Athipatla China Pullaiah. This fact is supported by the order passed by the RDO and therefore, the allegations made in the complaint accepting on its face value would constitute the alleged offences. Pendency of civil suit is not a ground to quash the proceedings unless the Court

¹ (2009) 8 SCC 771

concludes that the criminal prosecution is converted into civil litigation. Some times, civil wrong also converts into criminal wrong and it is the chance of the parties to proceed with the criminal wrong or civil wrong. Merely because the suit is pending based on the alleged forged document is not a ground to quash the proceedings as there is no possibility of imposing sentence in the civil proceedings. Whereas in the criminal proceedings, if the petitioners are found guilty for the offences alleged, they are liable for punishment for those offences and sentenced them to imprisonment and fine. Therefore, merely because the suit is pending, the proceedings cannot be quashed.

7. It is an undisputed fact that the proceedings in Cr.No.136 of 2017 are at fetus stage of investigation and when the investigation is not yet commenced, this Court cannot normally exercise its jurisdiction to quash the proceedings in view of the law declared by the Apex Court in “***State of Orissa v. Saroj Kumar Sahoo***²”, wherein it was held that the inherent powers 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

² (2005) 13 SCC 540

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 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.

8. In “**Kurukshetra University v. State Of Haryana**”³, the Supreme Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C and observed as follows:

“It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the CrPC, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

9. Therefore, in view of the law declared by the Apex Court in “**State of Orissa v. Saroj Kumar Sahoo**” and “**Kurukshetra University v. State Of Haryana**” (referred supra) when the investigation is at fetus stage, this Court cannot interfere with the

³ AIR 1977 SC 2229

process of investigation and quash the proceedings by exercising power under Section 482 of Cr.P.C. Therefore, I find that it is not a fit case to quash the proceedings against the petitioners. Consequently, the criminal petitions are liable to be dismissed. However, it is left open to the petitioners to renew their request at appropriate time before the appropriate Court.

10. In the result, the Criminal Petitions are dismissed. Miscellaneous petitions, if any, pending in these petitions shall stand dismissed.

25th June, 2018

sj

M. SATYANARAYANA MURTHY, J

