

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No. 5190 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 in crime No. 18 of 2018 of Kakumanu Police Station, Guntur District, registered for the offences punishable under Sections 341 and 506 IPC and Section 3 (1) (r) of SC ST OPA Act.

2. One Komaragiri Kutumbarao lodged a report with the police on 12-04-2018 making a serious allegation against the petitioner, who belongs to YSR Congress Party, that about three days prior to presentation of the report, the petitioner abused him by touching his caste name while questioning him as to why he participated in "Dalita Tejam" and that later on 10-04-2018, while his wife was proceeding on road, the petitioner also threatened her that he will kill her husband and the dead body will not reach her house. On the strength of the report, the police registered the above crime.

3. The main contention of learned counsel for the petitioner is that there is a delay of nine days in lodging the report which speaks volumes about the falsity of the allegations made in the report. The other ground is that due to political factions and with a view to terrorize the other side faction group, the local ruling party elders used the *de facto* complainant as a tool to initiate the above proceedings and there is absolutely no truth in the allegations made in the report and prayed to quash the proceedings.

4. While deciding a petition under Section 482 Cr.P.C., the duty of the Court has to look into the allegations made in the complaint and if the allegations constitute any offence, the Court cannot exercise such power. The inherent

power under Section 482 Cr.P.C. can be exercised only in exceptional circumstances and not as a matter of routine. 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***<sup>1</sup> 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 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.*

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<sup>1</sup> 1992 Supp. (1) SCC 335

- (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."*

Even according to the above guidelines, when the allegations made in charge sheet or F.I.R. disclose commission of any offence on their face value, the Court cannot exercise its inherent power under Section 482 Cr.P.C. Here in this case, the allegations made in the report *i.e.* abusing the *de facto* complainant raising his caste name and threatening his wife with dire consequences would constitute *prima facie* the above offences. Therefore, I find no ground to quash the proceedings at this stage.

5. The Apex Court in State of **Orissa Vs. Saroj Kumar Sahoo**<sup>2</sup> held that the inherent powers under Section 482 of Cr.P.C. should not be exercised by 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. In the case on hand, the investigation is at the threshold and at this stage, this Court cannot exercise its inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings, more particularly when the allegations made in the complaint would constitute the above offences.

6. The other ground raised by learned counsel for the petitioner before this Court is that there is a delay of nine days in lodging the report. Delay may be one of the grounds to acquit an accused but not for quashment. If the

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<sup>2</sup> (2005) 13 SCC 540

prosecution is able to explain the cause for the delay, the Court can record conviction as per settled law. Whether the prosecution explains the delay or not is a question of fact to be decided after trial and therefore the delay itself would not form the basis for quashment of the proceedings. The other ground urged before this Court is that due to political rivalry, the present case is falsely foisted but this contention is without any substance and there is nothing on record to conclude *prima facie* that due to political rivalry, the petitioner was falsely implicated in the present crime.

7. In view of my foregoing discussion, I find no ground to quash the proceedings at this stage. Consequently, the petition is liable to be dismissed.

8. 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

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**M.SATYANARAYANA MURTHY, J.**

