

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.5338 of 2018

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in F.I.R.No.847 of 2017 of Kusaiguda Police Station, Rachakonda, registered for the offences punishable under Sections 354, 354A, 354D, 509 120b IPC and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015, on various grounds.

The 2nd respondent, who is member of the scheduled caste lodged report with the police making serious allegations that on 29.11.2017, she received a phone call from a released convict prisoner named 'Golla Mallaiah' alias 'Mallesh' stating that the Deputy Superintendent, Sri Ch.Dashratham is compelling him to kill you giving an amount of Rs.60 lakhs in three spells and he has also sent her photographs, residential addresses alleging that the said D.S. has sent the prisoner and came to see her house along with the Deputy Superintendent and that the said Deputy Superintendent followed her up to her home and tried to catch hold of her hand. Based on the complaint, the police registered the above crime and issued FIR and investigation is not yet commenced.

The main ground urged in this petition is that registering FIR itself is contrary to the evidence on record and also the allegations made in the complaint would not constitute the offences, but the investigating officer registered the above crime. Therefore, prayed to quash the proceedings in the above crime.

As seen from the material allegations on record that the *de facto* complainant is a member of the scheduled caste and on 29.11.2017, she received a phone call from the released prisoner by name Golla Mallaiah @ Mallesh stating that the Deputy Superintendent Sri Ch Dasharadham is

compelling him to kill her by giving an amount of Rs.60 lakhs in three spells and he also sent her photographs and residential address by whatsapp as the said Deputy Superintendent sent him i.e. to the prisoner and came to see her house along with the Deputy Superintendent. Thereafter, he followed and that the said person had a bad eye and requested to take action.

Undisputedly, the *de facto* complainant is a member of the scheduled caste and whereas the petitioner is Golla by caste and not the member of the scheduled caste or scheduled tribe and hatched a plan to kill the *de facto* complainant with the aid of Deputy Superintendent for different reasons would constitute offence of conspiracy and so also the offence punishable under SCs & STs (POA) Act. Based on the ground that FIR was not evidentiary value, therefore, the allegations would not constitute offence, it is difficult for the Court to exercise power under Section 482 Cr.P.C. at the crime stage when the investigation is not yet commenced.

During hearing learned counsel for the petitioner would draw the attention of the Court to the statement of LW.10 recorded by the investigating officer and to contend that the allegations would not constitute offence, when the investigation is not yet completed. While deciding application under Section 482 Cr.P.C., this Court cannot appreciate the evidence as held by the Apex Court in **Umesh Kumar v. State of Andhra Pradesh and another**¹ where it was held that the High Court could examine the charge sheet, case diary and other material in the charge sheet which by no means can be terms as substantive evidence. However, in exercise of power under Section 482 Cr.P.C, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie

¹ 2013 (10) SCC 591

satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

Therefore, this Court cannot appreciate evidence on record since the statements recorded under Section 161(3) Cr.P.C. are not substantive evidence as on today. As discussed above, the allegations made in the complaint, *prima facie* constitute offences punishable under Sections 120B and 3(2)(va) of SCs & STs (POA) Act. Hence, this Court cannot exercise inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings at this stage and at best, this Court can exercise only in few circumstances as enumerated by the Apex Court 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.

² 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."

No doubt there is no specific allegation against the petitioner, but FIR is only a information to the police about the commission of cognizable offence to set the criminal law in to motion and it need not contain minute details since it is not encyclopaedia of fact. Apart from that the investigation in this case is not yet commenced.

Normally, this Court shall not exercise its inherent jurisdiction when the investigation is not yet commenced irrespective of the magnitude of facts and law. When the facts are incomplete and hazy before the Court, as held by the Apex Court in "**State of Orissa v. Saroj Kumar Sahoo**"³ 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

³ (2005) 13 SCC 540

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, it is difficult for the Court to exercise inherent jurisdiction under Section 482 Cr.P.C., when the investigation is not yet commenced. Therefore, applying the principle laid down by the Apex Court, I find no grounds to quash the proceedings. However, leaving it open to the petitioner to renew his request at appropriate stage.

Accordingly, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

08.06.2018
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