

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 6209 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. 85 of 2018 of Bonakal Police Station, Khammam District, registered for the offences punishable under Sections 447 and 379 of IPC.

2. Respondent No. 2 lodged a report on 31-05-2018 with the police alleging that he was working as President of Ravinuthala Matya Society and the Society was rearing fish in three tanks and that on 28-05-2018 at about 10.00 p.m., the petitioners unlawfully entered into Tallagunta Fish Tank and committed theft of fish worth Rs.75,000/- and the same was witnessed by the Society members. On the strength of the report, the above crime was registered and issued F.I.R.

3. The present petition is filed on the ground that petitioner No. 1 was not present at the scene of offence on the date of incident and he was undergoing treatment in Community Health Center, Madhira, Khammam District, as out-patient and that the allegations made in the report even if accepted on its face value, they would not constitute any offence much less the above offences.

4. According to the case of the prosecution, the petitioners unlawfully entered into the Fish Tank at Tallagunta and committed theft of fish worth Rs.75,000/-. However, the plea raised by learned counsel for the petitioners is that petitioner No. 1 was being treated as out-patient in Community Health Center, Madhira, for his ill-health and the out-patient slip dated 27-05-2018 is placed on record. The O.P. slip discloses that petitioner No. 1 was being treated as out-patient and the same is supported by medical certificate dated

04-06-2018. When petitioner No. 1 was being treated as out-patient on the date of alleged incident, his committing the above offences cannot be ruled out. Moreover, the plea of alibi is a question of fact to be decided only at the end of trial and the burden is always on the petitioners to prove such plea of alibi in view of Section 11 of the Indian Evidence Act, 1872. Therefore, on the plea of alibi, the proceedings against the petitioners cannot be quashed.

5. The other ground raised before this Court is that the allegations made in the report did not disclose commission of any offence much less the above offences but as seen from the report lodged with the police, the petitioners unlawfully entered into the Fish Tank at Tallagunta and committed theft of fish worth Rs.75,000/- and if those allegations are accepted on their face value, they would certainly constitute the above offences.

6. In view of my foregoing discussion, I find that it is not a fit case to exercise power under Section 482 of Cr.P.C. to quash the proceedings and the criminal petitions fails and is liable to be dismissed.

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

Date: 18-06-2018.

JSK

M.SATYANARAYANA MURTHY, J.