

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.5902 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in S.C.No.26 of 2017, pending on the file of Special Judge for trial of offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum-IV Additional District and Sessions Judge, Srikakulam, Srikakulam District, Andhra Pradesh.

Tompala China Ramulu lodged report with the police alleging that the accused attacked the complainant, who is elder brother of Tompala Veerappadu and his sister-in-law Tompala Appalasuramma with a stick and hands and caused injuries claiming right over the disputed land and also insulted them in the name of their caste etc.

On the strength of the complaint, a case in Crime No.30 of 2017 was registered by J.R.Puram Police Station, for the offences punishable under Sections 324, 323 and 354 read with 34 IPC and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short ' the Act') and issued FIR. On the basis of FIR, the Sub-Divisional Police Officer took up investigation, examined ten witnesses and recorded their statements under Section 161(3) Cr.P.C, collected wound certificate of LWs1 and 2 from LW.11 and filed charge sheet before the Magistrate concluding that there is *prima facie* material to proceed against the accused for the above referred offences.

The *de facto* complainant and the injured persons are members of the schedule tribe and whereas the petitioners are not members of either schedule caste or schedule tribe. The investigation conducted by the Sub Divisional Police Officer discloses that there is a dispute with regard to the land in Survey No.197-1, which was assigned to the father of the *de facto*

complainant earlier and it was allegedly cancelled and resumed the land and assigned to some other person and thereafter there were disputes. Since both parties are disputing the ownership of the property, the Tahsildar, Ranasthalam initiated proceedings under Section 145 Cr.P.C. on 19.12.2016 vide Crime No.175 of 2016 with a request to conduct enquiry so as to fix up the ownership and enjoyment of the disputed land. The Tahsildar, Ranasthalam enquired and bound over both parties to maintain good behaviour for a period of six months vide M.C.No.34 of 2016. Aggrieved by the findings of the Tahsildar, Ranasthalam, Pasapu Ramadasu/A7 approached this Court vide CrI.M.P.No.3305 of 2016 to quash the proceedings/orders under Section 145 Cr.P.C., as a result, an interim suspension order has been passed on 29.12.2016. Subsequently, SC beneficiary, LW.3-Tompala Surappadu continuously approached the Tahsildar, Ranasthalam and insisted for handing over the land, which is said to be assigned in the year 1970. The Tahsildar furnished an Adangal copy in which it is mentioned that an extent of 0.63 cents of land is in possession of Tompala Surayya as legal heir vide Khata No.100438 covered in Survey No.197-3, Upon which, LW.3 Tompala Veerappadu went into the disputed site and stayed in the land for the last four months by claiming right. As the matter stood thus, on 18.02.2017 at about 13.00 hours A1 and 12 others attacked the complainant, who is the elder brother of Tompala Veerappadu and his elder sister-in-law Tompala Appalasuramma with a stick and hands and caused injuries claiming right over the disputed land. Thus, the petitioners, who are accused allegedly committed the above offences.

The present petition is filed on the ground that the allegations made in the charge sheet would not constitute any offence since it is a civil in nature purely and the dispute is with regard to the grant of D form patta and its cancellation. The said proceedings were challenged in

W.P.No.37066 of 2017 in CrI.M.P.No.46025 of 2017, dated 27.11.2017, whereby the interim order granted earlier was extended until further orders, suspending the order passed by the Tahsildar canceling the D form patta granted in favour of the petitioners therein. When the order passed by the Tahsildar was suspended by granting interim suspension, the question of respondent No.2 continuing in possession and enjoyment of the property and interfering with their possession does not arise and thus, the dispute is civil in nature and that to wreck vengeance against the petitioners on account of filing various proceedings pending before the other Courts, complaint was lodged and charge sheet was filed after investigation. Therefore, such proceedings cannot be continued against the petitioners for various offence in S.C.No.26 of 2017.

Learned Public Prosecutor while contending that the material collected during investigation substantiates the contentions of the *de facto* complainant and that the petitioners caused injuries on the body of two persons, who belonging to the schedule caste and though the dispute is with regard to the grant and cancellation of D form patta, the petitioners are not supposed to cause injuries on the body of the victim and it constitute above offences.

In view of the rival contentions urged before this Court, the point that arises for consideration is:

Whether the allegations made in the charge sheet, if accepted on its face value constitute offences punishable under Sections 324, 323 and 354 read with 34 IPC and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, if not whether the proceedings against the petitioners are liable to be quashed exercising power under Section 482 Cr.P.C.?

The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise such power sparingly in exceptional circumstances to implement the order passed under the Code or to prevent the abuse of process of the Court or to secure the ends of justice. Keeping in mind this Court cannot examine the material minutely and express its opinion whether those allegations constitute any specific offence or not, in view of the law declared by the Apex Court in **Mrs Dhanalakshmi vs. R. Prasanna Kumar & Others**¹. In **Umesh Kumar v. State of Andhra Pradesh and another**², the Apex Court held that the scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under Cr.P.C. to prevent abuse of the process of Court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, 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* 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

¹ AIR 1990 SC 494

² 2013 (10) SCC 591

of a criminal trial. It is further held that proceedings at committal stage is like a still born child and cannot be quashed.

In view of the principles laid down in the above judgments, this Court cannot appreciate the evidence, but evaluate the material on record to come to conclusion while the allegations made in the charge sheet accepting on its face value. Keeping in mind the scope of jurisdiction under Section 482 Cr.P.C., the Apex Court in **State of Haryana v Bhajanlal**³ 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.*
- (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.*

The basis for registration of crime against the petitioners is written telugu report given by the complainants, who are claiming to be purchasers of the land assigned to them and the specific allegation made in the complaint is that they are resident of Bantupalli Village and the Government

³ 1992 Supp(1) SCC 335

assigned the land by granting D form patta to cultivate the same. One Pasapu Ramadasu of Kambalapeta Village, Ex-surpanch and affiliated to YSRCP of Bantupalli Panchayat, during his tenure as surpanch encroached the D form patta lands assigned to the *de facto* complainants and others and created fake pattadar passbooks and other documents, raised poultry forms and diary form, leased out to the third parties, who are carrying on their business, whereas the *de facto* complainants without any financial support from any corner, requested the said Pasapu Ramdasu to deliver possession of the same after removing constructions, but he postponed on one pretext or the other. For the last few years prior to complaint, the *de facto* complainant approached the Pasapu Ramdasu, supanch and constantly requesting to deliver vacant possession of the land assigned to them.

On 05.08.2016 at about 07.00 am, the said Pasapu Ramdas along with supporters came to Bantupalli villaged and entered into SC colony abused the *de facto* complainant, who were sitting at their residence as mala lanja kothullara and Mala Lanja Kodukullara and caused injuries. Therefore, based on allegations made in the Telugu written report lodged with the police, the police registered a case in Crime No.104 of 2016 for the offences punishable under Sections 506, 509, 323 read with 34 IPC and Section 3(1)(g)(r)(s)(w)(1) of the Act.

As seen from the statement of LW.1, the allegation of abusing the petitioners raising their caste name is totally absent, but the allegations would show that the petitioners beat them dragging to the road and also mis-behaved with women folk in the malapeta and they received injuries. Similarly, the other witnesses, LWs.2 and 3 supported the version of LW.1. Even if these allegations are taken into consideration or accepted as its, it would constitute offence punishable under Section 323, 324 and 506 IPC,

since this fact is supported by the medical certificate issued by the doctor. Thus, I find *prima facie* material against the petitioners for the offences referred above.

Section 324 IPC is the schedule offence. The offence punishable under Section 3(ii)(va) and (c) specified in the schedule is committed by any person other than the person belongs to schedule caste or schedule tribe against the person belongs to schedule case or schedule tribe, the said offence is also offence under Section 3(ii)(va) of the Act. Therefore, the allegations made in the complaint would constitute offence *prima facie*, but not offence punishable under Section 3(1)(i)(r)(s) of the Act.

In fact, the charge sheet was filed only for the offences punishable under Sections 324, 323, 354 read with 34 IPC and Section 3(ii)(va) of the Act and not under Section 3(ii)(1)(r)(s)(w) of the Act since the offences punishable under Sections 324 and 354 IPC are schedule offences.

When the Court finds *prima facie* material against the petitioners, this Court cannot exercise its power under Section 482 Cr.P.C. to quash the proceedings, hence, I find no ground to quash the proceedings against the petitioners and consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

30.08.2018
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