

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.6265 OF 2018

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal procedure, 1973 (for short 'Cr.P.C') to quash the proceedings in Crime No.2 of 2018 of Biccavole Police Station, East Godavari District, registered for the offence punishable under Section 379 of the Indian Penal Code, 1860 (for short 'I.P.C.')

The second respondent is the defacto complainant. He lodged a report with the police alleging that on 03.01.2018 at 6.00 a.m. he went to Subramanyeswar Swamy temple in his Village and parked his Glamour vehicle bearing No.AP 05 CS 6274 in front of the temple, after darshan when he came out side, he found the vehicle was missing at the parking place. On receipt of the complaint, the police registered the crime under Section 379 of I.P.C. and issued F.I.R.

The present petition is filed to quash the proceedings on the ground that the petitioner is no way concerned with the offence, even if the allegations made in the complaint, if taken on its face value. Thus, the allegations in the complaint would not constitute an offence punishable under Section 379 of I.P.C. and prayed to quash the proceedings in Crime No.2 of 2018.

Whereas the Public Prosecutor (A.P.) has contended that the confessional statement of the petitioner herein itself is sufficient to enrope him with the offence punishable under Section 379 of I.P.C. wherein he confessed that he committed theft of the vehicle bearing No.AP BW 7132, Engine No.JA06EJEGA00720, Chassis No.MBLJA06AHEGA00124.

The petitioner denied the alleged confessional statement recorded by the police during interrogation and it is inadmissible in evidence, since it is hit by Section 27 of the Indian Evidence Act, 1872.

The investigation in the above crime is at fetus stage. The Court cannot exercise power under Section 482 Cr.P.C. to stifle the 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 as held by the Apex Court in **State of Orissa v. Saroj Kumar Sahoo**¹.

As seen from the material on record, the petitioner himself gave statement that he along with A.1 committed theft of motor cycle parked in front of the Subramanyaswamy temple. The admissibility or otherwise of the confessional statement are not relevant at this stage and at best this Court has to verify whether those allegations would constitute an offence or not, in view of the law declared by the Apex Court in **State of Haryana v. Bhajan Lal**². On verification of material available on record, I find *prima facie* material against the petitioner to investigate the offence.

Hence, I find that it is not a fit case to exercise power under Section 482 Cr.P.C. when the investigation is not completed except

¹ (2005) 13 SCC 540.

² 1992 Supp.(1) SCC 335

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recording confessional statement of the petitioner during interrogation and seizure of the motor vehicle.

Hence, I find no ground to quash the proceedings in Crime No.2 of 2018 of Biccavole Police Station, East Godavari District. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date:19.06.2018
BV

