

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 6520 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioner-accused to quash the proceedings against him in crime No. 112 of 2018 of Manthani Police Station, Peddapalli District, registered for the offence punishable under Section 379 of IPC.

2. P.Sadanandam, Additional Programme Officer, Mahatma Gandhi National Rural Employment Guarantee Scheme (for short, 'MGNREGS'), Manthani Mandal-respondent No. 2 lodged a written report on 30-05-2018 with police alleging that the petitioner committed theft of 19 spun pipes worth of Rs.30,000/- which were dumped near Gramapanchayat Office, Mallepalli Village, for construction of culvert under MGNREGS. On the strength of the report, the police registered the above crime for the offence referred *supra*.

3. The present petition is filed on the ground that due to political rivalry, respondent No. 2 lodged the report against the petitioner at the instance of local political leaders; that the pipes are readily available at the place where they were dumped; that the petitioner did commit no offence much less the above offence and that when the report is lodged to wreak vengeance, the proceedings are liable to be quashed.

4. Since there is a serious dispute about availability of pipes at the scene of offence, an Advocate Commissioner is appointed. The Advocate Commissioner filed her report dated 17-07-2018 before this Court, wherein it is specifically stated that 12 pipes are readily available at the scene.

5. Basing on the report of the Advocate Commissioner, learned counsel for the petitioner has contended that when the pipes are available at the scene, question of proceeding against the petitioner does not arise and that the report is lodged only to wreak vengeance against the petitioner, who is the strong supporter of Congress Party, at the instance of ruling party.

6. Learned Public Prosecutor (T.S.) has opposed the petition on the ground that the pipes were sold to one K.Santosh and his statement was recorded on 21-07-2018 during investigation by the investigating officer which clearly discloses that he purchased the pipes from the petitioner and on account of registration of crime, he dumped the pipes purchased from the petitioner at the scene and purchased pipes from Gowthami Spun Pipes on 14-06-2018 and that even otherwise, only 12 pipes are available out of 19 pipes.

7. The power of this Court under Section 482 of Cr.P.C. is limited and this Court can exercise such power to implement 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 of Cr.P.C., the Apex Court in ***State of Haryana Vs. Bhajanlal***¹ 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.

¹ 1992 Supp. (1) SCC 335

- (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."*

In view of the guidelines laid down by the Apex Court, I would like to examine whether or not the allegations made in the report would constitute the offence punishable under Section 379 of IPC. As seen from the allegations made in the written report lodged with the police, 19 culvert pipes dumped by the side of Grampanchayat Office were available at 9 a.m. but at 9 p.m., they were found missing. On the basis of the report lodged with the police, the police registered the above crime and issued FIR. At this stage, the petitioner approached this Court to quash the proceedings on the grounds narrated above. As per Part – II Case Diary produced before this Court, the police recorded statements of the witnesses under Section 161 (3) of Cr.P.C. and all the witnesses consistently stated that the pipes were stolen by the petitioner. Added to that, the confessional statement of K.Santosh is another strong corroborative piece of evidence to the statements of the listed witnesses and according to it, he purchased pipes on 27-05-2018 from the petitioner but on coming to know about registration of crime, the petitioner again purchased pipes. This statement coupled with the statements recorded by the police during investigation *prima facie* establishes that the petitioner committed theft of pipes and replaced again when

crime was registered. Therefore, the pipes available at the scene of offence were only replaced pipes and not the original pipes. Therefore, the material on record *prima facie* discloses commission of offence *i.e.* theft of spun pipes by the petitioner subject to proof during trial. When the investigation is commenced and recorded statements to establish *prima facie* that the petitioner is responsible for commission of theft of pipes, this Court cannot normally quash the proceedings to stifle the legitimate prosecution by exercising power under Section 482 of Cr.P.C. since the evidence is incomplete and hazy before this Court in view of the law declared by the Apex Court in ***State of Orissa Vs. Saroj Kumar Sahoo***². When the allegations made in the report or charge sheet even if accepted on its face value do not constitute an offence, this Court can exercise power under Section 482 of Cr.P.C. to quash the proceedings in view of guideline No. 3 of the guidelines issued by the Apex Court in ***Bhajanlal*** (1st supra). In the present facts of the case, so far the material collected by the investigating agency discloses commission of the offence punishable under Section 379 of IPC *prima facie*. Therefore, I am not inclined to quash the proceedings at this stage and 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: 31-08-2018.

JSK

M.SATYANARAYANA MURTHY, J.

² (2005) 13 SCC 540