

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.6623 OF 2018

ORDER

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to quash the proceedings against the petitioners, who are arraigned as A.1 to A.5 in C.C. No.325 of 2017 pending on the file of Judicial Magistrate of First Class, Special Mobile Court, Nellore.

The second respondent lodged a report with the police on 27.06.2017 alleging that due to disputes between her family and the petitioners, the petitioners placed some collected dust in front of her house and when it was questioned, the first petitioner/A.1 slapped her son who came to the scene of offence and thereupon she questioned, why her son was slapped, then the first petitioner/A.1 picked up a stick, beat her on forehead and caused swelling injury and the said information was passed on to the elders, who in turn advised her to lodge a report with the police, accordingly she lodged a report with the police. Basing on these allegations, the police registered a case and issued F.I.R.

On the strength of these allegations, the police took up investigation and examined L.Ws.1 to 4, and injured were referred to the Government General Hospital, ACSR Govt. Medical College, Nellore and obtained wound certificate issued by L.W.5 and after completion of investigation, the police filed charge sheet before the Judicial Magistrate of First Class, Special Mobile Court, Nellore.

Even according to the allegations made in the charge sheet, the first petitioner/A.1 slapped the son of the second respondent and beat with stick on the forehead of the second respondent and

the other accused also fisted her on her face and caused bleeding injury to her nose and thereby they committed the offence punishable under Sections 324, 323, 509, 290 read with 34 of I.P.C.

The present petition is filed on the ground that there were disputes between the petitioners and the second respondent and a civil suit is pending in O.S. No.355 of 2010 before the Senior Civil Judge, Nellore, for partition of the suit schedule property and on account of the pendency of the Suit, the complaint was lodged with false allegations, and therefore, the complaint is only aimed to wreck vengeance against the petitioners and not otherwise. On this ground alone, the proceedings against the petitioners are liable to be quashed.

The other contention raised before this Court is that there is a delay of two days in lodging a complaint, the incident occurred on 25.06.2017, whereas the complaint was lodged with the police on 27.06.2017 and the delay is only due to consultation with the elders, therefore on the ground of delay in lodging the complaint, the proceedings are liable to be quashed.

The third ground is that the petitioners 1, 2 and 5 have nothing to do with the offence and prayed to quash the proceedings against the petitioners 1, 2 and 5 in C.C. No.325 of 2017.

Sri Ponna Rao Pasala, learned counsel for the petitioners, reiterated the contentions in the petition and informed this Court that the matter was referred to lok adalath for settlement, but it was not settled as the second respondent insisted the petitioners to compromise the suit in O.S. No.355 of 2010 pending before the

Senior Civil Judge, Nellore and that reason to lodge the report is only to wreck vengeance in view of pendency of civil suit for partition and prayed to quash the proceedings against the petitioners in C.C. No.325 of 2017.

Undisputedly, there is a close relationship between the petitioners and the second respondent and the suit is pending in O.S. No.325 of 2017 on the file of Senior Civil Judge, Nellore. The suit is pending for the last 8 years, no such incident took place during these years, but suddenly when the second respondent questioned the first petitioner/A.1 as to why they placed the collected dust in front of the house, latter allegedly slapped her son and caused injury on her forehead with stick and the other petitioners fisted her. If really it was the intention of the second respondent to foist a false case, they need not wait for these years from the date of filing of civil suit and though it is contended that a case is falsely foisted, it cannot be accepted when the medical evidence is available on record as the second respondent sustained bleeding injuries and the same was certified by L.W.5/ C.M.O., Government General Hospital, the question of self inflicting those injuries in normal course having waited for such long period from the date of filing the suit. Therefore, the petition is filed on the ground that the complaint was lodged with a view to wreck vengeance due to pendency of civil dispute is not accepted.

The other ground raised before this Court is that delay of two days in lodging the complaint, but the delay is not a ground to quash the proceedings. But, at best delay is one of the ground during trial to acquit the accused, if the delay was not explained by the prosecution. If the prosecution is able to explain the reason for

the delay sufficiently, the court may record conviction of the petitioners at the end of trial. Therefore, it is not a ground to quash the proceedings.

The third ground is that the petitioners 1, 2 and 5 are not concerned with the offence, but as seen from the allegations made in the complaint the first petitioner/ A.1 is prime accused who caused the injury on the forehead of the second respondent and slapped her son. The statement recorded by the police during investigation under Section 161(3) Cr.P.C. supports the contention of the second respondent.

Therefore, the allegations made in the charge sheet, accepting on its face value, would constitute an offence punishable under Sections 324, 323, 509 read with 34 I.P.C. and in such case this Court cannot exercise power to quash the proceedings under Section 482 Cr.P.C. in view of the guidelines laid down by the Apex Court in **State of Haryana Vs. Bhajan Lal**¹

At this stage this Court cannot appreciate the material available on record exercising power under Section 482 Cr.P.C., in view of the law declared by the Apex Court in **Mrs. Dhanalakshmi v. R. Prasanna Kumar And Ors**².

In view of the law declared by the Apex Court in **Bhajan Lal** case and **Mrs.Dhanalakshmi** case, and considering the facts and circumstances of the case, I find no ground to quash the proceedings at this stage as I find material to proceed against the petitioners and the allegations in the charge sheet would constitute an offence punishable under Sections 324, 323, 509, 290 read

¹ (1992) Supp (1) SCC 335

² AIR 1990 SC494

with 34 of I.P.C. *prima facie* and hence the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

Dt.27.06.2018
BV

