

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.6945 OF 2018

ORDER:

This petition under Section 482 of Cr.P.C. is filed by petitioners/A1 to A3 in Crime No.27 of 2018 of Talakondapally Police Station, Cyberabad District for the offences punishable under Sections 447, 324 r/w 34 IPC.

2. The 2nd respondent is the *de facto* complainant and lodged the above complaint making serious allegations that on 03.04.2015, i.e., one day prior to lodging of report when the *de facto* complainant was in his agricultural land adjacent to the land of these petitioners, at about 04:00 PM, the inhabitant of his villagers viz., 1) Neela Kistamma, 2) Neela Alivela, 3) Edira Anjaneyulu and 4) Banda Sailu came to the land and starting cutting a tree. While so, the neighbours Banda Padma, Banda Pentayya, Banda Parvatamma with a dishonest intention entered into the land of the *de facto* complainant, initially Banda Srinu entered into the land and beat Neela Kistamma, Neela Alivelu and Edira Anjaneyulu and Banda Sailu. Suddenly Banda Padma attacked on them with stick and to protect themselves they entered into the land of the *de facto* complainant and requested to drop them at their house and while so he started his two wheeler motor cycle to drop Banda Pentamma. In the meanwhile, Banda Padma illegally entered into his land and beat him with stick and also Anjaneyulu, who is by his side and also beat Banda Padma, with the same stick who received swelling

injuries on their waist and lodged report with the police making those allegations.

3. The present petition is filed on the ground that the complaint is filed as a counter blast to the complaint in Crime No.26 of 2018 and that the earlier incident was serious in nature since the offence allegedly committed by the *de facto* complainant is punishable under Section 376 and 511 IPC r/w 34 IPC and that the petitioner did commit no offence.

4. The learned counsel for the petitioners, during hearing, would draw the attention of this court to the allegations made in the complaint dated 04.04.2018 and on the strength of the complaint he contended that there is a delay of more than a day in lodging the complaint and that the complaint was lodged to the police as a counter blast to the Crime No.26 of 2018 and no such incident took place, as alleged in the complaint, and prayed to quash the proceedings.

5. The powers of this court under Section 482 Cr.P.C. are limited and such powers has to be exercised sparingly in exceptional cases where the allegations made in the complaint do not constitute any offence or where the complaint was lodged to wreck vengeance. The law is settled on the powers as to when such inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various perspective pronouncements of the Apex Court. The leading case on this aspect is "*State of Haryana v. Bhajanlal*"¹, wherein the Apex Court laid down the following seven guidelines:

¹ 1992 Supp.(1) SCC 335

“(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.”

17. Earlier to the Judgment in “State of Haryana v. Bhajanlal” (referred supra), in “*R.P. Kapur vs. State of Punjab*²” the Apex Court laid down the following guidelines:

² AIR 1960 SC 866

“(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

8. Keeping in view the guidelines laid down by the apex court, I would like to examine the case of the petitioners in detail.

9. As seen from the allegations made in the complaint, these petitioners criminally trespassed in to the land of the *de facto* complainant and petitioner No.3 and beat the *de facto* complainant and three others and caused injuries on their body. If these allegations are accepted on its face value, they constitute an offence punishable under Section 324 IPC. But the contention of the petitioners that petitioner No.1 also lodged a report with the police, which is the subject matter of Crime No.26 of 2018 of the same police station for the offences punishable under Section 376 r/w 34 IPC.

10. According to the contention, the petitioners lodged the report as a counter blast to the other Crime No.26 of 2018. Curiously, both parties lodged reports with the police on 04.04.2018 at about 19:30 hours and 20:00 hours respectively. The gap is only half an hour in lodging the reports by both the parties. The time and date of offence is almost one and the

same i.e., 03.04.2018 at 16:00 hours. Therefore, both the incidents allegedly occurred on the same date and time and the scene of offence is also one and the same. Even if the contention of the petitioners is accepted, both the cases are case and counter case arising out of the same incident, but on the ground that the petitioners lodged the report half an hour earlier to the report, the proceedings against these petitioners cannot be quashed.

11. Moreover, the investigation is at fetus stage and this court normally would not exercise its jurisdiction to stifle the legitimate prosecution when the facts are incomplete and hazy before the court in view of the law declared by "*State of Orissa v. Saroj Kumar Sahoo*³" and "*Kurukshetra University v. State of Haryana*⁴". Therefore, in view of the principles laid down in the aforesaid decisions, at this stage, it is difficult to quash the proceedings against these petitioners.

12. Hence, I find no grounds to quash the proceedings at this stage and consequently, the petition is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed at the stage of admission. As a sequel, the miscellaneous applications, if any, shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

July 5, 2018
LMV

³ (2005) 13 SCC 540

⁴ (1977) 4 SCC 451