

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No. 7268 OF 2018**

**ORDER:**

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings against the petitioner-accused in crime No. 129 of 2018 of Kalwakurthy Police Station, Nagarkurnool District, registered for the offences punishable under Sections 504 and 506 of IPC and Section 3 (1) (r) (s) of SC ST POA Act.

2. Respondent No. 1, who is a member of Scheduled Caste, lodged a written report with police on 07-06-2018 alleging that prior to 21.00 hours on the same day, on receipt of reliable information about transportation of sand illegally, he went to Sri Venkateswara Dharma Kanta and found weighing sand tipper and that while he was taking photo, the petitioner, who is a sand businessman, obstructed him and abused him raising his caste name and also threatened him with dire consequences that the latter would kill the former with tipper. On the strength of the written report, the above crime was registered for the offences referers *supra*.

3. At the hearing, learned counsel for the petitioner has contended that on the date of incident, the petitioner was not present in the Town and he was falsely implicated and that the allegations made in the complaint do not constitute any offence much less the above offences. He has further contended that the driver of the tipper already lodged a complaint with the police against respondent No. 1 which is registered as a case in crime No. 128 of 2018 at about 20.30 hours on 07-06-2018 for the offence punishable under Section 384 of IPC and the present report is lodged only as a counterblast to the report lodged by

the driver of the tripper and that therefore the proceedings cannot be continued against the petitioner.

4. While deciding a petition under Section 482 Cr.P.C., the Court has to look into the allegations made in the complaint and if the allegations constitute any offence, the Court cannot exercise such power. The inherent power under Section 482 Cr.P.C. can be exercised only in exceptional circumstances and not as a matter of routine. The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise such inherent jurisdiction only to give effect to 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 Cr.P.C., the Apex Court in ***State of Haryana Vs. Bhajanlal***<sup>1</sup> 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.
- (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.

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<sup>1</sup> 1992 Supp. (1) SCC 335

- (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."*

Even according to the above guidelines, when the allegations made in charge sheet or F.I.R. disclose commission of any offence on their face value, the Court cannot exercise its inherent power under Section 482 Cr.P.C. Here in this case, the allegations made in the report would constitute *prima facie* the above offences. Therefore, I find no ground to quash the proceedings at this stage.

6. The other contention raised by learned counsel for the petitioner before this Court is that after registration of crime against respondent No. 1 in crime No. 128 of 2018 of the same police station basing on the report lodged by driver of the tipper, the present report was lodged by respondent No. 1 as a counterblast to wreak vengeance against the petitioner. No doubt while the driver of the tipper lodged a report to the police at about 20.30 hours on 07-06-2018, respondent No. 1 lodged the present report at about 21.00 hours on the same day and the difference is only 30 minutes. However, this aspect cannot be appreciated at this stage while deciding a petition of the present nature. This Court at best can evaluate the material on record but cannot appreciate the same to come to a definite conclusion that the petitioner *prima facie* committed

the above offences or not. Motive is a double edged weapon and it may be one of the causes for foisting a false case by respondent No. 1 or to commit such offences by the petitioner. Motive is not a substantive piece of evidence. Therefore, on this ground, the Court cannot quash the proceedings.

7. The Apex Court in State of **Orissa Vs. Saroj Kumar Sahoo**<sup>2</sup> held that the inherent powers under Section 482 of Cr.P.C. should not be exercised by High Court to stifle a 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. In the case on hand, the investigation is at the threshold and at this stage, this Court cannot exercise its inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings, more particularly when the allegations made in the complaint would constitute the above offences. The other contention that the petitioner was not in the Town at the relevant point of time and date is no more a ground since it is question of fact to be decided by adducing evidence in view of Section 11 of the Evidence Act.

8. In view of my foregoing discussion, I find no ground to quash the proceedings at this stage and consequently, the petition is liable to be dismissed.

9. The criminal petition is dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 13-07-2018.  
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**M.SATYANARAYANA MURTHY, J.**

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<sup>2</sup> (2005) 13 SCC 540