

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.7315 OF 2018

ORDER:

This criminal petition is filed by the petitioner/accused under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in F.I.R.No.82 of 2018 on the file of the Shankerpalli Police Station, Cyberabad, registered for the offences punishable under Section 447 and 427 of Indian Penal Code (for short "I.P.C.").

In the complaint lodged by respondent No.2 it is alleged that he is the owner of land in Sy.No.16 in an Ac.5.20 Gts and the adjacent owner, the petitioner herein trespassed into the land criminally and demolished servant quarter and constructed compound wall and thus committed the offence punishable under Sections 447 and 427 of I.P.C.

On the strength of the said complaint, police registered a case and issued F.I.R.

The present petition is filed on the ground that the complaint is totally silent with regard to time and date of offence and the petitioner purchased property from the wife of respondent No.2 and when the respondent No.2 made an attempt to interfere with the possession and enjoyment of the property, the petitioner filed a civil Suit O.S.No.53 of 2018 pending on the file of the Junior Civil Judge, Chevella for grant of perpetual injunction restraining the wife of the respondent No.2 and her men from interfering with the peaceful possession and enjoyment of the land admeasuring Ac.3.20 Gts situated at Donthanapally Village, Maharajpet Grampanchayat, Shankerpalli Mandal, Ranga Reddy District.

Therefore, the dispute is purely civil in nature and when the civil allegation converted into criminal offence, the Court can exercise power under Section 482 of Cr.P.C. to quash the proceedings.

During hearing, learned counsel for the petitioner reiterated the allegations narrated in the petition while drawing the attention of this Court to the complaint dated 12.03.2018 to demonstrate that the complaint is bereft of details like time and date of commission of offence and prayed to allow the petition.

Learned Public Prosecutor for the State of Telangana drawn the attention of this Court to the statements recorded by the police during investigation under Section 161 (3) of Cr.P.C., which disclosed all the details of case and made out *prima facie* case against the petitioner to prosecute the proceedings further and prayed to dismiss the petition.

As seen from the allegations made in the complaint dated 12.03.2018 lodged by the respondent No.2 with the police, no details like time and date of offence are mentioned in the complaint. But it is only information to the police about the commission of cognizable offence to set the criminal law into motion and it need not contain all the minute details. On the ground that no details were mentioned in the complaint, the proceedings against the petitioner cannot be quashed. It is also brought to the notice of the Court that the alleged incident took place in the month of January, whereas the complaint was lodged on 12.03.2018. Thus, there is delay of more than two months in lodging report and on this ground, the learned counsel for the petitioner sought to quash the proceedings.

Delay in lodging report with the police itself is not a ground since the delay can be explained during trial and if the Court satisfied about the explanation in causing delay in lodging the report, the Court can record conviction. Hence, the delay in lodging report about the commission of offence is not a ground to quash the proceedings.

Next ground urged by the learned counsel for the petitioner is that the dispute is purely civil in nature and when the respondent No.2 gave colour of criminal offence to the civil dispute, the Court can exercise power under Section 482 of Cr.P.C. and requested to quash the proceedings.

As seen from the allegations made in the complaint, respondent No.2 owned and possessed Ac.5.20 Gts of land, even assuming for a moment that the petitioner purchased Ac.3.20 Gts in Sy.No.16 within the boundaries mentioned in the schedule annexed to the plaint, by registered sale deed dated 14.06.2013 from the wife of the respondent No.2, he is entitled to construct a compound wall around the land purchased by him, but he is not entitled to trespass into the other part of the land belonging to the respondent No.2 out of Ac.5.20 Gts as alleged in the written report. Entering into the land of respondent No.2 and demolition of servant quarter constructed therein would certainly amounts to offence punishable under Section 447 of I.P.C. since the petitioner entered into the property of the respondent No.2 with an intention to commit an offence or to intimidate, insult or annoy respondent No.2 as defined under Section 441 of I.P.C. Section 441 of I.P.C. defined criminal trespass. Section 441 of I.P.C. reads thus:

441. **Criminal trespass:-** Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property.

or having lawfully entered into or upon such property, unlawfully remains therewith intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

In the present case, the petitioner allegedly entered into the land belonging to the respondent No.2 and demolished the servant quarter constructed by the respondent No.2, such act would amount to commission offence, thereby it would fall within the definition of criminal trespass under Section 441 of I.P.C.

Section 427 of I.P.C. deals with mischief causing damage to the amount of fifty rupees. In the present case, the petitioner allegedly demolished the servant quarter, which is worth more than Rs.50/- and such act would attract the offence punishable under Section 427 of I.P.C. *prima facie*.

In “**State of Haryana v. Bhajan Lal**¹” the Apex Court considered in detail the powers of High Court under Section 482 of Cr.P.C. and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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.

¹ 1992 Supp (1) SCC 335

(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.

In view of the said guidelines when the allegations made in the complaint constitute cognizable offence, this Court cannot quash the proceedings by exercising power under Section 482 of

Cr.P.C. Therefore, I find no ground to quash the proceedings at this stage. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

27.08.2018
Ksp

