

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 7501 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 C.C.No. 215 of 2018 on the file of the Court of II Additional Judicial I Class Magistrate at Machilipatnam (for short, 'the Court below') registered for the offences punishable under Sections 195-A and 353 of IPC.

2. Respondent No. 2, who is working as VRO, Block-IV, Machilipatnam, lodged a report against the petitioner making an allegation that the latter deterred the former from discharging his duties and threatened him with dire consequences while discharging his duties as a public servant. The said report was registered as a case in crime No. 22 of 2018 of Robertsonpet Police Station, Machilipatnam, for the offences referred *supra* and issued F.I.R. During investigation, the police examined as many as eight witnesses and recorded their statements under Section 161 (3) of Cr.P.C. On the basis of evidence collected during investigation, the Sub Inspector of Police, Robertsonpet Police Station, having concluded that there is *prima facie* material to proceed against the petitioner, filed charge sheet before the Court below.

3. At the hearing, learned counsel for the petitioner has contended that earlier the petitioner gave Rs.60,000/- to the S.H.O., Robertsonpet Police Station, for grant of station bail to him but the latter did not grant bail to the former; that thereupon, the petitioner lodged a report with the Deputy Superintendent of Police for return of the amount he allegedly paid as illegal gratification for grant of bail to him and he also filed Writ Petition and that therefore to wreak vengeance against the petitioner, the above compliant is

lodged against the petitioner with a *mala fide* intention through respondent No. 2. He has also contended that there is delay of 18 days in lodging the report.

4. Whereas learned Public Prosecutor (A.P.) has contended that the delay is explained by respondent No. 2.

5. It is an undisputed fact that earlier a case was registered against the petitioner in crime No. 113 of 2017 of the very same police station for the offences punishable under Section 420 of IPC and Section 7 of E.C. Act. Coming to the contention of delay, respondent No. 2 has explained the same in his statement recorded under Section 161 (3) Cr.P.C. However, delay by itself is not a ground to quash the proceedings for the reason that if the delay is explained during trial to the satisfaction of the Court below, the Court can record conviction of the petitioner for any of the offences and if it is not properly explained, the petitioner is entitled to the benefit of unexplained delay in lodging the report.

6. The other contention of learned counsel for the petitioner is that the petitioner paid Rs.60,000/- to the S.H.O., Robertsonpet Police Station, to release him on bail but the latter did not grant bail and thereupon, the former lodged a report with the DSP and therefore to wreak vengeance, respondent No. 1 colluding with respondent No. 2 foisted this present case. As seen from the material on record, respondent No. 2 is working as VRO, Block-IV, Machilipatnam, and moreover, he acted as a pancha witness at the time of conducting search and seizure in crime No. 113 of 2017. Therefore, lodging report with the DSP for refund of Rs.60,000/- which the petitioner allegedly paid as illegal gratification has nothing to do with respondent No. 2 and thereby question of boring grudge against the petitioner to wreak vengeance against the petitioner by respondent No. 2 is misplaced and not based on any material.

Hence, on this ground, this Court cannot exercise power under Section 482 of Cr.P.C. to quash the proceedings against the petitioner.

7. 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***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.*
- (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.*

¹ 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 if the above guidelines are applied to the present facts of the case, I find that the material allegations made in the charge sheet coupled with the statements recorded by police during investigation *prima facie* disclose commission of the above offences by the petitioner and therefore I am unable to exercise power under Section 482 of Cr.P.C. to quash the proceedings and the petition is liable to be dismissed.

8. The criminal petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 19-07-2018.

JSK

M.SATYANARAYANA MURTHY, J.