

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.7554 OF 2018

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in Crime No.583 of 2017 of Kukatpally Police Station, Cyberabad, registered for the offences punishable under Sections 420, 406, 471 and 468 IPC.

The petitioner/Kethinni Tjharakanath is A2 and the 2nd respondent is the *de facto* complainant in the above crime. The 2nd respondent filed written report with the police on 16.08.2017 alleging that the petitioner introduced one D.Hari Babu to the 2nd respondent and informed him that he is own plots at Survey Nos.57, 58 and 59 part at Bachupally Village in the name of his sons D.Karthik and D.Yashwanth and they are ready to sell the property and then entered into agreement on 19.06.2014 the said Haribabu in the presence of his sons, got registered the plots vide document No.7565/2014 for sale consideration of Rs.60 lakhs. After that, Haribabu with an intention to cheat the 2nd respondent, executed registered document by impersonation in his name vide document No.11957/2015 by forging the signature of the 2nd respondent and that the petitioner also played fraud directly in the fake registration of the document with the Sub-Registrar Office, Kukatpally. Thus, the petitioner/A2 along with others committed the above offences. On the strength of the written report lodged with the police, the police registered the above crime and issued FIR. The investigation in this case is not yet commenced.

It is the case of the petitioner that he did play any role in execution of the document by impersonation conveying the plot to another person. In the absence of allegation that he played prime role in creation of fake document by impersonation, he cannot be proceeded for the above

offences and that lodging report is nothing but abuse of process of the Court to set the criminal law into motion against the petitioner and others.

At the stage of admission, learned counsel for the petitioner reiterated the contentions urged in the petition while drawing the attention of the Court the allegations in FIR and contended that the petitioner did play no role in execution of the document and in the absence of any allegation in the report lodged with the police, the police concerned is incompetent to investigate into the case.

Learned Public Prosecutor opposed the petition on the ground that the investigation is not yet commenced and the petitioner has already enlarged on bail after his arrest. Therefore, at the threshold the proceedings against the petitioner cannot be quashed.

As seen from the allegations made in the complaint, the petitioner introduced Haribabu to the 2nd respondent and offered to sell the property in different survey numbers referred supra by producing a document bearing No.7565/2-14 and executed agreement of sale-cum-General Power of Attorney for sale consideration of Rs.60 lakhs in favour of the 2nd respondent and later with an intention to cheat the 2nd respondent, the said Haribabu executed document bearing No.11957 of 2015 in favour of other persons by impersonation and forged the signature of the 2nd respondent and that the petitioner played major role in creating the said document. The main contention before this Court is that the complaint is bereft of details of the role played by the petitioner and on this ground alone the proceedings against the petitioner are liable to be quashed.

No doubt there are no specific allegations, but he is the person, who introduced Haribabu and offered to sell the property of Haribabu, which was registered in the name of his sons and the agreement of sale-cum-General Power of Attorney creates interest in the property in terms of

Section 202 of the Indian Contract Act. When the agreement of sale-cum-General Power of Attorney created interest in property in favour of the petitioner is nothing but *prima facie* cheating at the instance of the petitioner by Haribabu and his sons.

However, FIR is only a information to the police about commission of cognizable of offence to set the criminal law into motion and need not contain minute details of the role played by the petitioner. Basing on the contention that the complaint is bereft of details, the proceedings cannot be quashed at the threshold when the investigation is at the fetus stage.

In **Kurukshetra University v. State of Haryana**¹, the Apex Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C. and observed as follows:

“It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Cr.P.C. it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. it ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise power only to implement the order passed by this Court to prevent abuse of process of Court or to meet the ends of justice. The Apex Court in **State of Orissa v. Saroj Kumar Sahoo**² held that the inherent powers under Section 482 Cr.P.C. should not be exercised by the 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*

¹ AIR 1977 SC 2229

² (2005) 13 SCC 540

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. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. While exercising jurisdiction under Section 482 Cr.P.C, it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed, at that stage, the Court has to only *prima facie* be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

In view of the law declared by the Apex Court, this Court cannot exercise its inherent jurisdiction to quash the proceedings to stifle the legitimate prosecution 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. Therefore, I have no hesitation to hold that the criminal petition is devoid of merits and the same is liable to be dismissed at the stage of admission.

Accordingly, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

20.07.2018
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