

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.8017 OF 2018

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in Crime No.429 of 2018 of Narsingi Police Station, Cyberabad, registered for the offences punishable under Sections 307 and 509 IPC.

The petitioner is the sole accused and the 2nd respondent is the *de facto* complainant.

The 2nd respondent lodged report alleging that on 03.06.2018 at 05.30 PM his father K.Nageshwar Rao, aged 60 years while returning home on his bike B.No.TS07 TQ 4003 reached in front of their house, their neighbour Sushil, who is coming out of his car bearing No.TS 07 EZ 0299, on seeing his father he intentionally hit his father bike, due to which his father fell down and received bodily internal injuries. Later Sushil got down from his car and beat his father on his face and chest where his father has pacemaker in his heart and the same was known to Sushil. The said Sushil caused injuries due to previous grudges. The said Sushil fisted his father on chest, his father sustained with heavy bleeding injuries on his nose and mouth. On seeing the same, two local colony people and his apartment people interfered and separated them. Thus, the petitioner allegedly committed the above offences.

On the strength of the written report, the above crime was registered and issued FIR. At this stage, the petitioner approached this Court under Section 482 Cr.P.C. to quash the proceedings on the ground that the allegations in the written report lodged with the police do not constitute the offence punishable under Section 307 IPC as there is no allegation in the entire complaint that the petitioner allegedly caused injuries

with an intention to kill the father of the 2nd respondent and that the complaint was lodged only due to previous disputes between the father of the complainant and the petitioner. Therefore, requested to quash the proceedings at the threshold.

During hearing, learned counsel for the petitioner while reiterating the contentions urged in the petition, drawn the attention of the Court to the allegations made in the written report lodged on 03.06.2018, which is the basis for setting the criminal law into motion.

It is the main contention of the petitioner that when the allegations made in the written report do not constitute the offence punishable under Section 307 IPC, the Court can exercise its inherent jurisdiction under Section 482 Cr.P.C. Learned counsel also contended that that the allegations would not constitute offence punishable under Section 509 IPC since there is no allegation that the petitioner by word, gesture or act intended to insult the modesty of a woman.

Learned Public Prosecutor opposed the petition on the ground that the investigation in this case is not yet commenced and at the threshold, this Court cannot exercise power under Section 482 Cr.P.C. to stifle the legitimate prosecution and requested to dismiss the petition.

The offences allegedly committed by the petitioner are punishable Sections 306 and 509 IPC. The main grievance of the petitioner is that none of the allegations made in the written report do not constitute the above offences.

Section 509 IPC deals with punishment for insulting a woman by word, gesture or act intended to insult the modesty of a woman. But here there was no involvement of any woman and the alleged acts of the petitioner are against the father of the 2nd respondent, who is a man. Therefore, *prima facie* the allegations made in the complaint do not

constitute the offence punishable under Section 509 IPC and the proceedings against the petitioner are liable to be quashed for the offence punishable under Section 509 IPC.

Coming to the other offence allegedly committed by the petitioner is under Section 307 IPC. i.e. Attempt to murder. According to Section 307 IPC, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Thus, any act committed as an attempt to murder by a person would constitute an offence. Such act may cause death of the person, but nothing was mentioned in the complaint that the petitioner caused such injuries on the chest, face, nose and mouth with an intention to kill father of the *de facto* complainant, despite knowledge about pacemaker in the heart of the father of the *de facto* complainant. Therefore, such knowledge is sufficient that the act of causing injuries on the chest may lead to death, such intention can be inferred more particularly from the seat of injury, the weapon used and the nature of injury. Here, the petitioner allegedly beat on the heart of the father of the *de facto* complainant, who has pacemaker in his heart to save his life, which is within the knowledge of the petitioner. When the petitioner having knowledge caused injuries on the chest of the father of the 2nd respondent, who is saving his life with pacemaker, the Court can infer knowledge or intention of the petitioner based on such circumstances. However, FIR is only an intimation to the police about the commission of cognizable offence to set the criminal law into motion and

FIR need not contain minute details since it is not an encyclopedia of facts. Therefore, at this stage, the proceedings against the petitioner cannot be quashed for the offence punishable under Section 307 IPC since the investigation is not yet commenced and this Court normally would not venture to exercise inherent power under Section 482 Cr.P.C. to quash the proceedings at the threshold when the 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 view of the law declared by the Apex Court in **State of Orissa v. Saroj Kumar Sahoo**¹ and in **Kurukshetra University v. State of Haryana**² and apart from that the Court can exercise power under Section 482 Cr.P.C. only to implement the orders passed under the Court or to prevent the abuse of process of the Court or to meet the ends of justice. In the leading judgment of the Apex Court in **State of Haryana v Bhajanlal**³ laid down the following seven guidelines:

“(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 (2005) 13 SCC 540

² AIR 1977 SC 2229

³ 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."

If the above principles are applied to the present facts of the case at this stage, this Court cannot exercise power under Section 482 Cr.P.C. drawing inference from the circumstances of the case that the petitioner had knowledge that the injuries caused on the chest when father of the *de facto* complainant is saving his life with pacemaker in his heart. Therefore, I find no ground to quash the proceedings against the petitioner for the offence punishable under Section 307 IPC at this stage.

In the result, the criminal petition is partly allowed quashing the proceedings against the petitioner for the offence punishable under Section 509 IPC in Crime No.429 of 2018 of Narsingi Police Station, Cyberabad District while permitting the investigating officer in Crime No.429 of 2018 of Narsingi Police Station, Cyberabad District to complete the investigation and proceed in accordance with law.

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

M.SATYANARAYANA MURTHY,J

31.07.2018
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