

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.8214 OF 2018

ORDER:

This criminal petition is filed by A1 under Section 482 Cr.P.C. to quash the proceedings in C.C.No.75 of 2018 pending on the file of Additional Judicial Magistrate of First Class, Huzurbad, registered for the offences punishable under Sections 447, 427, 297, 504, 506 read with 34 IPC.

The 1st respondent – Munipala Srinivas, lodged written report with the police alleging that the petitioner/A1 along with others trespassed into the land in Survey No.282 of Venkepally outskirts of the 1st respondent on 15.07.2017 at 18.30 hours. On the basis of the written report, the police registered Crime No.112 of 2017 for various offences and issued FIR. Thereafter, the police took up investigation and examined as many as 8 witnesses and recorded their statements under Section 161(3) Cr.P.C., during investigation, having concluded that there is *prima facie* material against the petitioner to proceed further and filed charge sheet against the petitioners and others for the offences referred supra. The Magistrate took cognizance of offence

The present petition is filed mainly on the ground that the petitioner filed O.S.No.96 of 2016 for grant of perpetual injunction and also obtained interim injunction against the petitioner under Order 39 Rules 1 and 2 C.P.C. restraining the respondents from interfering with the peaceful possession and enjoyment of the petitioner over the schedule property till disposal of the suit. While the interim order was in force, the 1st respondent trespassed into the land of the petitioner and thereupon lodged report with the police, but no action was taken and thereupon, W.P.No.7284 of 2017 was filed before this Court and on the direction of this Court, letter was

addressed by the Sub-Inspector of Police, Saidapur to the Executive Magistrate and Tahsildar that the stone laid by the petitioner which was displaced from the original possession and later registered a crime against the 1st respondent and issued FIR, which is subject matter of Crime No.38 of 2017, for the offences punishable under Sections 447 and 434 IPC and it is pending for investigation. While the matter stood thus, the 1st respondent at the instigation of the 2nd respondent got registered a crime for the above offences and thus, the complaint lodged by the 1st respondent against the petitioner and the investigation conducted by the police is outcome of the writ petition and original suit and the said Inspector of Police, Saidapur. Thus, the 1st respondent bore grudge against the petitioner and filed the present charge sheet as counter blast. Therefore, the proceedings are liable to be quashed.

During hearing, learned counsel for the petitioner contended that the petitioner though obtained interim injunction against the 1st respondent by filing O.S.No.96 of 2016 trespassed into the land despite subsistence of interim injunction, restraining him from interfering with the peaceful possession and enjoyment of the land in Survey No.284/A to an extent of Ac.2.06 gts situated at Venkapally Revenue Village of V-Saidapur Mandal within the specific boundaries described, annexed to the plaint. Since the 1st respondent interfered during pendency of suit despite interim injunction, a complaint was lodged, but no action was taken by the police, but only in view of the direction in W.P.No. 7284 of 2017, the police registered the crime and issued FIR. As the petitioner filed writ petition, the 2nd respondent bore grudge and filed false case without any material, filed charge sheet, which is nothing but a counter case by abusing process of law and prayed to quash the proceedings.

Whereas, learned Public Prosecutor contended that the basis for filing charge sheet is the evidence collected during investigation including the statements recorded under Section 161(3) Cr.P.C. In the absence of placing the statements on record under Section 161(3) Cr.P.C., the Court cannot quash the proceedings based on the proforma of charge sheet and apart from that the disputed land in suit is different from the land claimed by the 1st respondent and at this stage the proceedings cannot be quashed since the allegations made in the proforma charge sheet *prima facie* discloses the commission of offence for various offences and requested to dismiss the petition.

The main endeavour of the petitioner before this Court is that he is the owner of the land in Survey No.284/A, which is subject matter of O.S.No.96 of 2016 on the file of Principal Junior Civil Judge, Huzurabad and sought interim injunction against the 1st respondent herein and another and also obtained injunction on 03.04.2017 in I.A.No.469 of 2016 in O.S.No.96 of 2016 and the same is still in force. Despite the interim injunction, the 1st respondent trespassed into the land and a complaint was lodged to the police and as the police failed to take action, the petitioner filed writ petition and that only on the direction of this Court the police registered Crime No.38 of 2017. The Sub-Inspector of Police is the person behind to registration of crime against the petitioner on the complaint filed by the 1st respondent. The alleged incident which is subject matter of Crime No.38 of 2017 took place on 10.10.2016 and whereas, the incident in the present calendar case is occurred on 15.07.2017 i.e. almost after nine months from the date of alleged commission of offence, which is subject matter of Crime No.38 of 2017. If for any reason, this contention of the petitioner is accepted that the 1st respondent trespassed into the land of the petitioner, which is subject matter of O.S.No.96 of 2016 filed for perpetual injunction, the admission of trespass of the 1st respondent will have its own

consequence in the result of the suit, but this Court need not decide the consequences of the said suit in the present petition.

The other contention of learned counsel for the petitioner is that the Sub-Inspector of Police has bore grudge against the petitioner and got foisted a false case through the 1st respondent and investigated into and filed charge sheet. But this contention at this stage cannot be appreciated since this Court while exercising power under Section 482 Cr.P.C. cannot appreciate the evidence, but evaluate the material on record to come to conclusion where the allegations made in the charge sheet accepting on its face value and this Court is not required to go into the details of defence set up by the petitioner based on other material. In view of the limited jurisdiction of this Court under Section 482 Cr.P.C., the Court has to verify the allegations made in the charge sheet, which includes the statements recorded under Section 161(3) Cr.P.C. and the other evidence collected during investigation by the investigating officer, but unfortunately for the reasons best known to the petitioner, did not place those statements and other material collected before this Court to enable the Court to come to such conclusion whether the allegations made in the charge sheet constitute the offences. In the absence of the material collected during investigation, it is difficult for this Court to express any opinion based on proforma charge sheet since charge sheet includes statements recorded under Section 161 (3) Cr.P.C. and other evidence collected during investigation. Therefore, the contentions of learned Public Prosecutor are liable to be upheld that in the absence of any statements recorded under Section 161(3) Cr.P.C., this Court cannot exercise power under Section 482 Cr.P.C. Moreover, the contention of the petitioner from the beginning is that the 1st respondent and the Sub-Inspector of Police bore grudge against the petitioner in view of the writ petition and suit filed against them. The suit was filed in the year 2016 and interim injunction was granted on

03.04.2017. Similarly, the writ petition was filed in the year 2017, whereas the incident allegedly took place on 15.07.2017. Therefore, there is lot of time gap between the proceedings initiated by the petitioner against the Sub-Inspector of Police, Saidapur and the 1st respondent herein. But that by itself is not a ground to arrive at any conclusion that the proceedings were initiated to wreck vengeance against the petitioner due to ill-will and when the allegations made in the proforma charge sheet, which is placed on record *prima facie* discloses the commission of offence, this Court cannot exercise power under Section 482 Cr.P.C., in view of the guideline No.3 of the Apex Court in **State of Haryana v Bhajanlal**¹ and even otherwise in **Umesh Kumar v. State of Andhra Pradesh and another**², the Apex Court expressed doubt about the maintainability of the petition filed under Section 482 Cr.P.C., when the proceedings are at committal stage and held that the scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under Cr.P.C. to prevent abuse of the process of Court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the Court concerned. The High Court cannot reject

¹ 1992 Supp(1) SCC 335

² 2013 (10) SCC 591

the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial. It is further held that proceedings at committal stage is like a still born child and cannot be quashed.

Applying the above principles, I am not inclined to quash the proceedings at this stage as the entire material is not produced before the Court for perusal and the allegations made in the charge sheet constitute offences or not and consequently the criminal petition is liable be dismissed as devoid of merits.

In the result, the criminal petition is dismissed at the stage of admission.

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

03.08.2018
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The seal of the High Court of Judicature at Hyderabad, State of Andhra Pradesh, is a circular emblem. It features a central green emblem with a red lotus flower at the bottom. The text 'HIGH COURT OF JUDICATURE AT HYDERABAD' is written in a circle around the central emblem. Below the lotus, the text 'FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH' is written. At the very bottom, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is inscribed.

M.SATYANARAYANA MURTHY,J