

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.8310 of 2018

ORDER

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in Cr.No.75 of 2018 of Konaraopet Police Station, Rajanna Sircilla District, registered for the offences punishable under Sections 447 and 435 of IPC.

2. The second respondent herein lodged a report with the police on 27.05.2018 alleging that he owned and possessed the land to an extent of Ac.31.19 gts in Sy.No.91A situated at the outskirts of Dharmaram village and other villagers are also possessed lands in the same survey number and that there were disputes with regard to land to an extent of Ac.0.18 gts and civil suits are pending. It is alleged that on the same day referred above, the petitioner, keeping in mind the old disputes, set fire to his haystack, due to which, flames engulfed and 14 teak plants, 4 red sandal, five mango trees, one lime tree and one tractor were also burnt causing loss to the tune of Rs.20,000/- to him and another. On the strength of the complaint, the police registered the above crime.

3. The main ground urged by petitioner is that Section 157 of Cr.P.C. is not complied with and that there were land disputes between the petitioner and the second respondent and that a false case has been foisted against him. It is also urged that when once a crime is registered, the police have to commence investigation by visiting the scene of offence as a part of investigation, but till date,

no steps were taken by them and therefore, he requested to quash the proceedings at this stage.

4. The Public Prosecutor for the State of Telangana opposed the petition.

5. As seen from the material on record, the petitioner allegedly trespassed into the land of second respondent and set fire the haystack and other trees causing damage to the tune of Rs.20,000/- and that due to earlier disputes, the petitioner being adjacent owner has committed such act. If these allegations are accepted as true on its face value, the alleged acts would constitute the offences punishable under Sections 447 and 435 IPC i.e., criminal trespass and mischief by fire.

6. The jurisdiction of this Court under Section 482 of Cr.P.C., is limited and it shall be exercised sparingly in exceptional circumstances to implement the orders passed by the Court, to prevent the abuse of process of the Court and to meet the ends of justice keeping in view the following 7 guidelines framed by the Apex Court in **State of Haryana v. Bhajanlal**¹;

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

¹ 1992 Supp(1) SCC 335

(c) where the uncontroverted 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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 aforesaid guidelines, if the allegations made in the FIR are accepted on its face value, it would constitute the offences alleged and this Court cannot quash the proceedings. In view guideline No.7, it is made clear that if the prosecution is launched against the accused with an ulterior motive for wreaking vengeance and with a view of spite him due to private and personal grudge, this Court can exercise such power. Keeping in mind the law laid down by the Apex Court, it is clear that the allegations made in the complaint would attract the offences punishable under Sections 447 and 435 IPC. In such case, this Court cannot exercise power under Section 482 of Cr.P.C.

7. When the complaint is lodged and the investigation is not yet commenced, this Court cannot exercise its power under Section 482 of Cr.P.C., to stifle the legitimate prosecution when the material is incomplete and hazy before the Court irrespective of the magnitude of the fact and law as held by the Apex Court in **State of Orissa v. Saroj Kumar Sahoo²** and in **Kurukshetra University v. State Of Haryana³**. If these principles are applied to the present facts of the case, this Court cannot exercise its jurisdiction to quash the proceedings.

8. The main contention of the counsel for petitioner before this Court is that the FIR was not submitted to the Magistrate having jurisdiction in compliance of Section 157 of Cr.P.C. But, it is not a ground to quash the proceedings and it is a ground at best during trial for acquittal if the prosecution is not able to explain the delay in sending a copy of the FIR to the concerned Magistrate. Therefore, on the grounds urged by the counsel for petitioner, I am unable to exercise power under Section 482 of Cr.P.C., to quash the proceedings at the stage of admission and the petition is devoid of merit.

9. In the result, the Criminal Petition is dismissed. Miscellaneous petition, if any, pending in this petition, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

7th August, 2018

sj

² (2005) 13 SCC 540

³ AIR 1977 SC 2229