

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8668 OF 2018

ORDER:

This criminal petition is filed by the petitioner/accused under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in F.I.R.No.370 of 2018 on the file of Hayathnagar Police Station, Rachakonda District, registered for the offence punishable under Section 447 and 427 of Indian Penal Code (for short "I.P.C.").

The respondent No.2 – Dy.Commissioner, Greater Hyderabad Municipal Corporation (for short "GHMC"), Circle – 3 lodged report with the police alleging that the petitioner encroached the park land in Sy.Nos.209, 210 (p), 215, 217, 225, 226, 227, 245, 246 and 247 of Anmagal Village Mamilla, Hayath Nagar, Ranga Reddy District, which is known as Information Colony, Hayath Nagar. The basis for lodging a report is the representation of the Venkatadri Nagar Welfare Association Information Colony, Anmagal Village, Hayath Nagar and representation of Ward Member (Corporator) of 13 – Hayath Nagar Division Sri Thirumala Reddy dated 28.04.2018.

The present petition is filed to quash the proceedings on the ground that the petitioner purchased property and applied plan for construction of compound wall and building by paying necessary fee to the Corporation and that the petitioner obtained information under the Right to Information Act about the existence of any park or demarcation of land for park as per layout plan, but the information furnished by the Municipal Corporation does not disclose existence of any park or public land and that as per layout

plan, the land in plot Nos.120, 121 and 122 is not classified as park or public land vested in the Corporation. Therefore, the allegation that the petitioner criminally trespassed into the land is false and prayed to quash the proceedings.

During hearing, learned counsel for the petitioner Sri D.Vijaya Kumar would draw the attention of this Court to several proceedings issued by the GHMC, so also information collected by him under Right to Information Act including layout plan to demonstrate that the land in plot Nos.120, 121 and 122 is the private land and not classified as park or land demarcated for public purpose. Therefore, the allegation that the petitioner criminally trespassed into the land is false and requested to quash the proceedings.

Notice was ordered before admission, and the same was served on the respondent No.2. Proof of service is filed, but none appeared.

Learned Public Prosecutor for the State of Telangana supported the case of the prosecution and requested to pass appropriate orders.

As seen from complaint lodged by the Deputy Commissioner dated 21.05.2018, it is evident that the same was lodged only at the instance of Sri S.Thirumala Reddy, Ward Member (Corporator) of 13 – Hayatah Nagar Division and also on the representation of the Venkatadri Nagar Welfare Association Information Colony. Those representations are not placed on record. However, the land is not classified as park as per the information furnished by the GHMC to the petitioner under Right to Information Act dated

15.02.2017 and 04.10.2016 and the vendor of the petitioner also applied for permission to construct compound wall and the permission was accorded by collecting approximately Rs.6,00,000/-. The petitioner applied for permission to construct building. Apart from that the layout plan filed along with the petition does not disclose any demarcation of plot bearing Nos.120, 121 and 122 for community purpose or for park.

In the absence of any material produced by the GHMC with details, the proceedings against the petitioner are liable to be quashed for the offence punishable under Section 447 and 427 of I.P.C. since the petitioner herself is the owner *prima facie* having purchased the same under registered sale deed and obtained interim injunction against Sri S.Thirumala Reddy, Ward Member (Corporator), and the Venkatadri Nagar Welfare Association Information Colony. It is evident from the record, the complaint was lodged at the instance of Sri S.Thirumala Reddy, Ward Member (Corporator) with an ulterior motive to wreck vengeance against the petitioner on account of filing suit O.S.No.1520 of 2018 pending on the file of the IX Additional Senior Civil Judge, L.B.Nagar for grant of temporary injunction.

When the GHMC lodged written report at the instance of Corporator without any basis, it is nothing but abuse of process of law.

In “***State of Haryana v. Bhajan Lal***¹” the Apex Court considered in detail the powers of High Court under Section 482 of Cr.P.C. and the power of the High Court to quash criminal

¹ 1992 Supp (1) SCC 335

proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(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.

(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.

In view of the guideline No.7, when the proceedings are initiated with an ulterior motive to wreak vengeance against the petitioner, this Court can exercise inherent power under Section 482 of Cr.P.C.

In view of my foregoing discussion, I find that it is a fit case to quash the proceedings in F.I.R.No.370 of 2018 on the file of Hayathnagar Police Station, Rachakonda District, against the petitioner herein.

In the result, the criminal petition is allowed and the proceedings in F.I.R.No.370 of 2018 on the file of Hayathnagar Police Station, Rachakonda District, are hereby quashed against the petitioner herein. No costs. However, liberty is given to the Greater Hyderabad Municipal Corporation to evict the petitioner, if occupied any of the land belonging to it, as per due process of law.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

27.08.2018
Ksp