

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.9225 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, is filed by the petitioners/accused to quash the proceedings in P.R.C. No.2 of 2018, pending on the file of the Court of Additional Judicial First Class Magistrate, Narsapur, West Godavari District (For short, the trial Court'), registered for the offences punishable under Sections 307, 323, 427, 447 and 506(2) R/w.34 of I.P.C.

2. Heard, the learned counsel for the petitioners, learned Public Prosecutor appearing for the 1st respondent – State, and perused the record.

3. The case of the petitioners, in brief, is that the 2nd respondent – complainant lodged a private complaint alleging that she got Ac.0.19 cents of zeroyati dry land in survey No.141/7 of Mutyapalli village by way of registered gift settlement deed, dated 14.03.2012, executed by her husband. Since then, she has been in possession and enjoyment of the same with absolute rights, got mutated her name in the revenue records, and also got issued pattedar passbook and title deed in her favour by the revenue authorities. While so, in the month of May, 2012, one Nippuleti Srinu tried to trespass into the land, she filed a suit for permanent injunction *i.e.*, O.S. No.74 of 2012 against Srinu to restrain him and his henchmen from trespassing into her land before the Principal Junior Civil Judge's Court, Narsapur, and obtained *interim* injunction in her favour. The petitioners herein have no right, interest or title over the schedule property, at any point of time, and due to the disputes between the husband of the complainant with the 2nd petitioner regarding properties,

they bore grudge against the complainant and her husband, waiting for an opportunity to take revenge against her on 14.09.2012 at about 10:30 A.M. when the complainant along with her husband went to the schedule land, removing stagnant water by water engine, the petitioners highhandedly trespassed into her land, abused the complainant and her husband in filthy language, pulled the water engine pipes and destroyed the engine pump system and damaged the engine worth Rs.25,000/-. When the complainant and her husband tried to object for the same and questioned the highhanded acts of the petitioners, 2nd petitioner caught hold the tuft of the complainant, fell her down, beat her indiscriminately and 1st petitioner beat the husband of the complainant with hands and kicked with legs indiscriminately. 1st petitioner took the iron handle of the engine and tried to beat the complainant on her head with the said handle, the husband of the complainant intervened and rescued the complaint and as such both the petitioners tried to kill the complainant and her husband, openly proclaiming that they would murder the complainant and her husband, the neighbours present there intervened and rescued the complainant and her husband from the hands of the petitioners and therefore requested to take necessary action.

4. The Magistrate recorded the sworn statements of Vijjam Sarveswara Rao and the complainant viz., Channapragada Hymavathi and took cognizance of the case for the aforesaid offences against the petitioners by order dated 03.02.2017 and issued process to these petitioners.

5. The present petition is filed on the ground that there were civil disputes between the parties and a partition suit i.e., O.S. No.92 of 2012 is pending between the 2nd petitioner and complainant before the X Additional District Judge, Narsapur, West Godavari District and they also

made earlier complaint against the petitioners which is pending for adjudication before the competent Court and that the instant complaint was lodged by the 2nd respondent – de-facto complainant only with a view to wreak vengeance against the petitioners, taking advantage of both criminal and civil disputes pending between them, on the file of different Courts, and therefore filing of the complaint by the 2nd respondent herein against the petitioners is nothing but abuse of process of the Court and finally requested to quash the proceedings in P.R.C. No.2 of 2018 pending before the trial Court.

6. During course of hearing, learned counsel for the petitioners, brought to the notice of this Court that in the complaint lodged by the 2nd petitioner herein against the 2nd respondent – complainant herein and others, which is registered as C.C. No.518 of 2012, on the file of Judicial First Class Magistrate, Narsapur, a petition was filed before this Court in Criminal Petition No.13272 of 2014, under Section 482 of Cr.P.C., by accused therein *i.e.*, A-1, A-3 to A-9, A-11, A-14 and A-15 to quash the proceedings against them; wherein this Court by order dated 23.07.2018 quashed the proceedings in C.C. No.518 of 2012 pending on the file of Judicial First Class Magistrate, Narsapur, West Godavari District, insofar as the Petitioners/A-1, A-3 to A-9, A-11, A-14 and A-15 concerned. Thus, it is clear from the material on record, the proceedings against some of the accused therein *i.e.*, C.C. No.518 of 2002 were quashed but quashing of the proceedings against the 2nd respondent herein and others is not a ground to quash the proceedings against the petitioners herein at this stage. However, learned counsel for the petitioners requested this Court at least to dispense with appearance of the petitioners but this Court at this stage cannot exercise such power.

7. As seen from the material on record including the allegations made in the complaint and sworn statements, this petitioners caused injuries on the body of de-facto complainant and her husband and made an attempt to beat on the head of the complainant, 2nd respondent herein with iron rod and the petitioners herein openly proclaimed that they would kill the 2nd respondent herein and her husband on one day or the other, the intention can be gathered from the overt acts attributed to these petitioners. When the petitioners made an attempt to cause injuries on the head of the complainant, which is a vital part of the body, and if the 2nd respondent achieved the object of causing injuries, it would have resulted in her death, depending upon the size and weight of the weapon used in commission of such offence. However, the allegations made in the charge sheet and the sworn statements recorded *prima-facie* discloses that there is material against the petitioners to attract the offences punishable under the aforesaid sections.

8. It is also contended that the instant private complaint is lodged as a counter-blast to the earlier complaint *i.e.*, C.C. No.518 of 2018, lodged by the 2nd petitioner herein. But, it is difficult to conclude, at this stage, that the instant complaint is filed as a counter blast to the earlier complaint *i.e.*, C.C. No.518 of 2012, as the earlier complaint in C.C. No.518 of 2012 was filed by the 2nd petitioner on 28.09.2012; whereas, the present complaint before the Magistrate was filed on 21.07.2015. Therefore, the instant complaint filed by the 2nd respondent herein is almost three years subsequent to complaint filed by the 2nd petitioner. Under these circumstances, it is difficult to conclude that the instant private complaint, filed by the 2nd respondent herein is a counter-blast to C.C. No.518 of 2012 and, on the other hand, the sworn statements recorded by the Magistrate clearly disclose about the commission of offences. *Prima-facie*,

the material discloses that the petitioners herein involved in the aforesaid offences.

9. One of the contentions of learned counsel for the petitioners is that the 1st petitioner is working as a Lecturer at Hyderabad and has been falsely implicated in this case, but such plea of *alibi* cannot be decided since it is a question of fact which has to be decided during trial by adducing evidence, though it is not relevant, Section 11 of Act permits to adduce evidence to improbabilize the presence of 1st petitioner at the time of the incident near the scene of offence, but such fact has to be decided only during trial and not at this stage. Hence, it is not a ground to quash the proceedings against the petitioners in P.R.C. No.2 of 2018.

10. Moreover, the law is settled on the powers as to when the inherent power under Section 482 Cr.P.C. can be exercised and cannot be exercised in various perspective pronouncements of the Apex Court. The leading case on this aspect is ***State of Haryana Vs. Bhajanlal***¹, wherein the Apex Court 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

¹ 1992 Supp.(1) SCC 335

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.”

11. In **(Mrs.) Dhanalakshmi Vs. R. Prasanna Kumar and others²**, the Apex Court dealt with the scope of Section 482 of Cr.P.C and it reads as under:

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it

² AIR 1990 SC 494

appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is *mala fide*, frivolous or vexatious. in that event there would be no justification for interference by the High Court.”

12. In ***State of Karnataka Vs. L. Muniswamy and Others***³, the Apex Court while considering scope and jurisdiction of the High Courts, under Section 482 Cr.P.C, held as under:

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

13. From the principles laid down by the Apex Court in the decisions referred *supra*, this Court can exercise power under Section 482 of Cr.P.C. only in rare circumstances to quash the proceedings; more particularly, when there is no material to proceed against the petitioners, *prima-facie*, even if the allegations in the complaint are accepted as true.

³ AIR 1977 SC 1489

The allegations made in the complaint, coupled with the sworn statements recorded by the learned Magistrate disclose commission of offences punishable for the aforesaid offences. Therefore, I find that it is not a fit case to quash the proceedings against the petitioners in P.R.C. No.2 of 2018. Accordingly, the Criminal Petition is liable to be dismissed.

14. In the result, the Criminal Petition is dismissed.

As a sequel, the miscellaneous petitions, if any pending, shall stand dismissed.

Date: 30.08.2018.
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M.SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Date. 30.08.2018

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