

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9031 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioners-accused Nos. 1 and 2 to quash the proceedings against them in C.C.No. 201 of 2017 on the file of the Court of Additional Judicial I Class Magistrate at Gadwal (for short, 'the Court below') registered for the offences punishable under Sections 420, 468 and 471 read with Section 34 of IPC.

2. Respondent No. 2 lodged a written report on 06-04-2016 with police against the petitioners alleging that he is having S.B. Account with SBH, Sunkulamma Mettu Colony, bearing No. 62232221016 and when he went to bank to withdraw amount from his account, he noticed that crop loan of Rs.90,000/- was sanctioned to him *vide* loan account No. 62267979158 and the same was taken away by some others without his consent and that on inquiry, he came to know that the petitioners took away the crop loan from his loan account by submitting forged documents. On the strength of the report, the police registered a case in crime No. 84 of 2016 of Gadwal Town Police Station, issued FIR and took up investigation. During the course of investigation, the police examined as many as seven witnesses and recorded their statements under Section 161 (3) of Cr.P.C. On being satisfied that there is *prima facie* material to proceed against the petitioners, charge sheet is filed for the offences referred *supra*.

3. The main contention urged before this Court is that the petitioners already discharged the loan and when the loan was discharged by the petitioners, they are unconcerned with the alleged offences and that the allegations made in the

charge sheet do not constitute any offence much less the above offences and prayed to quash the proceedings.

4. At the hearing, learned counsel for the petitioners has reiterated the grounds urged in the petition and requested to quash the proceedings.

5. As seen from the material on record, the petitioners admittedly obtained crop loan duly affixing the photograph of petitioner No. 1 on the photograph of respondent No. 2 and created mortgage over the property by forging the signature of respondent No. 2. The statements recorded by police during investigation disclose that petitioner No. 1 with the help of petitioner No. 2 stapled his positive photograph on the photograph of respondent No. 2 and obtained loan and that the petitioners are not the owners of the property mortgaged to the bank and made the bank to part with huge amount of Rs.90,000/-. Therefore, at this stage, it is difficult to exercise power under Section 482 of Cr.P.C. to quash the proceedings since the allegations made in the charge sheet including the statements recorded by the police during investigation *prima facie* disclose commission of the above offences.

6. The power of this Court under Section 482 of Cr.P.C. is limited and this Court can exercise such power to implement the orders passed under the Code or to prevent abuse of process of the Court or to secure ends of justice. Keeping in mind the power of this Court under Section 482 of Cr.P.C., the Apex Court in ***State of Haryana Vs. Bhajanlal***¹ laid down seven guidelines which are as follows:

"(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.

¹ 1992 Supp. (1) SCC 335

- (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."*

If guideline No. 3 is applied to the present facts of the case, this Court cannot exercise power under Section 482 of Cr.P.C. since the allegations made in the charge sheet coupled with the material produced along with the charge sheet *prima facie* disclose commission of the above offences. I, therefore, find no ground to quash the proceedings since production of forged documents with the forged signatures of respondent No. 2 and stapling the positive photograph of petitioner No. 1 with the help of petitioner No. 2 on the photograph of respondent No. 2 are disputed questions of fact to be decided only during trial and the criminal petition deserves to be dismissed.

7. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 28-08-2018.

M.SATYANARAYANA MURTHY, J.

JSK

