

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9070 of 2018

ORDER:

This Criminal Petition under Section 482 Cr.P.C. is filed to quash the proceedings in C.C.No.457 of 2017 on the file of Additional Judicial First Class Magistrate, Nadigama, registered for the offence punishable under Section 353 IPC.

De facto complaint/Rachapalli Naga Saibabu, who is working as Junior Planning Officer, CRDA, Vijayawada, lodged a report with the police alleging that on the directions of Commissioner, CRDA, Vijayawada, he along with his staff went to the house of the petitioner situated at old current office road to remove unauthorized constructions and at that time, the petitioner came to the spot and obstructed *de facto* complaint and other officials to remove unauthorized constructions and threatened that he will commit suicide by consuming the pesticide poison if they try to demolish the house and also proclaimed that the CRDA officials and police staff are responsible for his acts and threw pesticide on them and it fell on left eye, on the body and also in the mouth of the *de facto* complaint. Basing on the complaint given by the *De facto* complainant, a case in Cr. No.349 of 2016 under Section 353 r/w 34 IPC was registered by Nadigama Police Station and issued FIR. During investigation, the SI of Police, Nadigama, examined the witnesses and recorded the statements of the witnesses under Section 161 (3) Cr.P.C. Based on the medical certificate

issued by the Doctor, the Police of Nadigama concluded that there is *prima facie* case to proceed against the petitioner for the offence under Section 353 r/w 34 IPC.

The specific allegation against the petitioner is that he obstructed the *de facto* complainant and other officials when they came to the scene of offence to demolish the house and threatened them that he will consume organic pesticide and when the *de facto* complainant along with his staff made an attempt to demolish the house constructed in contravention of the plan sanctioned, the petitioner poured organic pesticide on the body of the *de facto* complainant and other witnesses, who were present including the Police, and thereby obstructed the *de facto* complaint and others while on duty and thus committed an offence punishable under Section 353 IPC.

Learned counsel for the petitioner contended that the allegations made in the complaint do not constitute an offence punishable under Section 353 IPC and the petitioner did not obstruct the officials from discharging their duties, but he purchased pesticide for agriculture purpose and after knowing the information that his building is likely to be demolished, he rushed the spot along with pesticide and fell in depression and as he was holding pesticide, the police caught hold of him under the impression that he was going to consume pesticide and attempt to commit suicide, they went to the doctor and obtained the certificate, which do not indicate any injury except smell of the pesticide. Thus, the act of the petitioner was only due to

distress, but not with an intention to obstruct the *de facto* complaint and other officials and therefore, the allegations leveled against the petitioner do not constitute any offence and prayed to allow the petition.

Learned Counsel for the petitioner vehemently contended that no injury was found on the body of Lw.1 by producing Medical Certificate issued by the Doctor and therefore, the allegations against the petitioner do not constitute any offence punishable under Section 353 IPC.

Section 353 IPC deals with assault or criminal force to deter public servant from discharge of his duty. According to it, whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Therefore, to constitute any offence punishable under Section 353 IPC, there must be either assault or use of criminal force.

The word 'Assault' is defined in Section 351 IPC. According to it, whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he

who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Here, the allegation is that the petitioner allegedly poured organic pesticide on the *de facto* complaint and others and the said fact is supported by medical certificate issued by the Doctor. Therefore, pouring such pesticide as certified by the medical officer would constitute *prima facie* an assault and such assault on public servant while on duty would constitute an offence punishable under Section 353 IPC *prima facie*. Therefore, I find that it is not a fit case to quash the proceedings by exercising power under Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise such power only in exceptional circumstances to implement the Orders passed under the Code or to prevent abuse of process of law or to secure ends of justice. The Apex Court in *State of Haryana v. Bhajanlal*¹ keeping in view the scope of Section 482 Cr.P.C. framed seven guidelines. Even according to guideline No.3, if the allegations made in the charge sheet or complaint are accepted as true on its face value and if it discloses any cognizable offence, the Court cannot normally exercise inherent jurisdiction to quash the proceedings.

By applying the principle referred above to the present facts of the case, I find no ground to quash the proceedings at this stage.

¹ 1992 Supp (1) SCC 335

Accordingly, this Criminal Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 28-08-2018.

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Dt. 28-08-2018

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