

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.14169 OF 2015

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.),' is filed by the petitioners/accused Nos.1 to 5, to quash the proceedings in C.C. No.865 of 2015, pending on the file of VI Additional Chief Metropolitan Magistrate, Nampally, Hyderabad (for short, 'the trial Court'), for the offences punishable under Sections 448, 504, 506 and 324 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 Sri P.S.Rajasekhar, learned counsel appearing for the 2nd respondent, and perused the record.

3. The 2nd respondent herein lodged a report with the Police, which is registered as a case in Crime No.215 of 2015 of Humayun Nagar P.S., issued F.I.R. and taken up investigation and examined as many as 8 witnesses, and after completion of investigation filed a charge sheet against the petitioners and, as per the investigation, the de-facto complainant, who is a house-wife, is residing at H.No.10-2-300/74, Vijaya Nagar Colony, Laxmi Nagar, Hyderabad, along with her family members and LW.2 P.Pandu Chary, her husband, a private employee. A-1 is the elder brother of LW.2 and A-2 is the wife, A-3 and A-4 are sons and A-5 is the married daughter of A-1 residing at H.No.10-2-300/74, Vijaya Nagar Colony, Laxmi Nagar, Hyderabad, where LW.2 and his family members are also residing, which household property stood in the name of their mother. For the last few days both A-1 and LW.2 are quarrelling regarding rights in the household property. While so, in the month of March, 2015,

all of a sudden, the accused entered into the house of LW.2, kept their household articles, and threw the household articles of LW.2 claiming that the house belongs to A-1. Since then, LW.2 is staying in one room of the house. On 15.05.2015, when LW.2 came to his house and observed A-1 kept almyrah in his room and when questioned about the same, A-1 claimed that he is owner of the property and asked LW.2 to do whatever he can and abused him in filthy language and demanded him to leave the house. In the meantime, A-3 and A-4 tried to pull LW.2, A-2 took a rod and beat on his right leg. A-5 abused LWs.1 to 3 in filthy language. Thus, all the accused threatened LW.2 to kill him and his entire family. In the said incident, LW.2, who sustained injury, was referred to Osmania General Hospital, Hyderabad, and he sustained a simple injury.

4. The present Petition is filed by the petitioners, under Section 482 of Cr.P.C., to quash the proceedings in C.C. No.865 of 2015 on the ground that the alleged incident occurred on 15.05.2015 is the subject matter of S.T.C. No.334 of 2015 and the accused therein who are A-3 and A-4 herein were found guilty for the offences punishable under Sections 70(b) of Hyderabad City Police Act and Section 323 of I.P.C., convicted and sentenced to pay a sum of Rs.300/- each and it is stated that they have paid the fine amount and, therefore, A-3 and A-4 herein cannot be tried again for the said offences and A-5 is the married daughter of A-1 living with her husband and A-1 is an employee in Railways and finally prayed to quash the proceedings against the petitioners.

5. During course of hearing, Sri K.G.Krishna Murthy, learned Senior Counsel, appearing on behalf of Sri K.Ramamohan Mahadeva, learned counsel for the petitioners, has drawn the attention of this court to the Medico Legal Record and the Injury Certificate issued by the Hospital Authorities, on the strength of which, he contended that the offences took

place against A-3 and A-4 herein, were already tried for the offences under Section 70(b) of the Hyderabad City Police Act and Section 323 of I.P.C. in S.T.C. No.334 of 2015, convicted and sentenced to pay a fine of Rs.300/- each and thereby the second trial is barred in view of Section 300 Cr.P.C. and that the 2nd complaint is not maintainable against them.

6. *Per contra*, learned counsel for the 2nd respondent would contend that the two incidents are different; the 1st incident took place on 08.03.2015 is the subject matter of S.T.C. and A-3 and A-4 herein were shown as accused therein and thereby the incident covered by this complaint is totally different, nothing to do with the incident occurred on 15.05.2015 and prayed to dismiss the Petition.

7. Admittedly, 2nd respondent lodged a report with the Police on 22.07.2015 for the incidents occurred on 08.03.2015 at 07:30 P.M. and 15.05.2015 at 10:00 P.M. The first incident in the Month of March, 2015 is that all of a sudden accused persons entered into the house of LW.2, kept their household articles, and throw away the household articles of LW.2 claiming exclusive title over the house and since then LW.2 alone is staying in one room of the said house. The 2nd incident took place on 15.05.2015; when LW.2 came to his house and noticed that A-1 kept almyrah in the room, which is in exclusive possession of LW.2, when he questioned about the same, A-1 threatened him to do whatever he can while claiming exclusive right over the subject property and A-2 took a rod and beat him on his right leg, the other accused abused him in filthy language and threatened to kill him and also his family members. So far as the 1st incident concerned that took place on 08.03.2015, which was not the subject matter of S.T.C. No.334 of 2015. The basis for registration of crime for the offence under Section 323 I.P.C. is the Medico Legal Record causality O.P. No.33790 and outpatient registration number is also

same dated 16.05.2015 and the injuries referred in the wound certificate is one and the same and the certificate was issued by the same Officer. Therefore, the Medico Legal Record and the wound certificate issued by the Doctor for causing injury on the body of LW.2 is one and the same in both S.T.C. No.334 of 2015 and, in the present case, A-3 and A-4 who were the accused in S.T.C. were already found guilty, on admission of guilt, and convicted and sentenced to pay fine of Rs.300/- each; accordingly, they paid the fine and this fact is not in dispute in view of perusal of the order dated 03.06.2015 in S.T.C. No.334 of 2015.

8. Even the allegations made in the complaint are accepted on its face value, A-2 allegedly caused injury, which A-3 and A-4 allegedly caused in S.T.C. and therefore the alleged causing of injury by A-2 with a rod on the body of LW.2 is nothing but attribution made against A-2 though for the same incident A-3 and A-4 were already convicted in S.T.C No.334 of 2015 and lodging the report against A-3 and A-4 for the same offences is a sheer abuse of process of the Court. Therefore, *prima-facie* A-2 is not liable for the said offences.

9. Coming to the allegations made against the other accused, A-1 allegedly threatened LW.2 with dire consequences by claiming exclusive right over the property, which incident took place on 08.03.2015, and so far as the 1st incident of trespass is concerned, it is not the subject matter of S.T.C., it is a totally distinct offence, therefore, proceedings against A-1 for the offence under Section 448 cannot be quashed, at this stage. Moreover, as per the material on record, A-1 alone allegedly trespassed into the house but not the other accused. Therefore, A-2 to A-4 cannot be proceeded for the offence under Section 448 I.P.C.

10. The 2nd incident that took place on 15.05.2015, A-5 allegedly abused LWs.1 to 3 in filthy language and all the accused threatened LW.2 to kill him and his family members, which may attract the offence punishable under Section 506 I.P.C. but it appears from the record that it is an after thought on registration of the crime and after convicting A-3 and A-4 in S.T.C. No.334 of 2015. Therefore, the allegations made in the report against A-2 to A-5 are only to wreck vengeance against the petitioners, the proceedings for the offences under Sections 448, 504, 506 and 324 R/w.34 I.P.C. are liable to be quashed against the petitioners/A-2 to A-5.

11. If really the petitioners/accused did such act on 15.05.2015, they would have made such allegations in the complaint dated 15.05.2015 lodged by LW.1 herein but the earlier complaint was totally silent. Hence, I find that the allegations made against these petitioners that they abused LWs.1 and 2 in filthy language and threatened to kill them is a clear invention to wreck vengeance against these petitioners in pursuance of the offences *supra*. Therefore, taking into consideration of these facts and circumstances I find that no *prima-facie* case is made out against the petitioners/A-2 to A-4 for the offences. Moreover, *prima-facie* material is found against A-1 for the offence under Section 448 I.P.C., subject to proof during trial.

12. The law is settled on the powers of High Court as to when such 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 1992 Supp.(1) SCC 335

(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.”

13. In *R.P. Kapur Vs. State of Punjab*², this Court laid down the following principles:

(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

14. In *(Mrs.) Dhanalakshmi Vs. R. Prasanna Kumar and others*³, 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 appears on a consideration of the allegations, in the light of the statement on oath of the

² AIR 1960 SC 866

³ AIR 1990 SC 494

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.

15. In ***State of Karnataka Vs. L. Muniswamy and Others***⁴, 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.”

16. In view of the law declared by the Apex Court in the decisions referred *supra* and, more particularly, referring to guideline No.7 in ***Bhajanlal***¹, the proceedings against the petitioners/A-2 to A-5 are quashed for the offences punishable under Sections 448, 504, 506 and

⁴ AIR 1977 SC 1489

324 R/w.34 of I.P.C. while declining to quash the proceedings against petitioner/A-1 for the offence under Section 448 I.P.C. and the proceedings shall go on against the petitioner/A-1 to that extent.

17. Accordingly, with the above observations, the Criminal Petition is allowed in part.

18. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 23.07.2018.
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