

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.9668 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') to quash the proceedings in Crime No.163 of 2018 of III Town Anantapuram Police Station, Anantapuram District, registered for the offences punishable under Sections 447 and 506 read with 34 of the Indian Penal Code, 1860 (for short 'IPC') and Section 3 (1) (r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short 'Act, 2015').

2. Respondent No.2 herein being a member of scheduled caste, lodged a report with the police on 16.08.2018, alleging that she is the owner of the land in plot No.55 in Survey No.95/3, situated at Papampeta, and her neighbours, the petitioners herein, by name, S. dilshad, S. Chand Basha, S. Mumthaj Begum, taking advantage of wrong measurements, encroached her land, and on getting the land surveyed, the Mandal Surveyor informed that her property was encroached by the petitioner herein. So, on 17.06.2018, elders on behalf of respondent No.2 informed about the encroachment to the petitioners, and in the presence of elders, who informed about the encroachment, the petitioners herein abused her as '*Dhed ki raand*'.

3. On the basis of Telugu written complaint, the above crime was registered. But, the main contention of the petitioners before this Court is that the incident allegedly took place on 17.06.2018, whereas the complaint was lodged on 16.08.2018, though a suit is pending in O.S. No.523 of 2018 on the file of the Principal Junior Civil Judge, Anantapuram, and also obtained order of *status quo* in I.A. No.1041 of 2018, dated 02.08.2018. On account of obtaining interim *status quo* order, respondent No.2 herein allegedly lodged the report with false allegations, and requested this Court to quash the proceedings.

4. The learned counsel for the petitioners reiterated the above contentions during arguments. Whereas, learned Public Prosecutor for the State of Andhra Pradesh opposed the petition.

5. As seen from the material on record, the case is at crime stage and no investigation is commenced, yet. The allegations made in the complaint, dated 16.08.2018 clearly disclose that these petitioners abused respondent No.2 using her caste name as *Dhed ki raand* in the presence of elders, who informed about the encroachment on getting the land surveyed through the Mandal Surveyor. Therefore, such abuse using her caste name in the eye of public constitutes an offence punishable under Section 3 (1) (r) (s) of the Act, 2015 *prima facie*, and apart from that encroachment of part of Plot No.55 in Survey No.95/3 constitutes an offence punishable under 477 IPC *prima facie*.

6. Jurisdiction of this Court under Section 482 of the Code is limited and this Court can exercise such power only to implement the orders passed by the Court under the Code or to prevent abuse of process of Court or to secure the ends of justice. Keeping in view the limits of jurisdiction of this Court, the Hon'ble Supreme Court laid down seven guidelines in **State of Haryana v. Bhajanlal**¹, and keeping in view, the guidelines, I would like to examine the allegations made in the complaint and to decide whether the allegations made in the complaint constitute an offence.

7. As discussed above, a specific abusive language used against respondent No.2, who is a member of scheduled castes constitutes an offence punishable under Section 3 (1) (r) (s) of the Act, 2015, and the alleged encroachment constitutes an offence punishable under Section 447 IPC *prima facie*. But, there is a delay in lodging the report. The delay itself is not a ground to quash the proceedings since the Court can record conviction, if the delay is explained satisfactorily during trial. Therefore, on the ground of delay, Court cannot exercise power under Section 482 of the Code to quash the proceedings.

8. Undoubtedly, the petitioners herein obtained interim order of *status quo* on 02.08.2018, wherein the learned Judge directed both the parties to maintain *status quo* till 23.08.2018. Passing such an order

¹. 1992 Supp (1) SCC 335

without deciding as to who is in occupation of the property creates any amount of unhealthy atmosphere since both the parties are claiming to be in possession of the property. Therefore, the order directing to maintain *status quo* without deciding as to who is in possession is, *prima facie*, irregular, and the Apex Court time and again deprecated passing such orders without deciding as to who is in possession. Even otherwise, if, for any reason, the petitioners are in possession of the property, that itself suffice to conclude that they encroached part of the land of respondent No.2 which constitutes an offence punishable under Section 447 IPC.

9. As stated above, the proceedings are at crime stage, no investigation is commenced, and in such case, this Court cannot exercise power under Section 482 of the Code to stifle legitimate prosecution when the evidence is incomplete and hazy before the Court in view of the judgments of the Hon'ble Supreme Court in **Kurukshetra University v. State of Haryana**² and **State of Orissa v. Saroj Kumar Sahoo**³. Therefore, in view of the law declared by the Apex Court in the said judgments that allegations made in the complaint *prima facie* if accepted on its face value constitutes an offences referred supra, and by applying guideline No.3 of the guidelines issued by the Apex Court in **Bhajanlal**¹, the proceedings in the aforesaid Crime cannot be quashed.

². (1977) 4 SCC 451

³ (2005)13 SCC 540 : 2006(2) ALT (CrI.) 16

10. Consequently, the present Criminal Petition is dismissed.

No order as to costs.

As a sequel, Miscellaneous Petitions, if any, pending in the present Criminal Petition, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 11, 2018
Mgr

