

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9988 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") by the petitioner-accused No. 1 to quash the proceedings against him in crime No. 88 of 2018 of Adavimutharam Police Station, Jayashankar Bhupalapally District, registered for the offences punishable under Sections 447 and 427 of IPC and Sections 3 (1) (g) and 3 (2) (va) of SC ST (POA) Act (for short, 'the Act').

2. Respondent No. 2 lodged a written report with police on 10-09-2018 against the petitioner and accused Nos. 2 and 3 alleging that she is a member of Scheduled Caste and that on 09-09-2018 at about 12.30 p.m., the petitioner along with others trespassed into her land and caused damage to the standing cotton crop. On the basis of the report, the police registered the above crime for the offences referred *supra* and issued FIR.

3. The present petition is filed by the petitioner-accused No. 1 on the ground that the allegations made in the FIR do not constitute any offence much less the above offences and that there are prior disputes between the parties regarding rights over the land. It is also contended that the investigating agency failed to follow the guidelines issued by the Apex Court in ***Dr. Subash Kashinath Mahajan Vs. State of Maharashtra***¹ since respondent No. 2 is not the owner of the land and no preliminary inquiry is conducted; that the petitioner is the enjoyer of the property and that the petitioner lodged a complaint with police against

¹ 2018 L.S. (SC) 233

respondent No. 2 but no action has been taken so far and requested to quash the proceedings.

4. Learned Public Prosecutor (T.S.) has opposed the petition on the ground that at this stage, the proceedings cannot be quashed since the investigation is not yet commenced.

5. The caste of the petitioner and respondent No. 2 is not in dispute. The dispute is with regard to tenancy over the land in survey Nos. 70 to 72 of Madharam Revenue Village, Mahamutharam Mandal. According to respondent No. 2, she is continuing in possession and enjoyment of the land as tenant having obtained the same on lease from one Ch.Anil. This fact has to be investigated by the investigating agency during investigation. If respondent No. 2 is continuing in possession and enjoyment of the land in survey Nos. 70 to 72 having obtained the same on lease from Ch.Anil, the alleged act committed by the petitioner would constitute the offence punishable under Section 3 (1) (g) of the Act. The contention of learned counsel for the petitioner is that since respondent No. 2 is not the owner of the land, dispossessing her from the said land would not constitute the offence punishable under Section 3 (1) (g) of the Act. In view of the specific contention, it is apposite to extract Section 3 (1) (g) of the Act and it is extracted hereunder for better appreciation:

"Wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises of water or irrigation facilities or destroys the crops or takes away the produce therefrom."

Here the claim of respondent No. 2 is that she is in possession and enjoyment of the property as a tenant having obtained the same from Ch.Anil. Learned counsel for the petitioner has conveniently read first sentence of Clause (g) but

second sentence clearly speaks about interference with enjoyment of rights. Lease is nothing but transfer of right to enjoy an immovable property. Therefore, tenant is entitled to enjoy in his/her right as a tenant and interference with enjoyment of right of a tenant also constitutes the offence punishable under Section 3 (1) (g) of the Act. Hence, I find no substance in the contention of learned counsel for the petitioner that Section 3 (1) (g) of the Act can be invoked only when the owner of the land is dispossessed.

6. The other offence allegedly committed by the petitioner is punishable under Section 3 (2) (va) of the Act. According to Section 3 (2) (va) of the Act, whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code for such offences and shall also be liable to fine. The other offences allegedly committed by the petitioners are punishable under Sections 447 and 427 of IPC. While Section 447 IPC is a schedule offence, Section 427 of IPC is not included in the schedule. Section 447 of IPC deals with punishment for criminal trespass. When the petitioner allegedly trespassed into the land in possession of respondent No. 2 as a tenant, it would constitute the offence punishable under Section 447 of IPC which is a schedule offence punishable under Section 3 (2) (va) of the Act. Therefore, the contention of learned counsel for the petitioner that it would not attract the offence punishable under Section 3 (2) (va) of the Act is not accepted.

7. The alleged trespass and causing damage to the standing crop of respondent No. 2 by the petitioner would fall within the meaning of mischief as

defined under Section 425 of IPC punishable under Section 427 of IPC *prima facie*. However, at this stage, when the investigation is not yet commenced, this Court cannot express any opinion as to the Section of law applicable to the acts committed by the petitioner allegedly. It is settled principle of law that Court cannot normally interfere with investigation to stifle legitimate prosecution when facts are incomplete and hazy before it as held by the Apex Court in ***State of Orissa Vs. Saroj Kumar Sahoo***². In the earlier judgment in ***Kurukshetra University and another Vs. State of Haryana and another***³, the Apex Court held that High Court cannot exercise inherent jurisdiction under Section 482 of Cr.P.C. when crime was registered and no further proceedings are taken place as it amounts to interfering with investigation.

8. Yet, the contention of learned counsel for the petitioner is that he also lodged a report with police and that civil suits are pending before competent Courts but, at this stage, this contention cannot be considered. As per the judgment of the Apex Court in ***Dr. Subash Kashinath Mahajan*** (1st *supra*), a preliminary inquiry is required to be conducted but no such inquiry is conducted before registering crime and issuing FIR in the present case. Hence, the investigating agency is directed to strictly follow the guidelines issued by the Apex Court in ***Dr. Subash Kashinath Mahajan*** (1st *supra*).

9. With the above direction, the criminal petition is dismissed at the stage of admission. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 20-09-2018.

JSK

M.SATYANARAYANA MURTHY, J.

² (2005) 13 SCC 540

³ AIR 1977 SC 2229