

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3896 OF 2017

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. 70 of 2017 of Madhapur (Guttala) Police Station, Cyberabad, registered for the offences punishable under Sections 420, 468, 471, 506 and 120-B of IPC.

2. Respondent No. 2 filed a private complaint against the petitioner-accused No. 1 and accused No. 2 on the file of the Court of XXV Metropolitan Magistrate, Cyberabad at Kukatpally (for short, 'the Court below'), alleging that prior to December, 1983, intending to purchase an open plot for investment purpose, he approached one Radhakrishna Murthy, resident of Ayyappa Society, Madhapur; that the latter introduced the petitioner and accused No. 2 to him assuring that they would show plots in Madhapur; that believing the same, he gave his entire particulars; that later, he went to Saudi Arabia on his business and come down to India after 31-03-1989; that taking advantage of his absence, the petitioner and accused No. 2 created fake General Power of Attorney and that basing on the said GPA, the petitioner and accused No. 2 sold out his plot bearing No.1067 in survey Nos. 11/11 to 11/13 admeasuring 300 square yards situated at Khanamet Village, Serilingampally Mandal, R.R. District, *vide* document No. 5227 of 1993 in favour of Smt. Sajida Begum. The Court below referred the case to Madhapur Police by exercising power under Section 156 (3) of Cr.P.C. On receipt of reference, the above crime was registered for the offences referred *supra*.

3. Questioning the registration of crime, the present petition is filed mainly on the ground that the petitioner purchased the subject plot *vide* document No. 635

of 1983 dated 13-02-1983 from Sri Swamy Ayyappa Co-operative Housing Society Limited; that he filed O.S.No. 2801 of 2007 on the file of the Court of I Additional Junior Civil Judge, R.R. District at L.B. Nagar, against respondent No. 2 herein and others for cancellation of sale deed and perpetual injunction in respect of the subject plot and he also lodged a report with police which was the subject matter in C.C.No. 858 of 2015 on the file of the Court of IV Additional Junior Civil Judge – cum – XXV Metropolitan Magistrate, Cyberabad at Kukatpally (for short, 'the Court below'); that after full-fledged trial in C.C.No. 858 of 2015, respondent No. 2 herein was found guilty and that having lost his defence in C.C.No. 858 of 2015, respondent No. 2 invented this story and lodged the present report only to wreak vengeance against him.

4. At the hearing, while learned counsel for the petitioner has reiterated the grounds urged in the petition, learned counsel for respondent No. 2 reiterated the allegations made in the compliant.

5. As seen from the material on record, the petitioner obtained decree in O.S.No. 2801 of 2007. Copies of decree and judgment are placed on record. The dispute in the said suit was with regard to plot bearing No. 1067 admeasuring 300 square yards in survey Nos. 11/11 to 11/13 situated at Khanamet Village of Serilingampally Mandal, R.R. District, and the same is the dispute in the present crime. Even if those allegations are accepted as true, the decree and judgment in O.S.No. 2801 of 2007 will come in the way of the investigating agency to proceed further against the petitioner. As per the decree and judgment in O.S.No. 2801 of 2007, the petitioner was declared as owner and possessor of the subject plot, against which no appeal whatsoever has been preferred by respondent No. 2 till date. When the judgment in O.S.No. 2801 of 2007 is allowed to attain finality, respondent No. 2, who was one of the

defendants to the said suit, now cannot contend that the petitioner is not the owner of the subject plot. Apart from that, respondent No. 2 also allegedly created certain documents pertaining to the subject plot which was the subject matter in C.C.No. 858 of 2015 on the file of the Court below, wherein respondent No. 2 herein was accused No. 2. By calendar and judgment dated 23-04-2018, respondent No. 2 was found guilty and convicted for the offences punishable under Sections 419, 420, 468 and 471 of IPC. Having lost his claim before both the Courts below, respondent No. 2 turned around and lodged the present complaint as if the petitioner committed the offences referred *supra*.

6. The inherent power under Section 482 Cr.P.C. can be exercised only in exceptional circumstances and not as a matter of routine. The power of this Court under Section 482 Cr.P.C. is limited and this Court can exercise such inherent jurisdiction only to give effect to 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 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.
- (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.

¹ 1992 Supp. (1) SCC 335

- (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."*

According to guideline No. 7, where the proceeding is instituted for wreaking vengeance on the accused and with a view to spite him due to personal grudge, the Court can exercise power under Section 482 of Cr.P.C. and quash the proceedings. The above guideline is applicable to the present facts of the case since the present complaint is filed only to wreak vengeance against the petitioner with a view to spite him due to personal grudges. I, therefore, find that it is a fit case to exercise power under Section 482 of Cr.P.C.

7. The criminal petition is accordingly allowed quashing the proceedings against the petitioner-accused No. 1 in crime No. 70 of 2017 of Madhapur (Guttala) Police Station, Cyberabad. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 30-07-2018.
JSK

M.SATYANARAYANA MURTHY, J.