

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.10283 and 10301 of 2018

COMMON ORDER:

These petitions, under Section 482 Cr.P.C, are filed by the petitioners - accused Nos.1 and 2 to quash the proceedings in C.C. No.217 of 2015 on the file of VI Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, registered for the offence punishable under Section 431 read with 34 IPC.

On 28.12.2013 at 15.00 hours, a complaint was received from Sri Mohd Abdul Javeed, Inspector of Police, Tolichowki (Traffic) alleging that, on 28.12.2013 at about 12.30 hrs., while he was route patrolling, opposite to Military Hospital near Andhra Flour Mill, found one person namely, S.Yellaiah, digging the road with compressor tractor engine bearing No.AP07S01197 and breaker; on enquiry, it was revealed that he was not having permission from the Additional C.P. Traffic, Hyderabad, for cutting road; on the order of the contractor and reliance Manager – Bhasker Reddy, he was cutting road. On the basis of the report, a case in Crime No.487 of 2013 was registered for the offence under Section 431 read with 34 IPC and issued FIR. During investigation, LWs.1 to 5 were examined and recorded their statements under Section 161(3) Cr.P.C. On the basis of the investigation and evidence collected, charge sheet was filed. Accused No.2, being sub-contractor, engaged the services of S.Yellaiah and caused damage to the road without obtaining prior permission from Additional CP Traffic, Hyderabad; and it attracts the offence punishable under Section 431 read with 34 IPC. He filed Crl.P.No.10301 of 2018 to quash the proceedings on the ground

that it is for the contractor to obtain necessary permission for cutting or digging the road and not for the sub-contractor; and, therefore, he is not liable for prosecution for the offence punishable under Section 431 read with 34 IPC.

During hearing, Sri Syed Azmatullah, learned counsel for the petitioners, reiterated the contentious urged in the petition.

Learned Public Prosecutor, however, opposed the petition on the ground that accused No.2 - sub-contractor should obtain permission to cut or dig the road from Additional CP (Traffic); and, in the absence of any permission, he is liable to be prosecuted for the offence and there are no grounds to quash the proceedings.

The power of this Court under Section 482 Cr.P.C. is limited and this Court can quash the proceedings only in exceptional circumstances. The allegations in the charge sheet or complaint do not disclose prima facie material to constitute any offence under any penal law or where the allegations are absurd or inherently improbable or when the complaint was filed to wreak vengeance, the power of this Court, under Section 482 Cr.P.C. can be exercised though is limited and this Court can exercise inherent power to implement the orders passed by this Court, to prevent abuse of process or to secure ends of justice.

Keeping in view the scope of Section 482 Cr.P.C., the Apex Court in **State of Haryana v. Bhajanlal**¹ laid down the following 7 guidelines to exercise power under Section 482 Cr.P.C.

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 F.I.R. do not disclose a cognizable offence, justifying an

¹ AIR 1992 SC 604

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 uncontroverted 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 F.I.R. 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.

In view of the guidelines, I would like to examine whether those allegations *prima facie* constitute an offence under Section 431 read with 34 IPC.

As per the material, during investigation, more particularly, the statement of S.Yellaiah, the worker, whom the petitioner engaged for breaking the road with the help of tractor engine and compressor, specifically stated to the investigating officer that the contractor, by name Mohd. Zaheer Baigh, and reliance Manager, Sri Bhaskar Reddy, directed him to dig the road opposite to Military Hospital near Andhra Flour Mill and engaged him as a coolie, along with his son, Sampath, for arranging cables. The petitioner was obstructed and enquired about obtaining permission from Additional CP (Traffic) for cutting/digging road

and he disclosed that no permission was obtained. From his statement, it is clear that petitioners are contractor/sub-contractor engaged S.Yellaiah to dig or cut the road without any permission. Admittedly, they failed to obtain any permission while throwing burden on contractor, Bhasker Reddy. The petitioners are the persons who executed the contract; it is for them to obtain permission for cutting or digging road for the purpose of laying cables; and, without obtaining such permission, the road was dug/cut which constitutes offence punishable under Section 431 IPC. Therefore, I find no ground to quash the proceedings in C.C. No.217 of 2015 against the petitioners applying the principles laid down in **Bhajanlal** (1 supra).

The Criminal Petitions are dismissed accordingly.

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

M. SATYANARAYANA MURTHY, J

Date:27.09.2018
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