

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10407 OF 2017

ORDER:

This petition under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') is filed by the petitioners to quash the proceedings in C.C.No. 506 of 2015 on the file of the Court of Additional Judicial I Class Magistrate, Alamuru (for short, 'the Court below').

2. The petitioners are accused Nos. 2 to 5 and respondent No. 2 is the *de facto* complainant. Respondent No. 2 and accused No. 1 started coco seeds business under the name and style of M/s. Vijaymma Minerals & Trading Consultancy and in pursuance of the same, they entered into an unregistered partnership deed, according to which respondent No. 2 has to invest money, accused No. 1 has to purchase coco seeds, the purchased coco seeds have to be preserved in the godown of respondent No. 2 situated at Jonnada Village, Alamuru Mandal, and the petitioners have to guard the stock seeds. Respondent No. 2 gave Rs.35,00,000/- to accused No. 1 for purchasing coco seeds. Accordingly, accused No. 1 purchased coco seeds. All the accused in furtherance of their common intention sold away the coco seeds at Eluru without informing respondent No. 2 and thereby violated the conditions of the partnership deed. Immediately, respondent No. 2 presented a complaint on 19-01-2014 to Eluru Police but the latter advised the former to take shelter of Alamuru Police as everything happened at Alamuru. Subsequently, respondent No. 2 approached Alamuru Police and presented a report but the police refused to receive the same. Therefore, respondent No. 2 filed the present complaint before the Court below.

3. The Court below after verifying the allegations made in the complaint referred the complaint to police for investigation by exercising power under Section 156 (3) Cr.P.C. On the strength of the reference, the police registered a case in crime No. 22 of 2014 of Alamuru Police Station and issued F.I.R. The Sub-Inspector of Police, Alamuru Police Station, took up investigation, examined as many as 19 witnesses, collected evidence and after completion of investigation filed charge sheet against accused No. 1 and the petitioners for the offences punishable under Sections 420, 406 and 506 read with Section 34 of the Indian Penal Code.

4. The present petition is filed under Section 482 Cr.P.C. to quash the proceedings on the ground that the transaction between accused No. 1 and respondent No. 2 is purely civil in nature since it relates to partnership business between them. The petitioners-accused Nos. 2 to 5 did commit no offence and that there was no connection between them and respondent No. 2. In the absence of any specific allegation to constitute any of the offences, the proceedings against the petitioners cannot be continued and therefore requested to quash the proceedings.

5. This Court can exercise its inherent jurisdiction under Section 482 Cr.P.C. only to implement the orders passed under the Code or to prevent abuse of process of Court or to secure ends of justice. The allegations made in the charge sheet are different from the allegations made in the complaint of respondent No. 2. However, complaint is only intimation to police about commission of a cognizable offence to set the criminal law into motion and it need not contain the minute details. Basing on the statements recorded under Section 161 Cr.P.C. during investigation and other material collected, the police filed charge sheet but the petitioners conveniently did not place on record the

statements recorded by the police under Section 161 Cr.P.C. for perusal of this Court though it is part of the charge sheet filed under Section 173 Cr.P.C. Thereby, the petitioners disabled this Court from evaluating the material to come to a conclusion whether or not there is any material against the petitioners to proceed for the offences referred *supra* but insisted the Court to pass appropriate orders based on the allegations made in the charge sheet. Therefore, at this stage, this Court cannot quash the proceedings exercising power 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.*
- (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."*

¹ 1992 Supp. (1) SCC 335

Even according to the above guidelines, when the allegations made in charge sheet or F.I.R. disclose commission of any offence on its face value, the Court cannot exercise its inherent power under Section 482 Cr.P.C. Here in this case, the allegations made in the charge sheet disclose commission of a cognizable offence but it is not known whether or not the investigating agency collected any evidence during investigation to arrive at such conclusion as no other material is placed on record. Therefore, I find that it is not a fit case to quash the proceedings without evaluating the evidence collected during investigation. Consequently, the petition is liable to be dismissed.

6. The criminal petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 03-01-2018.
JSK

M.SATYANARAYANA MURTHY, J.

