



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.5286 of 2018

and

Crl.M.P.Nos.2612 & 2613 of 2018

1. Kancharla lakshmi Narayana @ Chanti
2. Kancharla Bala Saroja Bindurekha .. Petitioners

Vs.

State rep by Inspector of Police,
Yanam Police Station,
Yanam.
(Crime No.69 of 2016)

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.18 of 2017 on the file of the Judicial Magistrate, Yanam and quash the proceedings therein.

For Petitioners : Mr.V.V.Sairam
For Respondent : Mr.V.Balamurugane
Public Prosecutor
Puducherry

O R D E R

The case of the prosecution is that A3 and A4 are owners of the Petrol Bunk, viz., Maheejakshi Oils Petrol Bunk and it was leased out through oral agreement to one Kancharla Veerayya @ Chinnabbai and it is alleged that there are some disputes with regard to the said petrol bunk and it was kept under lock for the past one month. While being so, the defacto complainant, who was working as a Watchman, lodged a complaint before the respondent Police, alleging that on 03.12.2016, A1 and A2 illegally trespassed into the lease property and assaulted the complainant and caused simple injury to him and abused him with filthy language. A case was registered in Cr.No.69/2016 under Section 420, 448, 294(b), 323, 506(i) r/w 34 IPC against these petitioners herein and the same was culminated into a charge



sheet in C.C.No.18 of 2017, on the file of the Judicial Magistrate, Yanam, challenging the same, the present petition is filed

2. The learned counsel appearing for the petitioner submitted that admittedly there is no written Lease Agreement between the 2nd petitioner and the lessee. The 2nd petitioner is the owner of the petrol bunk and in order to grab the petrol bunk, a false complaint was filed before the Law Enforcing Agency for the above said offence. Further the learned counsel submitted that for implicating the petitioners under Section 323 IPC, there must be a AR copy of the Doctor and the said Doctor should also be cited as witness, however in the final report, no such AR report and Doctor's witness were marked and further without issuing any notice, calling the petitioners for enquiry, the law enforcing agency has filed a Charge Sheet. He further submitted that even Section 41A Cr.P.C. notice was also not issued to the petitioners and hence prays for allowing of the petition. In support of his contention, the learned counsel appearing for the petitioner has also placed reliance upon the decision of the Hon'ble Supreme Court in the case of State of Haryana - Vs - Bhajan Lal (1992 Supp (1) SCC 335).

3. The learned Public Prosecutor (Puducherry) submitted that the matter in issue requires adjudication on disputed question of fact and the same can be considered only at the time of trial and further the petitioners are absconding accused and they were not cooperated with the investigation, for which absconding charge sheet was also filed and even the copy of the same has not been furnished to the petitioners. Hence the petition itself is not maintainable and prays for dismissal of this petition.

4. The fact is not in dispute that admittedly the 2nd petitioner is the owner of the petrol bunk. It is alleged that the 2nd petitioner has entered into an Oral Agreement with the lessee, who in turn deputed the defacto complainant to guard the petrol bunk and further alleged that the petitioners deputed A1 and A2 to attack the defacto complainant, in order to secure the petrol bunk. Admittedly the petitioners were not present at the scene of occurrence and the allegation is that the petitioners induced A1 and A2 to attack the defacto complainant. As per the Charge Sheet, the petitioners were implicated for the offence under Section 323 IPC. Neither there is any material to show that the petitioners were available at the scene of occurrence and attacked the defacto complainant nor any AR copy has been produced by the prosecution to show that the defacto complainant had sustained injuries. In the absence of the AR copy along with the final report and the Doctor, who treated the defacto complainant having not been shown as witness, the offence under



Section 323 IPC is bereft of any materials. Further, in respect of Section 420 IPC offence should be made out as to how the defacto complainant was cheated by the petitioners, however there is no such averments in the complaint. Further with regard to abetment under Section 34 IPC also, there is no ingredients to establish such an allegation against the petitioner.

5. Further in the present case, it is the claim of the defacto complainant that the lessee entered into an oral Lease Agreement with A4, but mere claim without any other material to substantiate the same cannot be taken as a valid agreement and therefore, the Oral Agreement itself deserves to be rejected.

6. In State of Haryana - Vs - Bhajan Lal (1992 Supp (1) SCC 335), the Hon'ble Supreme Court has expounded the circumstances and the situations in which the inherent power u/s 482 should be invoked for quashment and for better appreciation, the relevant portion is extracted hereunder :-

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) 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 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;



WEB COPY

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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 the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. Itself."

7. In view of the ratio laid down in Bhajan Lal's case (cited supra), this Court has no hesitation to quash the complaint as no offence has been made out against the petitioners herein.



8. For the reasons aforesaid, this Criminal Original Petition is allowed and C.C.No.18 of 2017, on the file of the Judicial Magistrate, Yanam, is quashed. Consequently connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sk

To

1. The Judicial Magistrate,
Yanam.
2. The Inspector of Police,
Yanam Police Station,
Yanam.
3. The Public Prosecutor,
Pondicherry.

Crl.O.P.No.5286 of 2018
and
Crl.M.P.Nos.2612 & 2613 of 2018

GPL (CO)
K.RK. (27.09.2021)