THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL PETITION NO.321 OF 2015

ORDER:-

This Criminal Petition is filed to quash the proceedings in FIR No.3 of 2015 of Guntakal Rural Police Station, Anantapur district, registered for the offences punishable under Section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act, 1989').

2. Brief facts of the report lodged by 2nd respondent-defacto complainant are as follows:

Lord Meetu Bukya Naik temple is existing at a distance of 6 KMs to Guntakal Town. As the place available to it, is insufficient, he, along with his community people and family members, approached petitioner-accused and his brothers, who are landlords by the side of the temple, to help atleast Ac.0.50 cents or Ac.1.00 cents. They have taken a uniform decision to share Ac.0.33 cents and accordingly documents were prepared in the name of the temple and given to 2nd respondent-defacto complainant and others, who undertook construction of compound wall sheds providing of the water to pilgrims and the same had come to final stage.

The landlord is creating a moral and fear in the community people of 2nd respondent-defacto complainant, who are illiterates. The petitioner telephoned to the priest of the temple, threatened and created a fear in all means. The priest also feared and informed 2nd respondent-defacto complainant and his community people. At this juncture, petitioner called 2nd respondent-defacto complainant at about 9.40 hours on 12.01.2015 and spoke about 25 to 30 minutes, and though the former was politely speaking, the latter spoke in filthy/ unparliamentary language to him, his family and his community. He shouted that he would see the end of 2nd respondent-defacto complainant and his family members and his community people residing in the areas surrounding Guntakal.

3. Heard learned counsel for the petitioner and the learned Special Assistant Public Prosecutor appearing for 1st respondent-State.

4. Learned Senior Counsel Sri C.Masthan Naidu appearing for the petitioner contends that there is a telephonic conversation between the petitioner-accused and 2nd respondent-defacto complainant and the alleged words spoken in the said conversation would not come within the purview of the provisions of the Act, 1989; that merely basing on the alleged telephonic conversation, 2nd

respondent-defacto complainant has resorted to filing the present complaint alleging that petitioner-accused abused all the community people; that the accusations made are general in nature, and hence, continuation of the impugned proceedings is nothing but abuse of process of Court.

5. On the other hand the learned Special Assistant Public Prosecutor Sri Soora Venkata Sainath opposed the Criminal Petition on the ground that even the telephonic conversation would attract the offence under the provisions of the Act, 1989.

6. This Court perused the record and found that the learned counsel for the petitioner had taken out personal notice to 2nd respondent-defacto complainant, and though notice was served on 2nd respondent, he did not choose to come on record to defend the case.

7. There cannot be any dispute that inherent powers of this Court under Section 482 CrPC can be exercised to prevent abuse of process of Court or to give effect to any order under the code or to secure the ends of justice. There is also no dispute with regard to the proposition that when the allegations in the report constitute a *prima facie* case for a cognizable offence, it is the statutory duty of police to conduct investigation and the same cannot be curtailed.

8. This Court is also conscious of the fact that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the report. On this aspect, it is pertinent to refer to the judgment of the Hon'ble Apex court in *State of Haryana Vs. Ch.Bhajanlal and ors.*[1]**,** wherein the Apex Court held,

> "In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (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

---

[1] ***AIR 1992 SC 604***

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 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 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."

The above principle is well settled one and there cannot be any dispute with regard to the said proposition of law.

9. 2nd respondent-defacto complainant and his community people approached family members of petitioner/accused and his brothers, who are landlords by the side of the temple, to help atleast Ac.0.50 cents or Ac.1.00 cents of land, as the community people of the defacto complainant requested him to do some help to the welfare of the temple. The petitioner/accused and his brothers took a uniform decision before all the community people of 2nd respondent-defacto complainant to share Ac.0.33 cents from their land. Accordingly documents were prepared in the name of the temple and were given. 2nd respondent-defacto complainant and others had undertaken to construct compound wall sheds providing of water to pilgrims and it was in final stage and about to complete within 3 to 4 months. At that juncture, the petitioner/accused called 2nd respondent-defacto complainant over mobile at about 9.40 hours on 12.01.2015 and talked for about 25 to 30 minutes. It is alleged in the First Information Report that though 2nd

respondent-defacto complainant was speaking to the petitioner-accused politely, the petitioner-accused is alleged to have abused in an unparliamentary language and shouted at all the members of the community and the people residing in the surrounding areas. Basing on the said report, the subject crime was registered after lapse of 3 days.

10. Though the incident is said to have taken place on 12.01.2015 at about 9.40 AM, the 2nd respondent-defacto complainant resorted to file the present report only on 15.01.2015 at about 2.00 PM. On a perusal of the First Information Report, no reasons are assigned for the delay in reporting the case before the police by 2nd respondent-defacto complainant.

11. Learned Senior Counsel appearing for the petitioner-accused also submitted that there is no temple at the place, nevertheless, believing the words of 2nd respondent-defacto complainant, the petitioner-accused donated the land by way of a gift deed, and it appears that 2nd respondent-defacto complainant and others intended to grab the land under the guise of the temple and the same was opposed by the petitioner and his brothers. He also relied on some decisions.

12. Without going into the factual aspects of the case, this Court perused the following judgments.

(a) In *Hitesh Verma v. State of Uttarakhand & another,*[2] wherein it is held thus: (paragraphs 14 to 16).

> **"14.** Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as *Swaran Singh* v. *State* [*Swaran Singh* v. *State*, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527] . The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (*sic*) [**Ed.** : This sentence appears to be contrary to what is stated below in the extract from *Swaran Singh*, (2008) 8 SCC 435, at p. 736*d-e*, and in the application of this principle in para 15, below:"Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view."] . The Court held as under : (SCC pp. 443-44, para 28)
>
> > "*28*. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our

[2] (2020) 10 SCC 710

> opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, *and* also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies." (emphasis in original)

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in *Swaran Singh* [*Swaran Singh* v. *State*, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527] , it cannot be said to be a place within

public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.

16. There is a dispute about the possession of the land which is the subject-matter of civil dispute between the parties as per Respondent 2 herself. Due to dispute, the appellant and others were not permitting Respondent 2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the civil court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe."

(b) In *Pramod Suryabhan Pawar v. State of Maharashtra & another*[3], wherein it is held thus: (paragraph 23)

> **"23.** Without entering into a detailed analysis of the content of the WhatsApp messages sent by the appellant and the words alleged to have been spoken, it is apparent that none of the offences set out above are made out. The messages were not in public view, no assault occurred, nor was the appellant in such a position so as to dominate the will of the complainant. Therefore, even if the allegations set out by the complainant with respect to the WhatsApp messages and words uttered are accepted on their face, no offence is made out under the SC/ST Act (as it then stood). The allegations on the face of the FIR do not hence establish the commission of the offences alleged."

(c) In *Asmathunnisa v. State of A.P. rep. by the Public Prosecutor, High Court of A.P., Hyderabad and another*[4], wherein it is held thus: (paragraph 13)

---

[3] (2019) 9 SCC 608

> **"13.** This Court, in a number of cases, has laid down the scope and ambit of the High Court's power under Section 482 of the Code of Criminal Procedure. Inherent power under Section 482 CrPC though wide has to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. The authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in the absence of specific provisions in the statute."

13. On a perusal of the abovesaid judgments would go to show that it was held that without entering into a detailed analysis of the content of the Whatsapp messages sent by the appellant therein and the words alleged to have been spoken, it is apparent that none of the offences set out above are made out. It is also held that the messages were not in public view, no assault occurred nor was the appellant in such a position so as to dominate the will of the complainant.

14. Under Section 3 (1) (x) of the Act, 1989, whoever, not being a member of a Scheduled Caste or a Scheduled Tribe intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view, is punishable. The offence under

---

[4] 2011 CRI.L.J. 2594

the Act, 1989 is not established merely on the fact that the informant is a member of scheduled caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

15. In the case on hand, it is not the case of 2nd respondent-defacto complainant that when the telephonic conversation was taking place, there were people present at that place. It is also not his case that the discussion that went on between 2nd respondent-defacto complainant has been over-heard by the public at large. There are absolutely no averments in respect of the discussion that took place between the petitioner-accused and 2nd respondent-complainant. A reading of the contents in the First Information Report goes to show that no words have been uttered by the petitioner-accused to humiliate 2nd respondent-defacto complainant that he belongs to such caste, and except stating that the accused used unparliamentary language, nothing has been stated in the First Information Report so as to come to the conclusion that the petitioner abused 2nd respondent-defacto complainant by his caste. In the absence of any averments to that effect, mere conversation over phone would not in any way come within the purview of the offence under the provisions of the Act, 1989.

16. This Court is conscious of the fact that in exceptional cases, exercise of power under Section 482 Cr.P.C. for quashing the cases on the settled parameters has already been observed while deciding the cases. Since the ingredients of the provisions of the Act, 1989 are absent, this Court is of the view that continuation of the impugned proceedings is nothing but abuse of process of law. Accordingly, the impugned proceedings in FIR No.3 of 2015 of Guntakal Rural Police Station, Anantapur district are quashed.

17. The Criminal Petition is allowed.

Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

JUSTICE K. SREENIVASA REDDY

.04.2022.
DRK

THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL PETITION NO.321 OF 2015

.04.2022

DRK