



**HIGH COURT OF ANDHRA PRADESH**  
FRIDAY ,THE TWENTY FIRST DAY OF JANUARY  
TWO THOUSAND AND TWENTY TWO

**PRESENT**

**THE HONOURABLE SRI JUSTICE AHSANUDDIN AMANULLAH**  
**CRIMINAL PETITION NO: 7657 OF 2013**

**Between:**

1. K.NAGESWARA RAO S/o K.Krishnaiah  
working in CRS,  
Tirupathi Urban, Chittoor District

**...PETITIONER(S)**

**AND:**

1. THE STATE OF AP., & ANOTHER Rep by its Public Prosecutor  
High Court of AP.,  
Hyderabad
2. Sri.V.Nagarjuna Reddy Tahasildar & Mandal Executive Magistrate  
Tirupathi Urban  
Chittoor District

**...RESPONDENTS**

**Counsel for the Petitioner(s): T JANARDHAN RAO**

**Counsel for the Respondents: PUBLIC PROSECUTOR**

**The Court made the following: ORDER**



**\*THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH**

**+CRIMINAL PETITION No.7657 OF 2013**

**%21.01.2022**

**Between:**

# K. Nageswara Rao,  
S/o. K. Krishnaiah,  
Working in CRS.,  
Tirupathi Urban, Chittoor District.

.. Petitioner

**And**

\$ 1. The State of A.P  
Rep. by its Public Prosecutor  
High Court of A.P., Hyderabad,  
Through SHO, Alipiri PS., Chittoor District.

2. V. Nagarjuna Reddy,  
Tahasildar & Mandal Executive Magistrate,  
Tirupathi Urban, Chittoor District.

.. Respondents

**! COUNSEL FOR THE PETITIONER** : Mr. T. Janardhan Rao,  
Advocate.

**^ COUNSEL FOR THE RESPONDENT No.1** : Mr. Soora Venkata Sainath,  
Special Assistant Public  
Prosecutor.

Mr.Anand Kumar Kochiri,  
Assistant Public  
Prosecutor.

Counsel for the Respondent No.2 : ---

< Gist:

>Head Note

? Cases referred:

1. **1992 Supp (1) SCC 335**
2. **(2002) 3 SCC 89**
3. **AIR 1960 SC 866**
4. **(2017) 2 SCC 779**
5. **(2020) 13 SCC 435**
6. **2021 SCC OnLine SC 1021**



**THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? Yes/No
  
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals. Yes/No
  
3. Whether Their ladyship/Lordship wish  
to see the fair copy of the Judgment? Yes/No

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**AHSANUDDIN AMANULLAH, J**



**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**  
**THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH**

**CRIMINAL PETITION No. 7657 of 2013**

K. Nageswara Rao,  
 S/o. K. Krishnaiah,  
 Working in CRS.,  
 Tirupathi Urban, Chittoor District.

.... Petitioner

*Versus*

1. The State of A.P  
 Rep. by its Public Prosecutor  
 High Court of A.P., Hyderabad,  
 Through SHO, Alipiri PS., Chittoor District.
2. V. Nagarjuna Reddy,  
 Tahasildar & Mandal Executive Magistrate,  
 Tirupathi Urban, Chittoor District.

.... Respondents

Counsel for the Petitioner : Mr. T. Janardhan Rao,  
 Advocate.

Counsel for the Respondent No.1 : Mr. Soora Venkata Sainath,  
 Special Assistant Public  
 Prosecutor.

Mr. Anand Kumar Kochiri,  
 Assistant Public Prosecutor.

Counsel for the Respondent No.2 : ---

**ORAL JUDGMENT**

**Date: 21.01.2022**

Heard Mr. T. Janardhan Rao, learned counsel for the petitioner and Mr. Anand Kumar Kochiri, learned Assistant Public Prosecutor, for the State.

2. The petitioner has preferred the present application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') seeking quashing of the First Information Report bearing No.146 of 2013 at Alipiri Police Station, Tirupathi



Urban, Chittoor District instituted under Section 353 of the Indian Penal Code, 1860 (hereinafter referred to the 'IPC').

3. The FIR was instituted on the basis of a written report given by the 2<sup>nd</sup> respondent – the then Tahsildar and Mandal Executive Magistrate, Tirupathi Urban addressed to the Station House Officer, Alipiri Police Station, Tirupati, under Roc.A/87/2008, dated 15.04.2013, in which it is alleged that on a piece of land on which the erstwhile High Court of Andhra Pradesh *vide* order dated 27.03.2008 in Writ Petition No.6472 of 2008, had directed for maintenance of *status quo*. When the officials on knowing that some unknown persons had erected a six-foot statue of Dr. B.R. Ambedkar on a one-foot cement block in the late hours of 14.04.2013, for ensuring compliance of the order, reached the site in question on 15.04.2013 at about 05.45 p.m., the petitioner is said to have reached the spot and objected to such action by the officials. On the said allegation, the FIR came to be instituted.

4. Learned counsel for the petitioner submitted that the petitioner, on the date of incident, was working in a Carriage Repair Shop (CRS) as a Senior Section Engineer and this case has been lodged against the petitioner only because he had filed Writ Petition No.6472 of 2008, and having obtained an order of *status quo*, the petitioner could not have been either a violator of such order or have any reason to oppose the implementation of the order of the Court. Moreover, learned counsel submitted that the officials, both to gloss over their mistake and also intimidate him against filing any application alleging non implementation of the Court's order, made the petitioner a scapegoat. It was contended that even otherwise, the Court may take notice of the fact that there were five officers present



at the spot, out of which three were allegedly obstructed which is unbelievable for the reason that in the presence of five government officials, one person alone could not have resisted and obstructed them from discharging their official duty/ies. It was submitted that even the allegation of obstructing the officials in performing their duty is only a bald and vague statement, bereft of any overt act alleged with regard to the manner in which such obstruction was made by the petitioner.

5. On an earlier occasion, the Court had asked the learned Assistant Public Prosecutor to assist the Court on the basis of the materials which may have emerged during investigation, especially the statements, if any, recorded of the witnesses.

6. The learned Assistant Public Prosecutor submitted that five officials had been examined and in their statements, the singular stand adopted by the officials is that the petitioner had obstructed them in discharging their official duty. However, no overt act or specific instance has been mentioned with regard to what had actually been done by the petitioner.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. The charge sheet filed against the petitioner was for the offence punishable under Section 353 of the IPC, which reads thus:

*“353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person*



*in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*

9. The term ‘assault’ is defined in Section 351 of the IPC and it reads:

*“351. Assault- Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.*

*Explanation- Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.*

#### *Illustrations*

*(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z, A has committed an assault.*

*(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.*

*(c) A takes up a stick, saying to Z, “I will give you a beating”. Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.”*

10. The Court may take note of certain precedents at this stage.

In ***State of Haryana v Bhajan Lal, 1992 Supp (1) SCC 335***, it was held as follows:

*“102. 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 channelised 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 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 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.*

*103. We also give a note of caution to the effect 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; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”*





11. In **State of Karnataka v M Devendrappa, (2002) 3 SCC 89**, while noticing **R P Kapur v State of Punjab, AIR 1960 SC 866** and **Bhajan Lal (supra)**, it was held as under:

“6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”



12. The powers of the Court under Section 482 of the Code have been restated and reiterated, amongst others, in ***State of Telangana v Habib Abdullah Jeelani, (2017) 2 SCC 779*** and ***Ahmad Ali Quraishi v State of Uttar Pradesh, (2020) 13 SCC 435***. In ***Habib Abdullah Jeelani (supra)***, it was also impressed upon the High Courts that *“inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court.”*

13. In ***Mahendra K C v State of Karnataka, 2021 SCC OnLine SC 1021***, the Hon’ble Supreme Court stated:

*“23. ... the High Court while exercising its power under Section 482 of the CrPC to quash the FIR instituted against the second respondent-accused should have applied the following two tests: i) whether the allegations made in the complaint, prima facie constitute an offence; and ii) whether the allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint.”*

14. In the instant case, the Court finds that the statements of all five officials do not even have a whisper of any gesture and/or the alleged specific overt acts of the petitioner which may give an impression that the petitioner was about to commit assault. Hence, admittedly, there is no specific instance of assault or use of criminal force on any public servant attributed to the petitioner. Even otherwise, merely a bald allegation that the petitioner objected to further action in purported implementation of the order of the High



Court (*supra*) cannot be construed *ipso facto* to be an act of obstruction against officials in discharge of their official duties. Further, that the petitioner alone could obstruct three officials in presence of a total of five officials is improbable. In the considered opinion of the Court, this would fall within the ambit of category (5) of paragraph no. 102 of ***Bhajan Lal*** (*supra*).

11. For the aforesaid reasons, this criminal petition deserves to be, and is, hereby allowed. FIR No.146 of 2013 dated 16.04.2013 of Alipiri Police Station, Tirupati Urban, Chittoor District is, accordingly, quashed. As a necessary sequel thereto, consequential orders, if any, passed on the basis of the said FIR are also set aside.

12. Pending Miscellaneous Applications, if any, stand consigned to records.

**(AHSANUDDIN AMANULLAH, J)**

*Mjl/ \**  
LR copy to be marked



**THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH**

**CRIMINAL PETITION No. 7657 of 2013**

**21.01.2022**

*Mjl/ \**