

(1981) 08 AP CK 0018

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 384 of 1981 and Criminal Revision
Petition No. 378 of 1981

Banka Kandaswamy Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 19-08-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(2), 482, 91
Evidence Act, 1872 — Section 122, 123, 124, 126, 129

Citation : (1982) CriLJ 393

Hon'ble Judges : P. Ramachandra Raju, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Addl. Public Prosecutor, for the Respondent

Judgement

1. The correctness of the order of the Addl. Sessions Judge, Cuddapah, dt. 23-6-1981, upholding the privilege claimed by the Superintendent of Police C.B. C.I.D. under Sections 123 and 124 of the Evidence Act is questioned in this revision.

2. Crime No. 35/78 of Vempalli Police Station relating to the murder of one Laxmi Reddy of Kuppalapalli village was investigated into by the Inspector of Police, Pulivendala. The petitioners are being tried for various offences in S.C. No. 110/79 on the file of the Addl. Sessions Judge, Cuddapah. While the case was being investigated into by the local police, a relation of the 1st accused in the said case, has sent a petition dated 31-7-1978 to the D.I.G. of Police alleging that the local police were colluding with the prosecution party and requested investigation to be entrusted to the C.B. C.I.D. Under instructions from the D.I.G. a C.B. C.I.D. Inspector examined some witnesses and submitted a report on 14-9-1978. The accused applied u/s 91, Cr.P.C. to summon - (1) petition dated 31-7-78, (2) statement of witnesses recorded by the Inspector, C.B. C.I.D. during the enquiry conducted by him, and (3) the report of the Inspector, C.B. C.I.D. of the enquiry held by him. The Superintendent of Police C.B. C.I.D. while

producing the documents, claimed privilege u/s 124 of the Evidence Act on the ground that "public interests" would suffer by the disclosure. The Addl. Sessions Judge held that the report of the Inspector of Police, C.B. C.I.D. falls within the meaning of a communication made to a public officer in official confidence and that public interests would suffer by the disclosure of the contents of the said report. Mr. Padmanabha Reddy, learned counsel appearing for the petitioner has stated that he is not pressing for the production of that part of the report containing the opinion expressed by the Inspector, C.B. C.I.D. as a result of the enquiry he made into the case. He has, however, pressed this revision questioning the correctness of the order of the Addl. Sessions Judge regarding the petition dated 31-7-78 and the statements of witnesses recorded by the Inspector, C.B. C.I.D. during the enquiry held by him.

3. Neither the petition dated 31-7-78 nor the statements recorded by the Inspector C.B. C.I.D. constitute documents relating to any affairs of State. They do not also answer the description of communications made to a public officer in official confidence. According to the petitioners, the statements recorded by the Inspector of Police C.B. C.I.D. contain certain information which the petitioners can use for contradicting those witnesses when they figured as witnesses in the sessions case and withholding of such documents would prejudice their interests in having a fair trial. It appears that the statements recorded by the Inspector, C.B. C.I.D. have been incorporated as part of the report which the Inspector C.B. C.I.D. has submitted to the S.P. C.B. C.I.D. Hyderabad. While there cannot be any valid objection for the S.P. C.B. C.I.D. to produce the petition dated 31-7-1978, it has to be considered whether the privilege was properly claimed and upheld with regard to that portion of the report containing the statements of witnesses recorded by the Inspector, C.B. C.I.D. during the enquiry conducted by him.

4. The observations made by the Supreme Court in *Khatri and Others Vs. State of Bihar and Others*, can be conveniently referred to before noticing the submissions made by the learned Public Prosecutor in justification of the order of the Addl. Sessions Judge. Those observations are :

"It must be remembered that we have adopted the adversary system of justice and in order that truth may emerge from the clash between contesting parties under this system, it is necessary that all facts relevant to the inquiry must be brought before the Court and no relevant fact must be shut-out, for otherwise the Court may get a distorted or incomplete picture of the facts and that might result in miscarriage of justice. To quote the words of the Supreme Court of United States in *United States v. Nixon* (1974) 418 US 683 : 41 Law Ed 2d 1039 : "The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts within the framework of the rules

of evidence." It is imperative to the proper functioning of the judicial process and satisfactory and certain ascertainment of truth that all relevant facts must be made available to the Court. But the law may in exceptional cases, in order to protect more weighty and compelling competing interests, provide that a particular piece of evidence, though relevant, shall not be liable to be produced or called in evidence. Such exceptions are to be found, inter alia, in Sections 122, 123, 124, 126 and 129 of the Evidence Act and Sections 162 and 172 of the Criminal P.C. But being exceptions to the legitimate demand for reception of all relevant evidence in the interest of justice, they must be strictly interpreted and not expansively construed, "for they are in derogation of the search for truth".

5. The documents under present consideration in respect of which privilege is now claimed in this case impinge on the question of guilt or innocence of the accused. In *Kishan Narain Vs. State of Maharashtra*, the claim of the privilege made in respect of certain documents was not gone into because the Supreme Court held that those documents do not impinge on the question of the guilt or innocence of the accused. In *The State of Punjab Vs. Sodhi Sukhdev Singh*, the Supreme Court after referring to Sections 123 and 162 of the Evidence Act, has observed :

"Thus our conclusion is that reading Sections 123 and 162 together the court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question. That is a matter for the authority concerned to decide; but the Court is competent, and indeed is bound, to hold a preliminary enquiry and determine the validity of the objections to its production, and that necessarily involves an enquiry into the question as to whether the evidence relates to an affair of the State u/s 123 or not.

In this enquiry the Court has to determine the character or class of the document. If it comes to the conclusion that the document does not relate to affairs of State then it should reject the claim for privilege and direct its production. If it comes to the conclusion that the document relates to the affairs of the State, it should leave it to the head of the department to decide whether it should permit its production or not."

The documents under present consideration can, by no stretch of imagination, relate to the "affairs of the State". The order of the Additional Sessions Judge does not indicate whether he has gone through the documents which were in fact produced before him by the department. He appears to have accepted the statements contained in the affidavit of the Superintendent of Police C.B. C.I.D. that the disclosure of the contents of the report would prejudicially affect public interests. It is certainly not public interest to deny an opportunity to the petitioners to confront some witnesses who are to depose against them with some former statements which they have made before the Inspector C.B. C.I.D. The decisions in the *In Re: Killi Suryanarayana Naidu*, were obvious cases where the disclosure would injure public interest as it related to a matter of Central revenue or an alleged blackmarketing activity. The documents under present

considerations are in the nature of communications made by private persons to a public officer and not even in official confidence. The claim of privilege was, therefore, improper and the Addl. Sessions Judge is not correct in upholding the privilege. In the case *In Re S. S. M. Subramaniam Chettiar*, 1966 Mad LJ (Cri) 861 : (1967 Cri LJ 1232) (Mad), *Tilka and Others Vs. State*, and in *Natha Apparao Vs. Narulasetti Suryaprakasa Rao*, similar observations were made to that effect.

6. True, S. 397(2), Cr.P.C. bars the exercise of revisional powers regarding interlocutory orders but this Court has got the necessary powers to secure the ends of justice by proceeding to consider this revision as an application made u/s 482, Cr.P.C. The revision is accordingly treated as an application made under S. 482, Cr.P.C.

7. The impugned order is set aside in part in so far as it upheld the privilege claimed in respect of the petition dated 31-7-1978 and that portion of the report containing the statements of witnesses examined by the Inspector, C.B. C.I.D. during his enquiry. In other respects it is dismissed.

8. Order accordingly.