

(2014) 07 AP CK 0136

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3712 of 2011

Bondi Janaki

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 156(3), 173, 173(2)
Penal Code, 1860 (IPC) — Section 193, 198, 199, 209, 34
Workmens Compensation Act, 1923 — Section 2(d)

Citation : (2015) 1 ALT(Cri) 293 : (2015) CriLJ 320

Hon'ble Judges : T. Sunil Chowdary, J

Bench : Single Bench

Advocate : B.M. Patro, Advocate for the Appellant; Kuriti Bhaskara Rao, Advocate for the Respondent

Final Decision : Allowed

Judgement

T. Sunil Chowdary, J.—This petition is filed u/s 482 Cr.P.C. to quash the proceedings in Cr.No.38 of 2011 of Gara Police Station, Srikakulam District.

2. The factual matrix, leading to the filing of the present petition, are as follows:

First petitioner is the wife, 2nd respondent is the father and the de-facto complainant in Cr.No.82 of 2010 of P.S. Gara is the mother of one Bondi Bhujanga Rao (hereinafter referred to as the deceased). The marriage of the first petitioner was performed with the deceased in the year 2003. The deceased died on 20.05.2005 while working as seaman in Wilco Ship Management & Travels Private Limited, Mumbai. The employer of the deceased called the first petitioner and the parents of the deceased for settlement and receiving of the compensation amount of the deceased. For one reason or the other, no settlement was arrived at between the first petitioner and the parents of the deceased. Therefore, the employer of the deceased deposited an amount of Rs.33,85,762/- before the Commissioner for Workmen's Compensation Act-cum-

Labour Court at Mumbai. The first petitioner herein filed Application (WCA) No. 398/A-48 of 2006 on the file of the Commissioner for W.C. Act & Judge, XI Labour Court at Mumbai and the same was allowed on 10.08.2006 awarding compensation of Rs.28,85,762/- to the first petitioner and Rs.2.50 lakhs to each of the parents of the deceased.

3. While the things stood thus, the mother of the deceased filed a private complaint on the file of the Judicial Magistrate of I Class, Srikakulam u/s 200 Cr.P.C. against the first petitioner for the offences under sections 193, 198, 199, 209, 420, 464 and 465 IPC. The learned Magistrate referred the said complaint to the Station House Officer, Gara u/s 156(3) Cr.P.C. for investigation and submission of report. After receipt of the complaint, the Station House Officer, Gara Police Station, registered a case in Crime No. 82 of 2010 under Sections 193, 198, 199, 209, 420, 464, 465 IPC and Section 156(3) Cr.P.C. After conducting investigation, the Investigating Officer referred the case as mistake of fact and issued a notice to the de-facto complainant. In the notice, it is stated that if the defacto-complainant is not satisfied with the result of the final report, she can approach the concerned Magistrate Court.

4. On 12.04.2011, the father of the deceased i.e., 2nd respondent herein submitted a complaint to the Station House Officer, Gara Police Station alleging that the petitioners herein forged the signature of the then village sarpanch and gave false evidence before the Labour Court, Mumbai. Basing on the said complaint, the Station House Officer Gara P.S registered a case in Cr.No.38 of 2011 for the offences under Sections 420, 193, 198, 465, 209, 199 r/w 34 of IPC against the petitioners herein. Feeling aggrieved by the registration of the criminal case, the petitioners filed the present Criminal Petition.

5. Heard the learned counsel for the petitioners, the learned counsel for the 2nd respondent and the learned Additional Public Prosecutor appearing for the State.

6. The learned counsel for the petitioners submitted that it is a fit case to quash the proceedings in view of the principles viz., 1) registration of second FIR in respect of an act or omission on the part of an individual or individuals, which constitute the alleged offence, is not legally sustainable; and 2) there is abnormal delay in lodging the complaint. To substantiate the submissions, the learned counsel has relied upon the following decisions:

I. Babubhai v State of Gujarat

21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/ crimes, the second FIR is permissible. In case in respect of the same incident the

accused in the first FIR comes forward with a different version or counter claim, investigation on both the FIRs has to be conducted.

II. T.T.Antony v State of Kerala

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In *Ram Lal Narang Vs. State (Delhi Administration)*, it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report u/s 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report u/s 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power u/s 482 Cr.P.C. or under Article 226/227 of the Constitution.

III. Surender Kaushik v State of Uttar Pradesh

24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and Ors. against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in *Upkar Singh Vs. Ved Prakash and Others*, , the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.

IV. Udai Shankar Awasthi v State of U.P.,

47. The instant appeals are squarely covered by the observations made in *Kishan Singh (dead) thr. L.Rs. v Gural Singh and Ors.*, (Supra) and thus, the proceedings must be labeled as nothing more than an abuse of the process of the court, particularly in view of the fact that, with respect to enact the same

subject matter, various complaint cases had already been filed by Respondent No. 2 and his brother, which were all dismissed on merits, after the examination of witnesses. In such a fact-situation, Complaint Case No. 628 of 2011, filed on 31.5.2001 was not maintainable. Thus, the Magistrate concerned committed a grave error by entertaining the said case, and wrongly took cognizance and issued summons to the Appellants.

V. Harivadan Babubhai Patel v State of Gujarat

12. In this context, we may refer with profit to the authority in *State of Himichal Pradesh Vs. Gian Chand*, wherein a three-Judge Bench has opined that the delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay. If the explanation offered is satisfactory and there is no possibility of embellishment, the delay should not be treated as fatal to the case of the prosecution.

13. In *Ramdas and Others Vs. State of Maharashtra*, it has been ruled that when an FIR is lodged belatedly, it is a relevant fact of which the court must take notice of, but the said fact has to be considered in the light of other facts and circumstances of the case. It is obligatory on the part of the court to consider whether the delay in lodging the report adversely affects the case of the prosecution and it would depend upon the matter of appreciation of evidence in totality.

14. In *Kilakkatha Parambath Sasi and Others Vs. State of Kerala*, it has been laid down that when an FIR has been lodged in a belated manner, inference can rightly follow that the prosecution story may not be true but equally on the other side, if it is found that there is no delay in the recording of the FIR, it does not mean that the prosecution story stands immeasurably strengthened. Similar view has also been expressed in *Kanhaiya Lal and Others Vs. State of Rajasthan*. On the other hand, the learned counsel for the 2nd respondent contended that there is no bar to register a second crime if the facts and circumstances of a particular case so warrant.

7. To substantiate his argument, the learned counsel for the 2nd respondent has drawn my attention to the ratio laid down in *Shivshankar Singh v State of Bihar*, wherein the apex Court held as under:

18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit. The learned Additional Public Prosecutor submitted that a second complaint is maintainable only in exceptional cases. Let me consider the

facts which gave rise for registration of two F.I.Rs in the light of the principle enunciated in the case cited supra.

8. One of the allegations in Cr.No.82 of 2010 and 38 of 2011 is that the petitioners herein have forged the signature of the then sarpanch of the village and created a legal heir certificate, dated 28.03.2006. During the course of investigation, the investigating officer in Cr.No.82 of 2010 collected the signatures of the then Sarpanch of the village from the Gram Panchayat office. He also examined the then Sarpanch by name Varadi Gurumurthy to ascertain whether the legal heir certificate bears his signature or not. On verification, the said Gurumurthy admitted that the legal heir certificate, dated 28.03.2006 bears his signature. The Investigating Officer compared the signatures of Gurumurthy on the legal heir certificate with the admitted signatures of Gurumurthy that were called for by him from the Gram Panchayat Office. A perusal of the final report clearly reveals that Gurumurthy admitted his signature on the legal heir certificate dated 28.03.2006. In such circumstances the contention of the de-facto complainants in both the complaints that the legal heir certificate is forged one, prima facie, is not tenable either on facts or on law.

9. The substance of both the complaints is that the petitioners herein gave false evidence before the Labour Court at Mumbai that the de-facto complainants were neither dependants nor legal heirs of the deceased. A perusal of Section 2(d) of the Workmen's Compensation Act clearly demonstrates that the dependants of the deceased workman alone are entitled to compensation. It is a known fact that distribution of compensation amount among the dependents of the deceased depends upon various factors like age, dependency, future needs etc of the claimants. The Labour Court at Mumbai has taken into consideration the age of the de facto complainants and the first petitioner herein and apportioned the compensation in the following manner:

First petitioner : Rs.28,85,762/-

De facto complainant in Cr.No.82/2010 : Rs.2,50,000/-

De facto complainant in Cr.No.38/2011 : Rs.2,50,000/-

10. Apart from this, the de-facto complainants have received an amount of Rs.6.00 lakhs from an insurance company in respect of a policy taken by the deceased. After perusing the order of the Labour Court, prima facie, it is not possible to arrive at a conclusion that the Labour Court passed the orders basing on the false evidence adduced by the petitioners, as alleged by the second respondent. If really the de facto complainants are not satisfied with the award passed by the Labour Court, Mumbai, two options are left over to them viz., 1) to file a petition before the Labour Court for setting aside the same thereby to pass orders afresh after affording reasonable opportunity to them, or 2) to file an appeal challenging the order passed by the Labour Court before appropriate appellate forum by taking leave, if necessary.

11. The de facto complainants in both the crimes have not resorted to any of such remedies available to them under law. Unless and until the order of the Labour Court is set aside by a competent Court, the same is binding on the parties to the proceedings. The fact remains that the de facto complainants in both the crimes have received the compensation in pursuance of the orders of the Labour Court without any protest. Further, the Labour Court at Mumbai has not made any remarks against the petitioners herein. In such circumstances, the contention of the de facto complainants in both the crimes has to be scrutinised meticulously. Even if the allegations made against the petitioners are ex facie taken to be true and valid, the same, prima facie, do not satisfy the ingredients of the alleged offences. Having accepted the compensation without any protest, the de facto complainants are estopped from challenging the same. The petitioners 2 to 4 are the own brothers of the first petitioner. It is a known fact that the brothers will extend their full cooperation to a widowed sister if exigency so warrants. Mere accompanying of the petitioners 2 to 4 with the first petitioner to Mumbai and Gram Panchayat Office by itself will not constitute an offence.

12. The de-facto complainant in Cr.No.82 of 2010 did not choose to file a protest petition as contemplated u/s 190(1)(a) Cr.P.C. after receipt of the notice from the Court. The second respondent herein filed the present complaint in all probabilities after he came to know about the result of the investigation in the earlier crime. It is not the case of the second respondent that himself and his wife are not residing under the same roof. The second respondent herein, being the husband of the de facto complainant in Cr.No.82 of 2010, precluded to plead ignorance of the result of the investigation in Cr.No.82 of 2010. It is not uncommon that the wife and husband after mutual consultations and discussions only take decision in the family affairs. In the instant case, the de facto complainants in both the crimes have grievance against the first petitioner for the reason that she was awarded major portion of the compensation. In such circumstances, one cannot independently approach the police without consulting the other spouse. Though two complaints are filed by two different persons, the ultimate object of both the de facto complainants is one and the same i.e. to somehow trouble the first petitioner.

13. A perusal of the averments in the complaint prima facie demonstrate that both the de-facto complainants are not satisfied with the amount of compensation awarded to them. An act or omission on the part of an individual may constitute an offence. The set of facts in both the complaints which give rise to the alleged offence is one and the same. The Labour Court at Mumbai passed orders on 10.08.2006. The second respondent filed the complaint on 12.04.2011. There is a delay of nearly five years in lodging the complaint. It is a settled principle of law that mere delay in lodging complaint by itself is not a sufficient ground to disbelieve the version of the prosecution/complainant, provided that the complainant offers a satisfactory or reasonable explanation for such delay. There is no change of circumstances in between the date of passing of the orders by the Labour Court at Mumbai and lodging of present complaint. The only

change of circumstance in between this period is that Cr.No.82 of 2010 was referred as mistake of fact.

14. There is every possibility for lodging the present complaint by the second respondent with an ulterior motive to outsmart the provisions of Cr.P.C., thereby to continue the criminal proceedings against the petitioners more particularly against the first petitioner, even after closing Crime No. 82 of 2010 filed by the wife of second respondent. A perusal of the allegations made in the complaint clearly demonstrates that the defacto-complainants were very much frustrated with the amount awarded to them by the Labour Court. By any means to get some share out of the compensation amount awarded to the first petitioner by the Labour Court, filing of criminal cases by the defacto-complainants one after the other is nothing but abuse of process of law. One should not be allowed to use the criminal court as instrumentality to take personal vengeance by filing frivolous and vexatious complaints.

15. In Kishan Singh Vs. Gurpal Singh the Supreme Court observed as follows:

In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide Chandrapal Singh v. Maharaj Singh, State of Haryana v. Bhajan Lal, G. Sagar Suri v. State of U.P and Gorige Pentaiah v. State of A.P)

16. The Apex Court in R.P.Kapoor v. State of Punjab, held as hereunder:

Cases may also arise where the allegations in the F.I.R. or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged. In such cases, no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In this case it would be legitimate to the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

17. In State of Haryana v. Bhajanlal the Apex Court after having surveyed the

entire case law on the point has laid down certain indicia with reference to which, a High Court may in exercise of powers under Article 226 of the Constitution of India or u/s 482 Cr.P.C may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any court or otherwise to secure the ends of justice. In the present case, the registration of Crime No. 38 of 2011 against the petitioners herein under Sections 420, 193, 198, 465, 209, 199 r/w 34 of IPC, after referring Crime No. 82 of 2010 as mistake of fact, would certainly amount to abuse of process of the court. There is a Bar under law to register second F.I.R. in respect of the same incident basing on the same set of facts. Viewed from factual or legal aspects, it is a fit case to quash the proceedings in Crime No. 38 of 2011 of Gara Police Station, Srikakulam District against the petitioners by invoking the inherent jurisdiction u/s 482 Cr.P.C not only to prevent abuse of process of law but also to secure the ends of justice.

18. In the result, the Criminal Petition is allowed and the proceedings in Cr.No.38 of 2011 of Gara Police Station, Srikakulam District against petitioners/A.1 to A.6 are hereby quashed. As a sequel, miscellaneous petitions, if any pending in this Criminal, Petition shall stand closed.