

(1990) 11 AP CK 0005

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1675 of 1990

Dharma Reddy

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 12-11-1990

Acts Referred:

Cattle Trespass Act, 1871 — Section 20

Criminal Procedure Code, 1973 (CrPC) — Section 156, 157, 190, 2, 40

Citation : (1991) 1 ALT 101 : (1991) CriLJ 1476

Hon'ble Judges : Bhaskara Rao, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, for the Appellant; P. Gangaiah Naidu, Assistant Public Prosecutor, for the Respondent

Judgement

1. This is a petition filed u/S. 482, Cr.P.C., to quash investigation in Crime No. 254 of 90 of Abids Police Station, Hyderabad.

2. The relevant facts in brief are : One Ramanayya, General Manager of Hotel Ahwanam made a report to the Police, Abids Police Station, on 7-9-90 stating that some cash was missing from their almirah having been stolen and they suspect one Satyam of Guntur. The Police registered it as Cr. No. 254/90 u/S. 457 and 380, I.P.C. On 13-9-90 the Sub-Inspector arrested one Satyanarayana at his residence in Nacharam, Hyderabad, and recovered Rs. 25,000/- from him. Satyanarayana named three persons as having involved in the Crime. They are (i) Kasinath, (ii) Kareem and (iii) Prasad. On the same day (i.e. 13-9-90) the Sub-Inspector arrested Kasinath and recovered from him Rs. 5,000/-. While so, on 25-9-90 the local Daily, viz. Deccan Chronicle, published a news item stating that there has been a theft of Rs. 1,70,00,000/- from Ramakrishna Studios at Nacharam, that Sri N. T. Rama Rao has slashed away lakhs of rupees and kept them in Ramakrishna Studios and that a tea-stall owner has fled away with a part of money kept in the film-boxes. On 16-9-90 a Congress Legislator requested for a probe into the theft at Nacharam and that, it is stated, as per the

wish of the Chief Minister the Government ordered it. Thereafter the C.B. C.I.D., took up investigation from the Abids Police.

3. It is stated that the two people arrested by the Abids Police, viz. (i) Satyanarayana and (ii) Kasinath revealed the name of the petitioner as the main participant in the case. The petitioner, therefore, moved the 2nd Addl. Metropolitan Sessions Judge for grant of anticipatory bail on 25-9-90 in which a counter was filed stating that the investigation revealed commission of a theft at Nacharam. That petition ended in its dismissal.

4. On 9-10-90 within the limits of Marriguda Police Station, Devarakonda Taluk of Nalgonda District, the petitioner was arrested u/S. 41, Cr.P.C., when he was roaming suspiciously. On arrest police recovered a sum of Rs. 10,042/- from him and on the next day another sum of Rs. 30,000/- from his residence. In the confessional statement, he stated that he has stolen money from the Ramakrishna Studios at Nacharam. Subsequently, the case was transferred to the Nacharam Police Station on the point of jurisdiction. Thereafter the case is being investigated by the Inspector of Police, Malkajgiri. It is submitted that the petitioner was working as a light-boy whenever there was work in the Ramakrishna Studios for wages and that he had no connection with the theft in Ahwanam Hotel or Ramakrishna Studios and that with mala fide intention he is being harassed and therefore the investigation has to be quashed.

5. The learned counsel for the petitioner submitted that the powers of Police while investigating into cases are within the confines of Ss. 156 and 157, Cr.P.C. and that "cognizable cases" referred to in those sections have to be taken as the resultants of offences as defined in S. 2(n), Cr.P.C., and S. 40, I.P.C. Once there is no offence, he submitted, there cannot be any investigation and in this case there being no report as regards commission of any theft in Ramakrishna Studios there is no offence to be investigated and therefore the investigation has to be quashed.

6. To appreciate the submission of Mr. Pattabhi, the learned counsel, it is necessary to refer to Ss. 156 and 157 of Cr.P.C., which are as follows :

"156. Police Officer's power to investigate cognizable case : (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate, any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/S. 190 may order such an investigation as abovementioned.

157. Procedure for investigation : (1) If, from information received or otherwise,

an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/S. 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender;

Provided that :-

(a) When information as to the commission of any such offence is given against any person by name and the case is not of a serious nature the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in cls. (a) and (b) of the proviso to sub-s. (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

The above sections, as seen, confer, a wide power on the police to investigate into any offence, if they have suspicion regarding commission of such an offence by any person. As regards the definition of "offence" it is necessary to extract S. 2(n), Cr.P.C., and S. 40, I.P.C. S. 2(n), Cr.P.C. reads :

"(n) "Offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be u/S. 20 of the Cattle Trespass Act, 1871 (1 of 1871)."

S. 40 of the I.P.C. runs :

"Offence" :- Except in the chapters and sections mentioned in cls. 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, Chapter V-A and in the following sections namely, Ss. 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code or under any special or local law as hereinafter defined.

And in Ss. 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is

punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."

From a reading of S. 2(n), Cr.P.C. and S. 40, I.P.C. it is clear that S. 40, I.P.C. refers to offences prescribed by the I.P.C. while S. 2(n), Cr.P.C., refers to offences under different laws, apart from these under I.P.C. Thus, the definition of "offence" u/S. 2(n), Cr.P.C., is wider enough to enable the police to investigate into offences under other enactments also, apart from those under the I.P.C. It also needs to be noted as submitted by the learned Addl. Public Prosecutor, that the police while investigating into one crime, may come across with other crimes; and they can proceed with investigation into such discovered crimes and collect evidence. The contention of the learned counsel, Sri Pattabhi, is that when the very owner of the Ramakrishna Studios has denied commission of any theft in that Studios there cannot be said to be commission of any offence therein and therefore the investigation into that denied offence cannot be permitted to be continued and accordingly the investigation has to be quashed. It is relevant here to notice that Ramanayya, the General Manager of the Hotel Ahwanam himself had given a report to the Abids police that a theft was committed and cash was stolen away from an almirah in the hotel. Basing on this the police registered a crime (Cr. No. 254/90), u/ Ss. 457 and 380, I.P.C. During the course of investigation they arrested the petitioner and some others and some amounts were also recovered. During that course of investigation, they discovered commission of another crime in Nacharam and they are investigating into that crime by virtue of the powers conferred by Ss. 156 and 157, Cr.P.C. In the circumstances, simply because the Managing Partner of the Ramakrishna Studios, Nacharam, has denied commission of any offence in the Studios, the investigation into the crime, viz. Cr. No. 254/90, registered by the Abids police in pursuance of a report given by the General Manager of the Hotel Ahwanam cannot be quashed. It may also be made clear that the investigation into the discovered crime in Nacharam Studios is not complete. Therefore, when the investigation is going on, it cannot be said that it needs to be quashed on the ground that the police are harassing the petitioner. It is also to be noted in every case where the police have to interrogate while investigating into a crime, the accused and witnesses have to definitely suffer some inconvenience and that cannot be a ground for quashing the investigation.

7. The learned counsel, Sri Pattabhi, next submitted that the facts of the case accepting them into be so, do not make out existence of an even prima facie offence u/Ss. 457 and 380, I.P.C., and therefore when there is no prima facie offence investigation cannot be continued. As stated supra, the General Manager of the Hotel Ahwanam made a report to the Abids Police stating that a theft took place in their hotel and money was missing. That is not disputed by the petitioner. Even, Mr. Harikrishna the Managing Partner of Nacharam Studios or Ramanayya the General Manager of the Hotel Ahwanam have not stated during the course of investigation that no theft took place in the Hotel. On the other hand, during the course of investigation into that crime the police found out

some evidence regarding theft in Nacharam Studios. Therefore, it cannot be said at this stage that no prima facie evidence as regards the offence of theft is available for purposes of quashing the investigation.

8. The learned counsel for the petitioner took me through relevant paragraphs in the following texts for purposes of finding out when an offence of theft can be said to have been committed :

1. Introduction to Criminal Law by Cross Jones and Card XIth Edition,
2. Smith and Hogan on Criminal Law VIth Edition Chapter XV at page 524, and
3. Atchuthen Pillai's Criminal Law VIIth Edition Chapter 48.

There is no dispute with the principles discussed in these texts in regard to the proposition as to when an offence of "theft" is said to be committed. But, this is a case where investigation is going on into a crime registered pursuant to a report made to the Police by the general manager of the Hotel Ahwanam. At this stage, it is also not possible to say what is the offence committed. It is a well-known fact that while investigating into one crime registered by them, the police may find out different offences committed by the accused involved in the registered crime. I am of the opinion that the case has not reached a stage to say as to what offence has been committed, and it can be culled out only after the charge-sheet is filed. If after filing of the charge-sheet the petitioner is aggrieved of the allegations made therein or that they do not make out a prima facie case against the petitioner, it is open to him to challenge the same.

9. Here it is relevant to mention that the Supreme Court in Dharamvir and Another Vs. The State of Madhya Pradesh, while dealing with the question of quashing investigation by exercising the powers u/S. 561-A of the Old Cr.P.C., (corresponding to S. 482 of the present Cr.P.C.) held that the Courts would not quash the investigation since it amounts to stopping the process of investigation and this decision squarely applies to the facts of the present case.

10. The Privy Council in AIR 1945 18 (Privy Council) has laid down that in cases of cognizable offences, receipt and recording of a first information is not a condition precedent to the setting in motion of a criminal investigation. In view of this decision the learned counsel cannot be permitted to put forth the submission that there is no report made by any one that a theft took place in Nacharam Studios and therefore no investigation into such an unreported offence can go on.

11. In support of his submission that this Court has ample power u/S. 482, Cr.P.C. to quash the investigation, the learned counsel sought to place reliance upon a decision of the Supreme Court in State of Andhra Pradesh Vs. P.V. Pavithran, . That is a case where this Court was moved originally by the petitioner therein seeking quashing of investigation by invoking Art. 21 of the Constitution on the ground that there was inordinate delay of more than seven years in the investigation and that speedy trial is a fundamental right enshrined under the Constitution. It is in that background of the facts, the investigation

was quashed and on appeal the Supreme Court also sustained the order of quashing made by this Court. This is not a case based on the ground that there is inordinate delay in the investigation. Therefore, the facts of that case are different and have no application to the present ones.

12. In *State of U.P. Vs. R.K. Srivastava and Another*, the Supreme Court held that if the First Information Report on its face value does not constitute an offence the criminal proceedings instituted on that basis can be quashed. In the present case, the submission on behalf of the petitioner is that no offence of theft is made out as the Managing Partner of Ramakrishna Studios at Nacharam has denied its commission. However, it is not denied that a theft took place in the Hotel Ahwanam. On the other hand the investigation into the offence of theft in the Hotel Ahwanam has revealed commission of an offence and the investigation, is, in fact, in progress. Therefore, this is not a case where the FIR, does not reflect constitution of an offence and accordingly that decision has no application to the present case.

13. The decision in *Eastern Spinning Mills and Virendra Kumar Sharda and Another Vs. Rajiv Poddar and Others*, , lays down that interference with the investigation is permissible if non-interference would result in miscarriage of justice. This is not a case where non-interference would amount to miscarriage of justice and accordingly there is no need to interfere with the investigation.

14. The Supreme Court no doubt interfered with the investigation in *Abdul Rehman v. State of J & K* 1989 (1) Crimes 515 but on the ground that non-interference would result in miscarriage of justice. It was in these facts and circumstances that the interference was made and as noted supra this is not a fit case for interference on the ground that non-interference would result in such a miscarriage of justice.

15. The case in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, is one where the Supreme Court held that in a case where on a consideration of the relevant material the Court is satisfied that no offence is disclosed it will be the duty of the Court to interfere with the investigation. As already noted supra this is not a case where no offence is disclosed for purposes of warranting interference with the investigation.

16. In *R.P. Kapur Vs. The State of Punjab*, the Supreme Court laid down three categories of cases where the inherent jurisdiction to quash the proceedings should be exercised. The three categories are :

"(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings in respect of the offence alleged

(ii) Where the allegations in the First Information Report of the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged;

(iii) Where the allegations made against the accused person do constitute an

offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge"

The contention of Mr. Pattabhi is that there is no legal evidence in the case on hand and therefore the investigation has to be quashed. It is to be borne in mind that the case is in the stage of investigation and not yet completed. As long as investigation is not completed it cannot be said whether or not there is legal evidence in support of the case against the Petitioner. Accordingly I do not find any ground to interfere with the investigation.

17. Though allegation of mala fides is made behind the-challenged investigation, to wit the present Government is against the former Chief Minister Sri N. T. Rama Rao and it is to take revenge the present proceedings are initiated, Mr. Pattabhi has not rightly attacked the investigation on that ground since, as laid down by the Supreme Court in S.N. Sharma Vs. Bipen Kumar Tiwari and Others, that is a ground available only in proceedings under Art. 226 of the Constitution and not in those u/S. 482 Cr.P.C.

18. In the result, I find no ground to quash the investigation and the petition is accordingly dismissed.

19. Petition dismissed.