

(1985) 06 AP CK 0001

In the Andhra Pradesh High Court

Case No : Criminal M.P. No. 1647 of 1984

Divisional Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

D. Latcha Naidu

RESPONDENT

Date of Decision : 10-06-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 294, 319, 319(1), 482
Penal Code, 1860 (IPC) — Section 109, 351, 418, 420, 465

Citation : (1987) 62 CompCas 736

Hon'ble Judges : C. Sriramulu, J

Bench : Single Bench

Advocate : I.A. Naidu, for the Appellant; C. Poornaiah, for the Respondent

Judgement

Sriramulu, J.

1. This is a petition for quashing the proceedings against the petitioner-insurance company in C.C. No. 271 of 1983, on the file of the judicial Magistrate, First Class, Srikakulam.

2. On June 16, 1981, at about 9-30 a.m. near Etcherla Police Quarters in Srikakulam, a motor accident took place on account of rash and negligent driving of lorry No. APV 6667 by its driver and one, P. Rajagopalaran came under the left back wheel of the lorry and died on the spot. The wife and the two minor sons of the said Rajagopalarao filed an accident claim petition before the Motor Accidents Claims Tribunal (Additional District judge), Srikakulam, against the owner, driver of the lorry and the New India Assurance Co. Ltd., Srikakulam. The Motor Accidents Claims Tribunal allowed the claim of the claimants against the owner and driver of the lorry but the claim against the New India Assurance Co. Ltd. was dismissed on the ground that the insurance cover had expired on March 12, 1981, whereas the accident took place on June 16, 1981.

3. Thereafter, the owner of the lorry filed a criminal complaint in the Court of the judicial Magistrate, First Class, Srikakulam, under sections 109, 418, 420 and

465 of the Indian Penal Code against Y. S. S. Viswanadham, agent, New India Assurance Co. Ltd., Srikakulam, Sri K. Sriramachandramurthy, Inspector, New India Assurance Co. Ltd., Srikakulam, the Divisional Manager, New India Assurance Co. Ltd., Vishakapatnam, and the Area Manager, New India Assurance Co. Ltd., Hyderabad. The allegation in the complaint was that A-1 and A-2 fraudulently represented to the complainant that they would insure his lorry against accidents and third party risks and collected Rs. 149 on June 15, 1981, at the office of the first accused at Srikakulam towards third party insurance risk premium in respect of lorry No. APV 6667 and A-2 issued a Motor Vehicle Cover Note dated June 15, 1981, covering the insurance period from June 15, 1981, to June 14, 1982, and it was signed by the first accused. The allegation was that the petitioner herein and accused No. 4 abetted the offence.

4. The case of the complainant was that because of cheating and fraud played by A-1 and A-2 on the complainant, the very liability on the part of the insurance company has been negated in spite of the vehicle being insured with the company and that not only the liability of the insurance company was denied but the very fact of insurance of the vehicle in question was denied by the respondent herein in the counter filed by the petitioner in the claim petition.

5. In this petition, the only contention urged by learned counsel for the petitioner is that the allegations made in the complaint or the statement of the complainant taken at their face value make out absolutely no case against the accused-petitioner and the complaint does not disclose the essential ingredients of an offence which is alleged against the accused-petitioner and that the proceedings in C.C. No. 271 of 1983, on the file of the judicial Magistrate, First Class, Srikakulam, are liable to be quashed by this court u/s 482 of the Criminal Procedure Code.

6. In *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, it was held that the inherent powers u/s 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power, being an extraordinary one, it has to be exercised sparingly.

7. The limits of the power u/s 482 were clearly defined by the Supreme Court in *Raj Kapoor and Others Vs. State and Others*, where Krishna Iyer J. observed as follows (at page 260) :

"Even so, a general principle pervades this branch of law : when a specific provision is made, easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code."

8. Another important consideration which has to be kept in mind is as to when the High Court acting under the provisions of section 482 should exercise the inherent power in so far as quashing of criminal proceedings is concerned. This

matter was gone into in greater detail in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , where the scope of sections 202 and 294 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed, the Supreme Court observed as follows : (p. 195 1)

"Thus, it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside :

(1) where the allegations made in the complaint of the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by a legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can, quash proceedings."

9. Same view was taken in a later decision of the Supreme Court in Dr. Sharda Prasad Sinha Vs. State of Bihar, , where Bhagwati J., speaking for the court, observed as follows: (p. 1755)

"It is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction u/s 482 of the Code of Criminal Procedure to quash the order passed by the Magistrate taking cognizance of the offence."

In a recent decision in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , Fazal Ali J., in approval of the principles laid down in the aforementioned decision, observed: (page 70) "

"It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out, then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482 of the Criminal Procedure Code."

10. In the instant case, the argument of counsel for the petitioner before me is that even taking the allegations of the complainant ex facie and his own statement prima facie, it cannot be said that any offence is inside out and that the facts mentioned in the complaint do not constitute any offence against the petitioner herein. So far as the petitioner is concerned, on a reading of the complaint, I am satisfied that the petitioner has been treated as an abettor of the commission of the offence committed by accused Nos. 1 and 2 in the case.

11. I would like to state that there are ample provisions in the Code of Criminal Procedure, 1973, in which the court can take cognizance against persons who have not been made accused and try them in the same manner along with the other accused. In the old Code, section 351 contained a lacuna in the mode of taking cognizance if a new person was to be added as an accused. The Law Commission in its 41st Report adverted to this aspect of the law and section 319 of the present Code gave full effect to the recommendation of the Law Commission by removing the lacuna which was found to exist in section 351 of the old Code. Section 319, as incorporated in the present Code, may be extracted thus :

"319. Power to proceed against other Persons appearing to be guilty of offence. -

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the court, although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the court proceeds against any person under sub-section (1), then -

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard;

(b) Subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced."

12. This provision gives ample powers to any court to take cognizance and add any person not being an accused before it and try him along with the other accused. This provision was also the subject-matter of a decision by the Supreme Court in *Joginder Singh and Another Vs. State of Punjab and Another*, , where Tulzapurkar j., speaking for the court, observed thus (at page 342) :

"A plain reading of section 319(1), which occurs in Chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the courts including a Sessions Court and as such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused ...

13. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence, the court can take cognizance against them and try them along with the other accused. Of course, it is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.

14. In the present case, the third accused is shown as the Divisional Manager, New India Assurance Co. Ltd., Visakhapatnam, and the allegation against the third accused is that he along with the other accused has abetted the offence committed by accused Nos. 1 and 2. The complainant has not named the person who was acting as Divisional Manager at the time of the offence who is alleged to have abetted the offence committed by A-1 and A-2, and hence the complaint against A-3 as constituted at present in the complaint is not sustainable in law and, therefore, the proceedings against the petitioner-accused No. 3 described as Divisional Manager, New India Assurance Co. Ltd., have to be quashed.

15. As I have already observed above, though the power u/s 319(1) can be exercised by any court at any stage of the case, I would, however, make it plain that the mere fact that proceedings against accused No. 3 are quashed, will not prevent the Magistrate from exercising his discretion after recording the evidence, if he is fully satisfied that a case for taking cognizance against any person who was acting as Divisional Manager, New India Assurance Co. Ltd., Visakhapatnam, was guilty of an offence and that the case of taking cognizance against him has been made out on the evidence laid before him.

16. For these reasons, I allow this petition and quash the proceedings against A-3 in C.C. No. 271 of 1983 on the file of the judicial Magistrate, First Class, Srikakulam, described as the Divisional Manager, New India Assurance Co. Ltd., Visakhapatnam.