

(2011) 02 AP CK 0058

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 4703 of 2009

G. Linga Reddy

APPELLANT

Vs

M. Dharma Raju and State of A.P.

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 170, 173(2), 173(8), 482
Penal Code, 1860 (IPC) — Section 147, 149, 323, 325, 327
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2011) 8 RCR(Civil) 2054

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

**Advocate : N. Ramachandra Rao, for the Appellant; Ch. Sudarsana Rao, for Res.
No. 1 and Public Prosecutor, for the Respondent**

Final Decision : Allowed

Judgement

Samudrala Govindarajulu, J.—This petition is filed by the proposed A4 in P.R.C. No. 28 of 2008 on the file of II Additional Judicial Magistrate of the First Class, Khammam questioning proceedings therein including grant of permission to the Investigating Agency for conducting further investigation u/s 173(8) Code of Criminal Procedure. The case pertains to offences punishable under Sections 147, 323, 341, 348, 365, 454, 380, 354, 325, 327, 506, 149 IPC and Sections 3(i)(x) and 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. After investigation of Crime No. 11 of 2004, the CID Police, Hyderabad filed charge sheet for the said offences against A1 to A5. In the charge sheet, name of A4 is given as Are Linga Reddy, S/o. Buchchi Reddy, aged 60 years. He is described as Ex. MPP.

2. A1 is father of the 4th witness and is employed in BSNL (Bharat Sanchar Nigam Limited). A2 is a police constable in Suryapet Police Station and is younger brother of A1. A5 is another police constable working in Mothe Police Station. A5 is stated to be a friend of A2. A3 is elder brother of A1 and A2 and is

a contractor at Bangalore. A4 was Mandal Praja Parishad President of Mothe Mandal in Nalgonda District. He is stated to be friend of A2 and A5. This case is result of love affair between A1's daughter (witness No. 4) and witness No. 3 resulting in eloping with each other. A1 belongs to Reddy Caste whereas the boy belongs to Mala Caste, which is a Scheduled Caste. The CID Police filed charge sheet against A1 to A5 even without arresting A2 to A5 and without taking them into custody and producing them before the Magistrate along with charge sheet. The investigating agency, thus filed charge sheet against A1 to A5 even without, compliance of Section 170 Code of Criminal Procedure Section 170 Code of Criminal Procedure reads as follows:

170. Cases to be sent to Magistrate when evidence is sufficient:

(1) If, upon an investigation under this chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if, the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such magistrate until otherwise directed.

(2) When the officer-in-charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

3. Compliance of Section 170 Code of Criminal Procedure is a condition precedent for filing of final report/charge sheet u/s 173(2) Code of Criminal Procedure The Investigating Officer is expected to file final report u/s 173(2) Code of Criminal Procedure after completion of investigation; and the said final report/charge sheet shall contain a statement of information relating to Clauses a to h of Section 173(2)(i) Code of Criminal Procedure. Relevant portion of Section 173(2) Code of Criminal Procedure reads as follows:

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the State Government, stating-

(a) the name of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody u/s 170.

4. Clauses (e) and (g) contemplate arrest of the accused prior to filing of final report and in case, the accused was not arrested previously, the accused shall be forwarded in custody as required u/s 170 Code of Criminal Procedure. Thus, arrest of an accused person or taking the accused into custody and forwarding him to the Magistrate, is a condition precedent prescribed by law. It follows that arrest of an accused person or taking him into custody by the Investigation Officer, in case sufficient incriminating evidence is collected against him or her, is part of investigation. Without completing investigation as prescribed by law, the question of the investigating Officer resorting to Section 173(2) Code of Criminal Procedure by way of filing final report/charge sheet before the Magistrate will not arise at all. The Magistrate is also not expected to take cognizance of such a case for the offences mentioned therein, unless the investigation is complete, in the sense that the Investigating Officer either previously arrested the accused or presently took the accused into custody and forwarded the accused to the Magistrate along with final report/charge sheet. For practical reasons, this condition precedent of arresting the accused or taking the accused into custody may be excused only in hard cases like inter-state dacoits or underground extremists whose arrest could not be effected inspire of making hectic efforts. Therefore, even in such cases, the Investigating Officer has to narrate the efforts put in during investigation for effecting arrest of such accused persons and reasons for failure to achieve the result of arrest of such accused persons. In the case on hand, when the offence was committed in the year 2004, A4/Are Linga Reddy was Mandal Praja Parishad President of Mothe mandal in Nalgonda District. By the time the investigation is completed and the charge sheet is filed before the Magistrate. A4's term as Mandal Praja Parishad President was over and it is not the prosecution case that A4 was absconding from the village and was not available for arrest. Even in the charge sheet, the Investigating Officer did not state that A4 was absconding, but stated that A4 was not arrested. No reasons are given for not arresting of A4 as well as A2, A3 and A5 before filing

the charge sheet in the Magistrate Court. Inspire of it, the II Additional Judicial Magistrate of the First Class, Khammam took cognizance of the offences against A1 to A5 by way of taking the case on file against A1 to A5. After taking cognizance, the Magistrate issued non-boilable warrants against A2 to A5.

5. The trouble arose when the police went for arrest of A4 in execution of non-boilable warrant issued by the Magistrate after taking cognizance of the case for the above offences. Thereupon, the Deputy Superintendent of Police, CID, RCIU, Wrangle filed the impugned petition in P.R.C. No. 28 of 2008 u/s 173(8). Code of Criminal Procedure The said petition was filed by another Deputy Superintendent of Police, who came into the scene after filing of charge sheet by the then Deputy Superintendent of Police, CID by name A. Bala Subramanyam. It is/stated in that petition filed u/s 173(8) Code of Criminal Procedure that on credible information on 29.06.2008 at 06:00hrs., previous Investigating Officer A. Bala Subramanyam, DSP, CID, RCIU, Wrangle, left Wrangle along with staff and went to house of Are Linga Reddy (A4) in Huseenabad village of Mothe Mandal where A4 was present and that when the previous Investigating Officer informed A4 about facts of the case and pending non-boilable warrant against him, A4 deposed that he was not at all concerned with the said offence and was not aware of the same. It is further stated in that petition that similar to the name of A4, there is another Linga Reddy, whose name is Ganga Linga Reddy, S/o. Sathi Reddy, R/o. Kusumawarigudem Village of Suryapet Mandal of Nalgonda District who is friend of A5 and that the previous Investigating Officer made enquiries in the village and learnt that A4 was not at all concerned in this case, and that when the Investigating Officer met the defector complainant and his family members, they stated that A4 was not the person involved in commission of the offence. It is further stated in the petition that Ganga Linga Reddy was not available in his house along with his family and went away by locking the doors of his house and that Ganga Linga Reddy was running a fancy store by name Sitara Ladies Emporium at Suryapet and it was also found locked and that wife and son of the defector complainant identified Ganga Linga Reddy by photographs as the person involved in commission of this offence, and that the previous Investigating Officer examined and recorded further statements of those witnesses. Therefore, the petition was filed before the Magistrate praying for permission for further investigation of the case to ascertain which Linga Reddy was the real culprit and also for permission to file additional charge sheet after proper investigation. Non-boilable warrant issued against A4/Are Linga Reddy was returned to the Magistrate along with that petition. To question the harassment and abuse of process of law, Ganga Linga Reddy filed the present petition u/s 482 Code of Criminal Procedure for quashing the proceedings.

6. When the Magistrate had taken cognizance of the case for the offences mentioned in the charge sheet against A1 to A5 including Are Linga Reddy and when the Magistrate issued non-boilable warrant for arrest of A2 to A5 including Are Linga reddy, who is shown as A4 in the charge sheet, the question of recording a statement or the question of such an accused giving a deposition to

the investigating officer who went for his arrest, is contrary to known principles of criminal law. It is not as if any accused person is going to admit or confess that he was concerned in that case or participated in that case or committed the offences in that case. Simply because Are Linga Reddy is stated to have deposed to the Deputy Superintendent of Police who went to his house for arrest in execution of non-boilable warrant issued by the Magistrate, that he was not the person concerned in that case, the Investigating Officer should not have returned without execution of non-boilable warrant by way of arresting A4 and taking him into custody. By that time, the investigation was already over and the Investigating Officer filed final report before the Magistrate and it was taken on file by the Magistrate by way of taking cognizance of the offences against the accused including A4. The petition filed before the Magistrate u/s 173(8) Code of Criminal Procedure reads that the entire further investigation of the case by way of changing identity of Linga Reddy was complete. The CID wanted only post-facto approval of the alleged further investigation made by the Investigating Officer by name A. Bala Subramanyam from the time of obtaining of non-boilable warrants till filing of petition u/s 173(8) Code of Criminal Procedure. It is contended by the Public Prosecutor that when the Investigating Officer went to A4/Are Linga Reddy for his arrest, there was agitation by the public, who gathered at his residence. The Investigating Officer cannot be carried away by agitations, but has to rely upon substance of his investigation. Because Are Linga Reddy happened to be a public person who was a Mandal Praja parishad President of Mothe Mandal, naturally some of his party-men will support his activities whether legal or illegal. The said support of the public cannot have any influence in the mind of the Investigating Officer.

7. It is evident that since Are Linga Reddy happened to be a politician, who had support from a section of the public, the Investigating Officer intended for obvious reasons to delete his name and to introduce the Petitioner's name in the place of A4, as the Petitioner is not a public figure and is running a small fancy shop. This is not a case where another Linga Reddy of the same village with the same surname is sought to be identified in the place of A4/Are Linga Reddy. The Petitioner is a resident of Kusumawari Village of Suryapet Mandal whereas A4/Are Linga Reddy is a resident of Huseenabad village of Mothe Mandal. Father's name of the Petitioner is Sathi Reddy whereas father's name of Are Linga Reddy(A4) is Buchi Reddy. The Petitioner's identity is no way near to the identity of A4 against whom the charge sheet is already filed. On consideration of the entire events narrated above, this Court has no hesitation to come to the conclusion that the Investigating Officer intended to play game of "Body Doubling" in this case in order to facilitate A4/Are Linga Reddy to be away from this case. This sort of making a U-turn by the Investigating Agency is likely to hamper credibility of the said investigation itself. There may be instances of prosecution witnesses turning hostile to the prosecution by not identifying the accused person in the dock during trial in Court and by naming another person as the real culprit. This sort of activity by the witnesses is resorted to for helping

the accused during trial. But in the present case, the Investigating Officer himself wanted to turn hostile to the investigation which he made already in this case and concluding of the investigation by way of filing charge sheet before the Magistrate. Such Somersaults by the Investigating Officer in CID should not have been permitted by the Magistrate. This Court has absolutely no hesitation to conclude that further investigation in this case as against the Petitioner is nothing but abuse of process of law.

8. In the result, the Criminal Petition is allowed quashing further investigation in P.R.C. No. 28 of 2008 on the file of II Additional Judicial Magistrate of the First Class, Khammam, insofar as the Petitioner by name Ganga Linga Reddy is concerned.