
(2013) 02 AP CK 0022

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 170 of 2013

G. Pal Vijaya Kumar

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Citation : (2013) 02 AP CK 0022

Judgement

B. Seshasayana Reddy, J.—This Criminal Revision Case is directed against the order, dated 21.01.2013, passed in C.F.R. No. 15 of 2013 on the file of the Junior Civil Judge, Kalwakurthy, Mahaboobnagar District, whereby and whereunder the learned Junior Civil Judge dismissed the complaint u/s 203 Cr.P.C. for lack of sufficient ground. Facts in brief are: Mr. Subhash Patriji was the founder of Pyramid Spiritual Societies for promoting vegetarianism and meditation. He organized 11 days programme at Kadtal village in the name of "Prapancha Maha Dhyana Chakra-III". The said programme was successfully completed. However, this has become an eye-sore to some sections of people. TV 9 channel telecasted its self-styled story. A complaint was lodged against Mr. Subhash Patriji before the Station House Officer, Ammangal Police Station, Mahaboobnagar District, alleging, inter alia, that on 02.01.2013 at 10.00 A.M. Brahmarshi Subash Patriji and men of Ashoka Builders proprietor Vijaybaskar Reddy have attacked the persons concerned with TV 9 Channel. The said complaint came to be registered as a case in Crime No. 1 of 2013 for the offences punishable under Sections 109, 147, 148, 341, 324, 323, 427 r/w. 149 IPC. Sri G. Pal Vijay Kumar claiming to be associated with Mr. Subhash Patriji presented a complaint in the Court of the Judicial Magistrate of First Class, Kalwakurthy, Mahaboobnagar District, u/s 200 Cr.P.C. alleging that respondent-Vemulapally Ashok Kumar, Senior Reporter, TV 9 Channel, misdirected the public servants by making a false complaint before the Station House Officer, Ammangal P.S., Mahaboobnagar District. According to the complainant, on the relevant date, Mr. Subhash Patriji was not at the place of offence stated in Crime No. 1 of 2013 of Ammangal P.S. For better appreciation, I may refer paras. 4 to 8 of the complaint, which read as hereunder:

While in fact, that on 01.01.13 Mr. Patriji left Kadthal Village at about 4.00 PM and reached to Kurnool town at about 9.30 PM. That on 02.01.2013 at 8.00 AM Mr. Patriji left Kurnool Town and reached Ballary Town at about 11.30 AM to attend a marriage programme at the invitation of Mr. Mallikarjun Maski. He attended the marriage at Sree Ragvendra Kalyana Mandapa, 1st Cross, Satyanarayana Pet, Ballary, Karnataka State and later he took rest at Hotel Bala Regency, Parvathi Nagar, Main Road, Ballary town, for a period in between 01.00 PM to 5.00 PM and in the evening at about 6.00 PM he inaugurated a Pyramid at the house of Mr. M. Hanumantha Rao, at D. No. 17-18, Brundavana Colony, 1st Cross, Tharalatha Hospital, Ananthapur Road, Ballari Town, Karnataka State. All these programmes were videographed/Photographed and the same are enclosed herewith for kind perusal.

5. It is evident from the videos and photographs, invitations, hotel bills and other documents that Mr. Subhash Patriji was not in the State of Andhra Pradesh or at the scene of offence, whereas the accused lodged written complaint, voluntarily as if Mr. Subash Patriji was present at the place of offence. It is nothing but giving a false information to the SHO.

6. It is further submitted that the accused intentionally gave a false complaint before the SHO to demine the name & fame of Mr. Subash Patriji in the society by involving him in a false case and enable the investigating officer to use his lawful power to arrest Mr. Subash Patriji.

The accused gave false information with intent to cause public servant (SHO) to use his lawful power to cause injury of another person.

The accused being Senior Reporter of TV 9 Channel knows that in consequence of his complaint the police will make enquiries, searches in the village of Kadthal/offices of Trust on the cited accused in his complaint. Thus accused has committed an offence.

The learned Junior Civil Judge perused the complaint and proceeded to dismiss the complaint u/s 203 Cr.P.C. for lack of sufficient ground, by order, dated 21.01.2013. The said order is assailed in this Criminal Revision Case.

2. Heard learned counsel appearing for the petitioner and learned Additional Public Prosecutor appearing for the respondent/State.

3. It is contended by the learned counsel appearing for the petitioner that the learned Junior Civil Judge after receipt of the complaint without examining the complainant or his witnesses proceeded to dismiss the complaint and therefore, the order of dismissal of the complaint is liable to be set aside. In a way, it is his contention that learned Junior Civil Judge should have recorded the statement of the complainant and without doing the same, she has dismissed the complaint which is not legal. In support of his submissions, reliance has been placed on the following judgments:

1) A. Pulla Reddy v. K. Pushpa & Anr. 2006 (2) ALD (CrL.) 748 (AP)

- 2) P.S. Ramaswami Nadar Vs. R. Viswanathan and Another,
- 3) K. Laxma Reddy and Others Vs. The State of A.P. and Another,
- 4) N. Harihara Iyer Vs. State of Kerala,
- 5) S.D. Paulraj v. A. Balakrishnan 2010-LAWS(MAD)-7-52

4. It is essential to refer Sections 200 and 203 Cr.P.C., and they are thus:

S. 200 : Examination of complainant:-A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) If the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192:

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the later Magistrate need not re-examine them.

203. Dismissal of complaint.--If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) u/s 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

5. A reading of Section 200 Cr.P.C. makes it incumbent on the Magistrate to examine the witnesses who were present in Court on oath, and can apply Sec. 203 Cr.P.C. only if, after examining the complainant and the witnesses who are present in Court, he finds a sufficient ground for not proceeding with the case. The section is mandatory and it is therefore, obligatory on the part of the Magistrate to examine not only the complainant, but also the witnesses who are present in Court. There are only two exceptions mentioned in clauses (a) and (b) in the above section, in which case, the sworn statement of the complainant need not be recorded, viz., when the complaint is presented by a public servant acting in discharge of his official duty or when a Court makes the complaint. In the second exception, it is stated that if the Magistrate made over a case to any Magistrate for inquiry u/s 192 Cr.P.C. If the Magistrate who made over the case already recorded the sworn statement of the complainant, the later Magistrate need not re-examine the complainant. Except in the cases arising out of clauses (a) and (b) of Section 200 Cr.P.C., the Court is bound to examine the

complainant and record the sworn statement of the complainant and the witnesses. The object of such examination is to ascertain whether there is a prima facie case and sufficient ground for proceeding. Therefore, it is incumbent on the Magistrate taking cognizance on a complaint to examine upon oath the complainant and his witnesses present, if any, to satisfy himself as to the veracity of the complaint. The correct position therefore, appears to be that the omission to examine the complainant on oath u/s 200 Cr.P.C., is an irregularity, and if by reason thereof the complainant is prejudiced he is entitled to an order that the subsequent proceedings are invalid.

6. So far as the present case is concerned, prejudice in fact had been caused to the complainant because he had been deprived of an opportunity to explain his case to the Magistrate, which he could have got had the Magistrate examined him on oath. The Magistrate could apply Section 203 Cr.P.C. only if after examining the complainant and the witnesses who are present in Court, she finds no sufficient ground for proceeding with the case. Dismissal of a complaint u/s 203 Cr.P.C. without adopting the procedure u/s 200 is not valid. In that view of the matter, I hold that the order impugned in the revision case is liable to be set aside. Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 21.01.2013, passed in C.F.R. No. 15 of 2013 on the file of the Junior Civil Judge, Kalwakurthy, Mahaboobnagar District and directing the learned Junior Civil Judge a further enquiry should be made according to law in the light of the observations made above.