
(2015) 06 AP CK 0006

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1395 of 2014

M. Salahuddin Ayub

APPELLANT

Vs

The State of Telangana

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 193, 194, 195, 195
Penal Code, 1860 (IPC) — Section 121, 121A, 121-A, 192, 201

Citation : (2015) 4 CCR 216 : (2015) 3 Crimes 452

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : R. Sameer Ahmed, for the Appellant

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—This appeal is preferred under Section 341 of Cr.P.C. by the petitioner, who moved the learned V Additional Metropolitan Sessions Judge, Mahila Court at Hyderabad, seeking the following reliefs:

"1) Take cognizance of this matter, conduct inquiries as required, give specific finding and register a criminal complaint with the appropriate investigating agency against the prospective accused as detailed in this application and deal with the matter as per law enshrined in Section 340 and 195 of the Cr.P.C. in the interest of justice.

2) Call for the relevant General Diary, Case Diary and other records from CCS as this Hon"ble Court deems necessary to corroborate the culpability of the IO as has been discussed in this petition.

3) Take appropriate steps to immediately suspend the said accused Government officers in order to ensure free and fair inquiry, investigation and trial."

2. That petition (SR. No. 1699 of 2014) has been rejected by the learned Sessions Judge by his order dated 25.11.2014. Though the petitioner has settled

the pleadings and filed the criminal appeal in person, but nonetheless, he has engaged Sri R. Sameer Ahmed, an young and energetic lawyer, who has presented the case for considerable length of time.

3. The learned Sessions Judge by the impugned order dated 25.11.2014 upon noticing that the 3rd prayer of the petitioner is to take appropriate steps to immediately suspend the said accused/government officers in order to ensure free and fair enquiry, investigation and trial, had rejected the same as it is beyond the scope of the Court to exercise any such jurisdiction. Sri Sameer Ahmed, learned advocate, has not pressed the issue in this regard and fairly conceded that such a prayer made by the petitioner, who appeared and conducted the matter before the learned Sessions Judge in person, is not tenable.

4. In so far as securing the General Diary, Case Diary and other records from Central Crime Station (CCS) relating to the crime registered against the appellant, the present is not the appropriate stage, is not doubted before me.

5. The petitioner has been charge sheeted for offences under Section 376, 506 and 201 IPC and after a full fledged trial he has been convicted for the offences under Sections 376 and 506 IPC, but was acquitted of the offence under Section 201 IPC, by the Sessions Court.

6. The relevant facts are:

"On 20.07.2010, the Central Crime Police Station (CCS) registered a criminal case No. 173 of 2010, upon a complaint filed by a XI standard student of a school of which the petitioner was promoter-director. One Sri A.P. Anand Kumar, Inspector of Police, Team-I, CCS, was the investigating officer of the crime. Dr. A. Krishnaveni, Assistant Professor of Gynecology, Gandhi Maternity Hospital, Hyderabad, was examined on behalf of the prosecution as PW.6. The prosecution case was conducted by Smt. T. Padmalatha, the learned Additional Public Prosecutor, attached to the V Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad. The petitioner filed the petition (SR. No. 1699 of 2014) before the V Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad, where he was tried in S.C. No. 653 of 2010 and convicted, to take cognizance of the matter, to conduct enquiries as required and give specific findings and register a criminal complaint with the appropriate investigation agency against the aforementioned three prospective accused persons and to deal with the matter as per law, under Sections 340 and 195 of Cr.P.C. in the interest of justice. It is in this context, it has become necessary for this Court to point out to the learned counsel that the petitioner has already preferred criminal appeal against the judgment of conviction and sentence imposed against him in S.C. No. 653 of 2010 and the said criminal appeal is pending in this Court."

7. At the very outset, the role that is to be played by a Public Prosecutor is to be examined. Section 225 of the Code of Criminal Procedure, 1973, (henceforth referred to as the Code) makes it abundantly clear that every trial before a Court of Sessions, the Prosecution shall be conducted by a Public Prosecutor.

Thereafter, Section 226 of the Code enjoins the Public Prosecutor to open his case by describing the charge brought against the accused and then set-forth the evidence by which the prosecution proposes to prove the guilt of the accused. A Division Bench of this Court long back in *Medichetty Ramakistiah and others v. State of Andhra Pradesh* has gone about deciphering the true role of the Public Prosecutor in criminal justice system. It has been expounded that a Public Prosecutor is not merely a representative of the State, but he represents the larger interests of the society.

8. He holds the office of trust and responsibility. Justice Bhimasankaram speaking for the Bench has set out the principle in paragraphs (9) and (10) in the following terms: 9. But what exactly does the word "conduct" import? It conveys the idea of leading and guiding; that is to say, the person who conducts the prosecution determines all important questions of policy involved in the course of the trial and the attitude to be adopted by the prosecution towards material objections raised or demands made by the accused with respect to the evidence.

9. These provisions are clearly conceived in the public interest as well as in the interest of the accused because the position of the Public Prosecutor is, it must be borne in mind, unlike that of any advocate appearing for a private party. It is well-recognised, to use the words of Crompton J., in *R. v. Puddick*, (1865) 4 F and F 497 at p. 499, Public Prosecutors "should regard themselves rather as Ministers of Justice assisting in its administration than as advocates"--an observation which was adopted by the Court of Criminal Appeal in *R. v. Banks*, 1916 2 KB 621.

10. A prosecution, to use a familiar phrase, ought not to be a persecution. The principle that the Public Prosecutor should be scrupulously fair to the accused and present his case with detachment and without evincing any anxiety to secure a conviction, is based upon high policy and as such courts should be astute to suffer no inroad upon its integrity. Otherwise there will be no guarantee that the trial will be as fair to the accused as a criminal trial ought to be. The State and the Public Prosecutor acting for it are only supposed to be putting all the facts of the case before the Court to obtain its decision thereon and not to obtain a conviction by any means fair or foul.

11. The Supreme Court in *Hitendra Vishnu Thakur and Others v. State of Maharashtra and Others* held:

"23.... A public prosecutor is an important officer of the State Govt. and is appointed by the State under the CrPC. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not

agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation"

12. In *Shiv Kumar v. Hukam Chand and another*, the Supreme Court has described the role of a Public Prosecutor in the following words:

"13.. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the Court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/ conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, Public Prosecutor has the added responsibility to bring it to the notice of the Court if it comes to his knowledge."

13. It would be extremely profitable, in this very context, to notice the principle enunciated by the Supreme Court in *N. Natarajan v. B.K. Subba Rao*. In the above case, an application under Section 340 Cr.P.C. was laid by the respondent before the designated Court at Bombay dealing with Bombay blast cases. The respondent has complained that though the Appellant-the Chief Public Prosecutor had submitted to the Court at one stage that the material on record was sufficient to frame charges against various offences arising under Chapter-VI of IPC, however, at a later stage of the proceedings in the same case, the appellant urged the designated Court to drop the charges under Sections 121 and 121-A IPC against all the 157 accused as there was no material. Thus, he made statements which were contradictory to the earlier stand taken by him and left the matter to the discretion of the Court to accept one or the other version to be true in order to secure the ends of justice. Hence, the conduct of the Chief Public Prosecutor would attract the provisions of Sections 192 to 196 and 227 Cr.P.C. In that context the Supreme Court had to consider whether different statements at different stages of the case made by a Public Prosecutor would amount to any offence attracting the provisions of Section 340 of Cr.P.C., and in Paragraphs 5 to 8 held as under:

"What we have to see is whether the different statements at different stages of the case made by the public prosecutor would amount to any offence attracting the provision of Section 340 CrPC. We repeatedly asked the respondent as to how two different stands taken by a counsel would be covered by the offences referred to in provisions of Section 195 CrPC. He tried to explain that there is distinction between submissions made on law and on facts. Submissions based on facts, which would affect the life and liberty of innocent persons are not legal submissions but would amount to causing circumstances to exist so as to amount to fabricating evidence within the meaning of Section 192 IPC."

14. Supposing a counsel presents a preposterous argument or blatantly wrong argument which, he later on corrects himself on realizing the incorrectness of his submission or in a converse situation, having made a correct argument realising that the same would defeat the claim of his client, takes a diametrically opposite stand, could it be said that the said stand would lead to fabricating evidence before the court in any manner which attracts the offences adverted to under Section 195 CrPC. By no stretch of imagination, can we say that the stand of a counsel, howsoever inconsistent it may be at different stages of the proceedings, can amount to offences adverted to under Section 195 CrPC. If the courts begin to issue notice for prosecution or as to why the inquiry should not be made in the matter or to launch a prosecution, no Advocate can function with safety nor can he assist the court with the necessary fearlessness which is required of him. It is not unknown that even in criminal cases even after committal proceedings are over at the stage of sessions trial before charges are framed by the court or at the stage of final arguments, many public prosecutors have entered NOLLE PROSEQUI in cases where they thought that a charge could not be framed or the concerned accused should be acquitted. However, that does not mean that such a stand could not have been taken or attracts wrath of Section 340 CrPC.

15. In the present case, the hearing as to framing of charges has gone on for nearly eight months. Considering the nature of the charges to be framed in the case, the voluminous record of the case presented before the court, the seriousness and magnitude of the matter when several hundred of persons have been killed and property worth crores of rupees has been destroyed, in what manner the case should be conducted is a very serious affair. If the public prosecutor had been supporting at one stage of the proceedings the charge sheet that had been laid in respect of the offences arising under Sections 121 and 121A Indian Penal Code, later on he realises that evidence is not available at that stage of the case, seeks that for the time being these charges need not be proceeded with, and if further investigation discloses such offences as having been committed, supplementary charge sheet would be filed before the court later, we fail to understand as to how such shift in the stand would attract offences enumerated under Section 195 CrPC.

16. The stand of the respondent that we should not interfere in this matter as relevant facts are before the Designated Court and not before this Court does not hold water. What we are examining is whether the complaint made by the respondent, taking it as a whole, deserves to be proceeded with.

17. We are amazed at the manner in which the learned Designated Judge dealt with this matter. While holding that the respondent had locus standi to present the petition, he ought to have applied his mind further as to whether he should proceed further in the matter at all. If he had thoroughly perused the petition, it would have appeared that the submissions made by the learned public prosecutor - however contradictory they may be - in a case cannot amount to fabrication of evidence by any stretch of imagination. The substance of the

complaint should have been looked into and should have been decided. If such caution had been exercised, we are sure, he would not have proceeded further in the matter.

18. We are conscious of the fact that the learned Designated Judge has not exercised his power under Section 340 CrPC as yet to lodge a complaint nor has he proceeded to hold an inquiry but at the same time we must notice that issue of notice on an application of this nature would have serious impact upon the public prosecutor in conduct of the case particularly when at every stage he has got to be conscious whether any of his statement would attract Section 340 CrPC. This is not the kind of atmosphere where a public prosecutor can function effectively, independently and fearlessly. In the conduct of the case a public prosecutor must have full freedom and he can even give up certain cases and request the court to discharge or acquit any accused. If that kind of autonomy is to be enjoyed by the public prosecutor, he cannot be fettered in conducting the proceedings. By initiating the proceedings against him, the learned Designated Judge has crippled the freedom of the public prosecutor in functioning effectively and such a matter certainly results in serious miscarriage in administration of justice and no Advocate would be safe if such proceedings are initiated on the basis of the allegations of the nature made in the complaint. Either the learned Designated Judge has not applied his mind or he has not understood the scope of the application and if he had done either, he would have dismissed the application. That we do now.

19. The Supreme Court in *Sidhartha Vashisht @ Manu Sharma v. State* (NCT of Delhi) has held that the Prosecutor does not represent the investigating agencies but the State.

20. In view of what has been pointed out *supra*, the claim of the petitioner/appellant that proceedings should be initiated against Smt. T. Padmalatha, the learned Additional Public Prosecutor, who conducted the trial in S.C. No. 653 of 2010, which resulted in conviction of the petitioner for the offence under Sections 376 and 506 IPC and acquittal for the offence under Section 201 IPC, cannot be proceeded against.

21. What is the rationale behind the code providing for a provision in Section 340 Cr.P.C. for tackling the menace of perjury?

22. It is true that the object behind the provision is that the twin evils of perjury and fabrication of evidence, which will surely pollute the stream of justice, have to be dealt with a very firm hand. To achieve the objective of eradication of corrosion of the values of the judicial system this provision is introduced. Ultimately, the purpose is to uphold the majesty of the judicial process. Further, the process of decision making by a judicial authority should not be divested from its pursuit of finding truth. The Court must be provided with necessary power, apart from the power which it inherently had, to deal with those who attempted to subvert the process of decision making by judicial authorities and

hence, this provision is made.

23. The role of the Court, which was to deal with the application under Section 340 is not to record any finding as to whether any offence was committed or who committed the same. It is only intended for it to form an opinion that the witness has either intentionally given false evidence or produced fabricated evidence. Further, it is for the Court to firm up its opinion that it is expedient, in the interests of justice to prosecute the witness. Therefore, to the extent that the petitioner herein prayed the learned Sessions Court to record a finding against the prospective accused persons named by him, it is completely ill founded and untenable. The Supreme Court in *Pritish v. State of Maharashtra*, has brought out this feature crisply in Para 8 of the said judgment:

"Be it noted that the court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. In *M.S. Sheriff Vs. The State of Madras and Others*, AIR 1954 SC 397 : (1954) 1 SCR 1144 a Constitution Bench of this Court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into."

(emphasis is brought out by me)

24. The petitioner is making a serious attempt in trying to make out a case by adverting to some contradictions brought out in the deposition of a Doctor, who examined the victim girl when produced before her, upon registering the crime on her report. Similarly, he is trying to point out some contradictions in the deposition of the investigation officer. On such a score, he wants them to be prosecuted.

25. It is apt to notice the context and the background in which the case was laid. The petitioner is not an young man, but one who is wearing a worn out cap. The allegation surfaced against him would reveal the methodical and mischievous manner in which he exploited the innocence and helplessness of tender age girls who were admitted to the Boarding school floated by him. It is brought out how he exploited the unsuspecting victim girl. The complainant, who was examined as PW.1, has narrated as to how the petitioner violated her on several occasions, taking advantage of the fact that her parents live at far off Bombay. The appeal preferred by him to this Court against his conviction is still pending. At this stage, if the application preferred by the petitioner is entertained by the learned Sessions Court, it would amount to opening of a window of suspicion with regard

to guilt of the petitioner recorded by it earlier in the judgment. So that, the petitioner can take advantage of the same when the criminal appeal is considered by this Court. Minor contradictions relating to certain trivial aspects of the matter, are sought to be projected by the petitioner in his petition, as if they amount to tendering false evidence on the substantive charge. During the course of cross-examination of the witnesses examined on behalf of the prosecution, the petitioner/appellant may have succeeded to extract certain contradictions and so long as those contradictions have no bearing upon the substantial mis-demeanor of the petitioner, the Court is bound to ignore the same from serious consideration. Only on a substantial issue, should there be fabrication of evidence or tendering of false evidence knowing it be really so, then the situation warrants initiation of proceedings, otherwise, the precious time of the Court would be lost in pursuing the trivia leaving aside the substantial issues. In such cases, it would not be really expedient, for an already taxed Court, due to enormous dockets pending, to go on pursuits of prosecuting the witnesses.

26. I am, therefore, convinced that the desire behind the petitioner moving the present application is not rooted in preserving the purity of the stream of justice, or to uphold its majesty, but it is only intended to create a doubt in the mind of the Court so as to some how get over the conviction handed down to him by the Sessions Court after a full fledged trial. The design of the petitioner/appellant not being to promote the interests of justice, his application does not deserve any serious consideration.

27. The petition moved by the petitioner is not the most appropriate of the cases where the power under Section 340 Cr.P.C. was required to be exercised by the learned Sessions Judge. Therefore, rightly the petition moved by him has been dismissed. I do not find any warrant to admit this criminal appeal and it is accordingly, dismissed at the admission stage.

28. Accordingly, the criminal appeal is dismissed. No order as to costs.

29. Consequently, the miscellaneous petitions, if any pending shall also stand dismissed.