
(2014) 12 AP CK 0058

In the Andhra Pradesh High Court

Case No : Crp. Nos. 4578 and 4579 of 2014

Madapuram Maddileti Naidu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Arms Act, 1959 — Section 25(1)(b), 25(i)(b)
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 219, 219[2], 223, 319, 407
Explosive Substances Act, 1908 — Section 3, 4(b), 5
Explosives Act, 1884 — Section 4(b), 5
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2014) 12 AP CK 0058

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : N. Naveen Kumar, Advocate for the Appellant

Judgement

B. Chandra Kumar, J.—These CRPs are filed challenging the procedure adopted by II-Additional Sessions Judge, Kurnool at Adoni in continuing to hear and conduct SC. No. 63 of 2009 despite the orders passed by Sessions Judge, Kurnool on 28/10/2014, withdrawing SC. No. 537 of 2008 from the file of Assistant Sessions Judge, Adoni and directing to try the same along with SC. No. 63 of 2009.

2. Heard arguments of Sri S. Niranjan Reddy, learned counsel for the petitioner and Sri Posani Venkateswarlu, learned Public Prosecutor for the State.

3. On the compliant lodged by one Palegari Paramappa Naidu, the Police Gonegondla registered a case in Crime No. 56 of 2008 for the offences under section 147, 148, 324, 307, 302 read with section 149 IPC section 3, and 5 of Explosive Substances Act and section 25(1)(b) of Arms Act on the point of territorial jurisdiction crime was registered as Cr. No. 37 of 2008 of Devanakonda Police Station. During the course of investigation, on 24/5/2008, it is alleged that A-1 approached A. Maddilety, Tahsildar, Kurnool Mandal and voluntarily made

confessional statement, which was recorded by the said Tahsildar and in pursuance of the said confessional statement, the Police arrested A-2 to A-15, A-17 to A-25 and A-27 to A-32 and seized eight hunting sickles and fifteen country made bombs from them. The Police Gonegendla registered a case in Crime No. 59 of 2008 for offences under section 4(b) and 5 of Explosive Substances Act and Section 25(i)(b) of Arms Act read with section 34 of IPC. The concerned Police, who have investigated the cases separately filed two separate charge sheets. The case in Crime No.. 37 of 2008 of Devanakonda Police Station is now registered as SC. No. 63 of 2009 pending on the file of II-Additional Sessions Judge, Kurnool at Adoni. The case in Crime No. 59 of 2008 of Police Station Gonegandla has been registered as SC. No. 537 of 2008 pending on the file of Assistant Sessions Judge, Adoni.

4. It is not in dispute that now the trial in SC. No. 63 of 2009 has been concluded and arguments have been heard and the case is posted for judgment tomorrow. IN SC. No. 537 of 2008 trial schedule was fixed on 17/10/2014 but however the Public Prosecutor sought time, as the material objects were not brought to the court.

5. It may be relevant to mention here that accused in SC. No. 63 of 2009, who are petitioners herein have filed Transfer Petition Nos. 180, 186 and 187 of 2014 under section 407 Cr.P.C. alleging that the learned II-Additional Sessions Judge, Kurnool at Adoni had made certain observations which caused apprehensions to them. It is not in dispute that this court has dismissed those transfer petitions by order dated 20/10/2014. Subsequently, the petitioners herein approached the Hon"ble Supreme Court in SLP. Crl. No. 8597 of 2014, 8598 of 2014 and 8599 of 2014 and the Supreme Court dismissed those petitions on 07/11/2014.

6. As the things stood thus, the learned Assistant Sessions Judge, Adoni addressed a letter to the Sessions Judge, Kurnool on 20/10/2014 stating that when A2 to A-11, A-16 to A-18, A-20 to A-22, A-26 to A-30 and A-1 were arrested, the material objects i.e., country made bombs and hunting sickles were seized from them on the basis of confession and seizure panchanama dated 25/4/2008 and they were produced in SC. No. 63 of 2009 [Crime No. 37 of 2008 of Devanakonda Police Station] and the property required in SC. No. 537 of 2008 was produced in SC. No. 63 of 2009 and it is in the custody of II-Additional Sessions Judge, Kurnool at Adoni and that original panchanamas were also filed in SC. No. 63 of 2009. It is also contended that the evidence regarding arrest and seizure of material objects would be the same in both the cases, it was opined further that if both cases are tried separately it may result in doing injustice and advantageous to the accused. Thus the learned Assistant Sessions Judge, Adoni requested to transfer SC. No. 537 of 2009 to the Court of II-Additional Sessions Judge, Kurnool at Adoni for trial along with SC. No. 63 of 2009. Basing on the said letter of Assistant Sessions Judge, Adoni, the learned Sessions Judge, Kurnool, by order dated 28/10/2014 had withdrawn SC. No. 537 of 2008 pending on the file of Assistant Sessions Judge, Adoni and transferred

the same to the II-Additional Sessions Judge, Kurnool at Adoni for trial along with SC. No. 63 of 2009. The learned II-Additional Sessions Judge, Kurnool addressed a letter to the Principal District and Sessions Judge, Kurnool on 20/11/2014 informing that trial in SC. No. 63 of 2009 was completed long ago and it is at the fagend of disposal. From the correspondence, it appears that there are several other properties seized in Crime No. 59 of 2008 and some of the witnesses are also different in both the cases. However, the panch witnesses appears to be one and the same in both the cases. The learned II-Additional Sessions Judge, Kurnool at Adoni also informed that trial in SC. No. 537 of 2008 is not yet commenced and that there is a direction from this court to dispose of SC. No. 63 of 2009 expeditiously. He has also opined that subsequent case has to be tried separately and the prosecution may obtain certified copy of panchanama and submit the same in subsequent case and SC. No. 537 of 2008 can be tried separately. In view of the letter addressed by II-Additional Sessions Judge, Kurnool at Adoni, the learned Sessions Judge, Kurnool addressed a letter to the II-Additional Sessions Judge, Kurnool at Adoni on 26/11/2014 directing him to take appropriate decision as to the manner of disposal of the above two cases in accordance with law. Thus, it appears that the earlier orders passed by the learned Sessions Judge stands withdrawn.

7. Now the learned counsel for the petitioners submitted that when there is an order of learned Sessions Judge, Kurnool, dated 28/10/2014, the learned II-Additional Sessions Judge, Kurnool at Adoni ought to have stayed all further proceedings and should have complied with the orders of Sessions Judge, Kurnool. It is further submitted that the action of learned II-Additional Sessions Judge, Kurnool at Adoni in ignoring the orders of learned Sessions Judge, Kurnool and continuing to hear the proceedings amounts to disobeying the orders of learned Sessions Judge, Kurnool. It is further submitted that the procedure adopted by the learned II-Additional Sessions Judge, Kurnool at Adoni is contrary to judicial discipline and the lower courts have to follow and respect the directions of superior courts. It is further submitted that the hearing of SC. No. 63 of 2009 continued on 05/11/2014, 6/11/2014, 12/11/2014, 13/11/2014, 14/11/2014 and 17/11/2014.

8. Sri Posani Venkateswarlu, the learned Public Prosecutor submits that infact there was no necessity for the police to register a separate case in Crime No. 59 of 2008 in Gonegandla Police Station and there was no need to file separate charge sheet. It is also his submission that now the Public Prosecutor conducting SC. No. 537 of 2008 on the file of Assistant Sessions Judge, Adoni has addressed a letter to the Superintendent of Police, Kurnool stating that there is no need to continue SC. No. 537 of 2008 since the trial in SC. No. 63 of 2009 has been concluded. It is also his submission that the petitioners have knowledge since beginning that two separate cases have been registered, and pending before different courts and that they are accused in both the cases, but they have not taken any steps as required under section 223 Cr.P.C. It is further submitted that infact during the course of investigation the names of A-47 and A-48 were

deleted by the Investigating Officer but during the course of trial, the trial Judge while exercising powers under section 319 Cr.P.C., has added them as accused in SC. No. 63 of 2009. It is further submitted that the prosecution case was closed long back and arguments have been heard, transfer petitions filed by the petitioners have been dismissed by this court and Supreme Court. In the above circumstances, the question of trying both cases jointly at this stage does not arise. It is also his submission that the present CRPs are not maintainable under Article 227 of the Constitution.

9. As seen from the record, it appears that originally the case was registered at Gonegendla Police Station in Crime No. 59 of 2008 for offences under section 4(b) and 5 of Explosive Substances Act and Section 25(1)(b) of Arms Act read with section 34 of IPC. As the scene of offence is near Kothagudepadu bus stop on the road leading to Devanakonda, Kurnool within the limits of Devanakonda Police Station the case was transferred to Devanakonda Police Station and renumbered as Crime No. 37 of 2008. It is also not in dispute that on 27/5/2008 when A-1 surrendered, and certain other accused were arrested and a case was registered in Crime No. 59 of 2008 for offences under section 4(b) and 5 of Explosive Substances Act and Section 25(1)(b) of Arms Act read with section 34 of IPC.

10. It has to be seen that Sessions Case was registered as SC. No. 537 of 2009 on the file of Assistant Sessions Judge, Adoni in the year 2009. Similarly SC. No. 63 of 2009 was registered on the file of II-Additional Sessions Judge, Kurnool at Adoni in the year 2009, therefore, it is clear that petitioners herein, know very well about the pendency of these cases since 2009. Admittedly no petition or memo was filed before courts at Adoni i.e., either before II-Additional Sessions Judge, Kurnool at Adoni or before Assistant Sessions Judge, Adoni to club both the cases together for conducting joint trial. It appears that accused never felt it necessary for conducting joint trial.

11. It is clear from proviso to section 219[2] Cr.P.C. that application from the accused is necessary.

Proviso to Section 219 Cr.P.C. is as follows:

219 [2] Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code [45 of 1860] or of any special or local law:

Provided that, for the purpose of this section, an offence punishable under section 379 of the Indian Penal Code [45 of 1860] shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

12. Thus, it is clear that the accused should specifically plead that if separate

trial is conducted it may prejudicially affect their interest. Admittedly, no such applications have been filed before lower courts. Therefore, it has to be seen whether the petitioners, at this stage can seek joint trial? The cause of action, according to the petitioners arose when the learned Sessions Judge, Kurnool passed orders on 28/10/2014. As seen from the correspondence between II-Additional Sessions Judge, Kurnool at Adoni and the learned Sessions Judge, Kurnool, it is clear that the learned Sessions Judge has permitted the II-Additional Sessions Judge to take appropriate decision and proceed with the case in accordance with law. This means the earlier order issued by the Sessions Judge, Kurnool stands withdrawn. The docket orders dated 5/11/2014 to 17/11/2014 are not available.

13. It is not necessary to decide whether the Police Officer who registered Cr. No. 59 of 2008 was justified in registering separate case or not.

14. As and when it appears that any case is to be tried with another case on the ground that evidence may be tried together overlapping in both the cases, it is for the concerned police officers or to the accused to take steps at the initial stage. Now in this case charges have been framed, trial commenced and no steps were taken to club both the cases together at the initial stage or atleast before commencement of trial. Now much water has flown. At this stage, it is not possible to club both cases together. Moreover, in view of the submissions of Sri Posani Venkateswarlu, learned Public Prosecutor submitted that learned Public Prosecutor conducting the case in SC. No. 537 of 2009 has opined that SC. No. 537 of 2009 may be withdrawn in view of conclusion of trial in SC. No. 63 of 2009. Of course the withdrawal of case has to be done with the permission of the court. No useful purpose will be served by passing any orders in these revision petitions at this stage. The Police Officers conducting investigation should conduct proper investigation and take proper steps. Even other wise when charges have to be framed or when arguments are being heard on charges, the concerned Public Prosecutor or the defence counsel or the learned Sessions Judges hearing the case should take appropriate steps at the initial stage to see that cases are clubbed or joint trials are conducted in similar circumstances.

15. The Sessions Judges while conducting cases not only Sessions Judges, Judges while hearing the cases should not make any comments so as to create any apprehension in the minds of accused. No comments should be made on merits of the case. At present, there are unscrupulous crooked opportunists who take advantage of comments of the Judge. They try to read the mind of the Judge and may misuse his name. Unfortunately, we are at a stage, where cheating of clients has become the order of the day. Corruption is slowly creeping into judiciary. The faith of the people in administration of justice is eroding day-by-day due to allegations of corruption and huge pendency of cases. Therefore, the Judges should not make any unnecessary comment which may cause prejudice either to the accused or to the prosecution at any stage. But at the same time, there should be fair investigation and impartial trial. Judges should

not have any kind of prejudice. At the same time, any kind of interference either with fair investigation or trial should be allowed. Any attempt to prolong or postpone the trial or scuttle administration of justice should not be allowed and dealt with iron hand. Neither the accused nor prosecution should dictate terms to the Judges. The Judges should deliver judgment without any fear or favour. Of course, their judgment should be based on correct and proper appreciation of evidence, Subject to the observation made supra, these CRPs are dismissed at the admission stage.

16. Registry is directed to communicate the result of this case to the learned Sessions Judge, Kurnool and the II-Additional Sessions Judge, Kurnool at Adoni over telephone.