
(2000) 06 AP CK 0070

In the Andhra Pradesh High Court

Case No : Criminal P. No. 1474 of 2000

Maddu Lakshmana Rao

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 12-06-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 482
Prevention of Corruption Act, 1988 — Section 13

Citation : (2000) 4 ALD 663 : (2000) 2 ALD(Cri) 147 : (2000) 2 ALT(Cri) 414

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. M. Chandrasekhara Rao, for the Appellant; Mr. G. Pedda Babu, SC for SPE and ACB, for the Respondent

Judgement

1. This petition u/s 482 of Cr.PC seeks quashing of the proceedings in FIR I/ACB-VJA/96 registered at police station, ACB, Vijayawada Range in which the petitioner is accused of offence u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988.

2. The impugned first information report as registered would disclose that the District Inspector, Krishna, ACB, Vijayawada range by name Sri N. Prasad on the basis of which the first information report has been registered, has received the information that the accused being a public servant has amassed assets disproportionate to the known sources of income. The first information report mentions the lists of certain assets possessed by the accused and also mentions the estimated income of the petitioner.

3. The only ground on which the proceedings in the investigation are sought to be quashed is that the said N. Prasad, who is the complainant in the case and on the basis of whose complaint the first information report has been registered, has been appointed as the Investigating Officer in the case. The affidavit filed on behalf of the petitioner in this Court discloses that several documents, copies of which have been filed, unmistakably indicate that the said Inspector, first

respondent herein, has been acting as an Investigating Officer.

4. In fact, the learned Standing Counsel for the Anti Corruption Bureau, Sri G. Pedda Babu, does not controvert the fact that the first informant is the Investigating Officer in the case.

5. The learned Counsel for the petitioner relies on the judgment of the Supreme Court in the case of Bhagwan Singh v. State of Rajasthan 1975 SCC (CrL.) 737 in support of his contention that the complainant cannot act as an Investigating Officer in a criminal case against the accused. The following observations appears significant:

"We may first refer to a rather disturbing feature of this case. It is indeed such an unusual feature that it is quite surprising that it should have escaped the notice of the trial Court and the High Court. Head Constable Ram Singh was the person to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances. Head Constable Ram Singh could undertake the investigation of the case. How could the complainant himself be the investigator ?"

6. To the same effect, the Kerala High Court in the case of Xavier v. State of Kerala 1998 CrLJ 3182 held that the complainant being a police officer cannot be an Investigating Officer and it has been observed that it is an incurable infirmity. Similarly, in the case of Ram Kumar Singh v. State of Rajasthan 1994 (2) Cri 277 the Rajasthan High Court following the judgment of the Supreme Court referred to above also came to an opinion that the complainant cannot be the investigator.

7. From this, it is contended that the complainant cannot be permitted to act as an Investigating Officer against the accused. There is some substance in this contention.

8. The learned Standing Counsel for the Anti-Corruption Bureau however has tried to make two points which according to him constitute distinguishing features of the case before the Supreme Court on the basis of facts in that case. It is pointed out that the allegations in that case were that the Investigating Officer himself was offered bribe by the accused.

9. It is true that in the case before the Supreme Court Bhagwan Singh v. State of Rajasthan (supra), the star witness of the prosecution on whose evidence the result of the prosecution case hinges was the Investigating Officer. Though, in the case before me, the first informant may not be required to depose anything against the accused on the basis of his personal knowledge inasmuch as he gave the report on the basis of the credible information received by him that the accused has amassed assets disproportionate to the known source of income. This does not seem to affect the general principle that the complainant should

not be the Investigating Officer against the accused. Even if the complainant's evidence would not be based on his personal knowledge, but the very fact that the complainant received some information which he believed to be true and on the basis of which he gave the report, certainly affects the investigating process. The complainant normally is expected to seek material in support of his complaint. If he himself is the Investigating Officer, the entire concept of independent and unbiased investigation would be jeopardised. This factual difference does not make any difference to the broad principle that the complainant should not be the Investigating Officer in a case registered by the police.

10. There is another aspect which needs to be mentioned. The facts of the case before the Supreme Court *Bhagwan Singh v. State of Rajasthan* (supra) would disclose that the matter came up before the Supreme Court in an appeal after the trial. It could be argued that the observations of the Supreme Court do not lay down as a matter of law that in every case where the person shown as the complainant is the Investigating Officer, the trial must be deemed to have been vitiated and a nullity. This is clear from the following observations of the Supreme Court in the case of *Bhagwan Singh* (supra).

"This is an infirmity which is bound to reflect on the credibility of the prosecution case."

11. This observation indicates that the infirmity of the complainant being the Investigation Officer has far reaching significance affecting the credibility of the prosecution case. But, whether this could be interpreted as the Supreme Court having laid down that in every such a case, irrespective of the facts, the prosecution and the result of the trial are vitiated does not arise for consideration in this case as the case is at the investigation stage.

12. In this case, the question is raised at the earliest stage when the investigation is still in progress. There is no point in allowing the investigation to continue with this infirmity and if it results in filing of the charge-sheet, to allow the trial to proceed and then at the end of the trial to consider the question, whether the fact of the complainant being the Investigating Officer has adversely affected the credibility of the prosecution case. When the matter is brought to the notice of the Court at the earliest and where there is an opportunity to correct the malady at the earliest stage, there is no point in allowing the proceedings of investigation to continue with this infirmity.

13. Under these circumstances, this petition is allowed. The proceedings in the investigation subsequent to the recording of first information report are directed to be quashed. This does not preclude further investigation by a competent officer other than the complainant.