
(2013) 12 AP CK 0005

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5066 of 2010

N. Goverdhana Babu

APPELLANT

Vs

Palyam Ramasubrahmanyam

RESPONDENT

Date of Decision : 31-12-2013

Acts Referred:

Citation : (2013) 12 AP CK 0005

Judgement

R. Kantha Rao, J.—This criminal petition is filed u/s 482 Cr.P.C. to quash the proceedings in C.C. No. 7/2010 on the file of the Court of the Judicial Magistrate of First Class, Pakala, Chittoor District.

2. I have heard Sri V.V. Laxminarayana, learned counsel appearing for the petitioner/accused, Sri D. Purnachandra Reddy, learned counsel appearing for the 1st respondent/de facto complainant and the learned Public Prosecutor, representing the 2nd respondent/State.

3. The short facts necessary for considering the criminal petition may be stated as follows:

The petitioner herein is the complainant in C.C. No. 164/2004 on the file of the Court of the Judicial Magistrate of First Class, Pakala. The said case was filed against two persons viz., Purushothamnaidu and K. Doraswamy, alleging commission of offence punishable under sections 417, 420, 468 and 463 of IPC. In the course of the trial of the said case, the complainant was examined in chief as P.W. 1 on 10.11.2008 and thereafter he was cross examined on 13.11.2008. On behalf of the complainant, one B. Ramasubramanyam was examined in chief as a witness (P.W. 2) on 19.11.2008. The matter was posted to 25.11.2008 for cross examination of P.W. 2. On that day, according to the petitioner, he developed chest pain and was admitted in Government Hospital, Chittoor and was kept in observation of the Doctor till 26.11.2008.

4. It is the version of the petitioner that on 25.11.2008 he came to know that P.W. 2-Ramasubramanyam gave a representation to the Judicial Magistrate of

First Class, Pakala alleging that he threatened him to give evidence in the said case in a particular way. It seems that the learned Magistrate recorded the statement of the said Ramasubramanyam and forwarded the same to the Inspector of Police, Pakala for registration of a crime and for investigation into the offence alleged. On receipt of the same, the Inspector of Police registered a case in Cr. No. 151/2008 of Pakala Police Station against the petitioner herein for the offences punishable under sections 195-A and 506 of IPC.

5. It is the further version of the petitioner herein that he approached this Court and filed a criminal petition being CrI. P. No. 723/2009 u/s 482 of Cr.P.C. seeking to quash the investigation in the aforesaid crime, whereupon, this Court stayed investigation with regard to the offence punishable u/s 195-A of IPC and directed the police to conduct investigation in respect of the offence punishable u/s 506 of IPC. According to the petitioner, he was not aware of filing of the charge sheet by the police in the aforesaid crime. Subsequently, the police, however, on 17.07.2009 filed another charge sheet alleging only commission of offence punishable u/s 506 of IPC by deleting the offence punishable u/s 195-A of IPC. According to the petitioner, the police filed second charge sheet basing on the same facts and on the same investigation, basing on which, the learned Magistrate took cognizance of the offence alleged and issued process to the petitioner. Feeling aggrieved, the petitioner filed the present criminal petition to quash the proceedings in C.C. No. 7/2010 on the file of the Judicial Magistrate of First Class, Pakala, Chittoor District.

6. The allegations mentioned in the statement made by the de facto complainant to the Magistrate as well as the contents of the charge sheet disclose that the petitioner abused the de facto complainant in vulgar language and threatened him to give evidence in a particular manner otherwise he put some Ganja and Sandalwood in his house and would get false cases foisted through police and send him to jail. It is also mentioned in the charge sheet that some persons who are present in the Court premises, viz., Purushothamnaidu, Doraswamy, Masthan, Ramakrishnamanaidu etc., witnessed the incident.

7. Apart from contending that the allegations made in the First Information Report as well as in the charge sheet are so absurd and inherently improbable, the learned counsel appearing for the petitioner contended that since the learned Magistrate recorded the statement of the de facto complainant, he has either to take cognizance of the offence alleged or to dismiss the complaint, but shall not order investigation by the police. Therefore, in the opinion of the learned counsel appearing for the petitioner, the charge sheet filed in C.C. No. 7/2010 on the file of the Court of the Judicial Magistrate of First Class, Pakala basing on the investigation directed by the learned Magistrate being illegal is liable to be quashed in exercise of powers u/s 482 of Cr.P.C.

8. On the other hand, it is contended by the learned counsel appearing for the 1st respondent/de facto complainant that the learned Magistrate did not take cognizance of the offence and he ordered only investigation u/s 156(3) of Cr.P.C.

In the alternative, the learned counsel appearing for the 1st respondent/de facto complainant contended that even after taking cognizance of the offence also, the Magistrate is empowered to direct an investigation to the police authorities u/s 202 of Cr.P.C.

9. As regards the first contention advanced by the learned counsel appearing for the petitioner that since the de facto complainant gave his evidence in chief as P.W. 2, absolutely it was unnecessary for the petitioner to threaten him to give evidence in a particular way and therefore, the allegation itself is absurd and inherently improbable, I would like to state that from the facts of the case, the basic allegation appears to be that the petitioner threatened the de facto complainant to depose in a particular way, the petitioner might not be exactly knowing about the stage of the case and the consequences of the evidence which was already given by the de facto complainant. Further, in the charge sheet filed by the police after thorough investigation it mentioned that the petitioner threatened the de facto complainant on several occasions earlier not to depose against him. Therefore, in my view, this is a question of fact, which can be decided only during the trial. The charge sheet discloses that the petitioner abused and intimidated the de facto complainant and the same was witnessed by several witnesses. Therefore, I do not accede to the contention advanced on behalf of the petitioner that the allegations mentioned in the First Information Report as well as charge sheet are absurd and inherently improbable.

10. As regards the other question as to whether the procedure adopted by the learned Magistrate is either irregular or illegal, under the Code, the Magistrate can invoke his powers u/s 156(3) of Cr.P.C. at pre-cognizance stage to direct investigation by the police, he can also by exercising his powers can direct investigation u/s 202 of Cr.P.C.

11. The learned counsel on either side relied on some authorities. The learned counsel appearing for the petitioner relied on two decisions of the Supreme Court in Rameshbhai Pandurao Hedau Vs. State of Gujarat, and Suresh Chand Jain Vs. State of Madhya Pradesh and Another, , whereas the learned counsel appearing for the 1st respondent/de facto complainant relied on four decisions of the Supreme Court in Rameshbhai Pandurao Hedau Vs. State of Gujarat, , Mohd. Yousuf Vs. Smt. Afaq Jahan and Another , Dilawar Singh Vs. State of Delhi, and Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, in support of their respective contentions.

12. Suffice it to extract the legal position enunciated by the Supreme Court in one of those decisions i.e. in Dilawar Singh Vs. State of Delhi, hereunder.

13. Chapter-XII of the Cr.P.C. contains provisions relating to "information to the police and their powers to investigate", whereas Chapter-XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there

could be a common factor i.e., complaint filed by a person. Section 156, falling within Chapter-XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter-XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section-202 is different from the investigation contemplated in Section 156 of the Cr.P.C.

15. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter-XV of the Cr.P.C. A reading of Section 202(1) of the Cr.P.C. makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e., "or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding".

13. Chapter-XII of Code of Criminal Procedure deals with the powers of the Police Officer to investigate into cognizable offence without the authorization of the Magistrate. However, the Magistrate also u/s 156(3) of the Code can order such an investigation. The investigation contemplated u/s 156(3) of Cr.P.C. is therefore at the pre-cognizance stage. The investigation contemplated u/s 202 of Cr.P.C. is only for a limited purpose enabling the Magistrate to take a decision as to whether there is sufficient ground to proceed further against the accused person in the case. After receiving the report relating investigation ordered u/s 202 of Cr.P.C., the Magistrate has to take a decision as to whether the cognizance can be taken or not. Basing on the decision so taken, the Magistrate may either dismiss the complaint u/s 203 of Cr.P.C. or may proceed further as required in Chapter-XIV of the Code of Criminal Procedure.

14. In the instant case, the contention of the learned counsel appearing for the petitioner is that since the Magistrate recorded the statement of the de facto complainant, he has either to take cognizance or dismiss the complaint, but cannot direct investigation by the police. It is true that for directing investigation by the police u/s 156(3) of Cr.P.C. the Magistrate need not record the statement of the complainant, but at the same time, it is erroneous to presume that when once the Magistrate recorded the statement of the complainant, he made up his mind either to take cognizance of the offence or to dismiss the complaint. "Taking cognizance of offence by the Magistrate" has not been defined in the Code. Generally speaking "taking cognizance" means applying judicial mind by the Magistrate to the facts before him for the purpose of proceeding under the provisions of the Chapter-XIV of the Code of Criminal Procedure.

15. In the instant case, the de facto complainant made a complaint to the Magistrate. The Magistrate it seems recorded his statement to ascertain about

the allegations made in the complaint. In my view, it cannot be said that the Magistrate had made up his mind either to take cognizance or to dismiss the complaint. Though under law the Magistrate is not required to record the sworn statement of the complainant if he intends to direct an investigation to the police u/s 156(3) of Cr.P.C., mere recording the statement of the complainant does not preclude the Magistrate from exercising power u/s 156(3) of Cr.P.C. to forward the case for investigation by the police authorities. The expression cognizance of the offence would liberally mean taking notice of the offence and also proceeding to initiate judicial proceeding when the Magistrate had taken down the narration made by the complainant took note of it and directed the police to investigate into the offence u/s 156(3) Cr.P.C. Obviously therefore the Magistrate had not yet taken a decision to initiate judicial proceedings against the accused.

16. From the facts of the present case it is clear that the Magistrate has recorded the statement of the complainant to ascertain the allegations levelled in the complaint, after so ascertaining, the Magistrate used his discretion to forward the complaint to the police for investigation. The course adopted by the Magistrate therefore according to me is neither irregular nor illegal requiring this Court to quash the charge sheet in exercise of powers u/s 482 of Cr.P.C.

17. In view of the above, there are no valid grounds to quash the proceedings in C.C. No. 7/2010 on the file of the Judicial Magistrate of First Class, Pakala, Chittoor District in exercise of powers u/s 482 of Cr.P.C. Consequently, the Criminal Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed in consequence.