
(2014) 03 AP CK 0176

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 12725 of 2010

Punugoti Naga Kiran Kumar

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 506

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2014) 2 ALD(Cri) 39 : (2015) 1 ALT(Cri) 21

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Nimmagadda Satyanarayana, Advocate for the Appellant

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor representing the State. Though served with notice, the second respondent did not appear in person or through counsel.

2. This Criminal petition is filed to quash the charge sheet in S.C. No. 29 of 2010 on the file of the Special Judge for trial of Cases under S.C. and S.T. (POA) Act, Prakasam District at Ongole, filed against the petitioner alleging commission of offences punishable u/s 506 of I.P.C., and Section 3(1)(x) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act").

3. The brief facts of the case, which is sought to be quashed may be stated as follows:- The petitioner is the Panchayat Secretary of Vallur village, Tangutur Mandal of Prakasam District. Earlier, he worked as Panchayat Secretary of Boddulurivaripalem village of Ongole rural Mandal. The second respondent-de facto complaint was the Sarpanch of Boddulurivaripalem village Gram Panchayat and he belongs to Madiga community, which is a schedule caste. The petitioner

belongs to Brahmin community, which is a forward caste.

According to the second respondent-de facto complainant, taking advantage of his innocence and illiteracy, the petitioner who was discharging duties as Panchayat Secretary from 1-6-2006 to August, 2007 of Gram Panchayat, Boddulurivaripalem village, made him to put his signatures on some cheques and other papers, withdrew the funds of Gram Panchayat and utilized them for his own purposes. The second respondent reported the matter to the higher authorities and the District Panchayat Officer, Ongole caused an enquiry conducted in this regard and obtained a report. In the meanwhile, the petitioner was transferred to Vallur village.

While so, on 24-3-2008 around 6.00 PM., the second respondent went to MPDO's Office, Ongole and noticed the petitioner in front of MPDO's Office and requested him to reimburse the misappropriated public fund of Rs. 35,500/- (Rupees thirty five thousand, five hundred only) pertaining to Gram Panchayat Boddulurivaripalem village. On that a wordy quarrel took place between the petitioner and second respondent, during which the petitioner allegedly abused the second respondent in filthy language, touching his caste, stating that he would not pay the amount and the second respondent could do whatever he wanted. L.Ws.2 to 8 witnessed the incident, pacified the issue and sent both of them away.

Two days later i.e., on 26-3-2008 at 9.00 PM., the second respondent lodged a type written report with the Assistant Sub Inspector of Police, II Town Police Station, Ongole. Basing on the said report, a case in Crime No. 72 of 2008 for the offences punishable u/s 506 of I.P.C., and Section 3(1)(x) of the Act was registered. The Sub Divisional Police Officer, Ongole conducted investigation and filed charge sheet against the petitioner, which is now pending as S.C.No. 29 of 2010 on the file of the Special Judge for trial of cases under SC and ST (POA) Act, Prakasam District at Ongole.

4. It is submitted by the learned counsel appearing for the petitioner that in fact, the second respondent misappropriated the funds of Gram Panchayat, on the representations made by some of the villagers of Gram Panchayat, the District Panchayat Officer caused an enquiry to be conducted into the allegations of misappropriation and the Officer conducted an enquiry and submitted a report to the District Panchayat Officer. Before the Enquiry Officer, the petitioner submitted a detailed statement to the District Panchayat Officer stating that the entire records pertaining to the Gram Panchayat were handed over to the Sarpanch on 8-11-2006 and the Sarpanch kept them in his custody and also passed a receipt to him and the said fact was also brought to the notice of other members of Gram Panchayat and Upa-Sarpanch and obtained their signatures. In the said statement, which was submitted much prior to the First Information Report in the present case, the petitioner categorically stated that the second respondent threatened him to implicate in a false case under the Act as the second respondent belongs to schedule caste.

It is further submitted by the learned counsel that after receiving enquiry report, the District Panchayat Officer cancelled the cheque power of the second respondent. Challenging the same, the second respondent filed W.P. No. 7970 of 2008 before this Court and the said writ petition was dismissed, holding that an alternative remedy was available to him under the provisions of Andhra Pradesh Panchayat Raj Act, 1994 by way of an appeal.

5. On the other hand, the learned Additional Public prosecutor submitted that since the allegations leveled in the First Information Report prima facie make out an offence punishable u/s 506 of I.P.C., and Section 3(1)(x) of the Act, the contentions urged by the petitioner can only be decided during the course of trial after the evidence is let in by both parties and this is not a fit case to quash the proceedings at the threshold.

6. For the purpose of pronouncement upon the issue as to whether the charge sheet can be quashed by invoking the powers u/s 482 of Cr.P.C., certain crucial aspects in this case have to be examined.

7. Basing on the enquiry report received, the District Panchayat Officer suspended the petitioner, who was the panchayat secretary on the ground that he failed to conduct meetings of the Gram Panchayat properly. But, at no point of time, the panchayat secretary was held guilty of misappropriation and no amounts were ordered to be recovered from him. In fact, the Collector, Panchayat Wing issued a notice dated 25-5-2008 to the second respondent stating that he misused his powers and misappropriated Rs. 35,500/- (Rupees thirty five thousand, five hundred only) and failed to give an explanation to the show-cause notice issued and therefore, he has to repay the aforesaid amount within seven days from the date of receipt of the notice.

In the explanation to the show-cause notice issued to him, the petitioner gave a statement to the Divisional Panchayat Officer on 16-11-2007, stating that the Sarpanch threatened him to incorporate false resolutions in the minutes book by abusing him in filthy language and also threatened him stating that he belongs to schedule caste and he would foist false cases against him under the provisions of the Act and he would be sent to jail. This statement was given much prior to the report lodged by the second respondent with the police.

8. Further, the villagers of Boddulurivaripalem submitted a report to the Collector, Prakasam District stating that the Sarpanch, without paying heed to the words of the petitioner who was the panchayat secretary, withdrew the panchayat funds and misused the said amount, when the petitioner asked the second respondent Sarpanch to submit the receipts, the second respondent told him that he need not show any receipts for the amounts drawn by him and if the petitioner complains against him to the higher authorities, he would foist false case against him under the Act. The said representation was sent to the Collector by 51 villagers on 8-10-2007. The aforesaid representation was also much prior to the lodging of the report by the second respondent. Subsequently, the suspension

order passed against the petitioner was revoked and he was reinstated.

9. More over, the MPDO, Mandal Parishad Tanguturu addressed a letter to the Sub Divisional Police Officer, Ongole, stating that on 24-3-2008 the petitioner who was a panchayat secretary was on duty at Mandal Parishad Office, Tangutur from 11.00 AM., to 3.00 PM., and subsequent thereto, he worked in Computerisation Programme of Indiramma Pensions Scheme along with one R. Sanjeeva Rao-Panchayat Secretary till 7.00 P.M., on his instructions.

10. This Court is conscious of the fact and it should not assume the role of trial Court and evaluate evidence. At the same time, while exercising the jurisdiction u/s 482 of Cr.P.C., this Court cannot adopt a casual or mechanical approach to the facts before it. It is under a duty to scrutinize the facts in the light of the circumstances of the case. Merely because the First Information Report contains some allegations attracting the offence punishable u/s 3(1)(x) of the Act and the fact that a charge sheet was lodged after investigation, it cannot refrain from examining the absurdity or falsity of allegations mentioned in the FIR/charge sheet. If the allegations mentioned in the FIR/charge sheet are inherently improbable or apparently absurd, this Court can proceed to quash the FIR/charge sheet in exercise of powers u/s 482 of Cr.P.C. notwithstanding the fact that the allegations mentioned in the FIR/charge sheet technically attract the offence punishable under the Act or any other offence under the Penal Code.

11. In the instant case, the most crucial aspect which requires consideration is that long prior to the lodging of report, the second respondent-de fact complainant threatened the petitioner to implicate him in false cases under the provisions of the Act. This fact was brought to the notice of the Collector, Panchayat Wing by the petitioner in his statement submitted to him and also by the villagers in their representation to the Collector. Thus, it is submitted on behalf of the petitioner that earlier to the lodging of the report, the second respondent threatened the petitioner to implicate him in false charges under the provisions of the Act which finds place in the above two documents. Therefore, there is documentary proof in regard to the statement made by the petitioner and obviously threats were hurled by the second respondent to implicate the petitioner in false charges under the provisions of the Act much prior to the lodging of report by him in the present case.

12. The version of the second respondent is that when he asked the petitioner who was present in front of the MPDO's Office to repay the misappropriated amount, the incident took place. In fact, the Collector directed the second report to repay the misappropriated amount. The petitioner was never directed to repay any such amount. The petitioner was suspended only on the charge of not properly conducting the meetings of Gram Panchayat and subsequently he was reinstated. When no notice was served on the petitioner to repay the misappropriated amount, he cannot be expected to repay the same. Therefore, the version that when the second respondent asked the petitioner to repay the misappropriated amount, an altercation took place between both of them and in

the course of the said altercation, the petitioner abused the second respondent in his caste name seems to be inherently improbable and ex facie false. It would clearly appear that the said allegation was invented by the second respondent for the purpose of fixing the petitioner in a false charge under the Act.

13. The main object of exercise of powers u/s 482 of Cr.P.C., is to prevent abuse of process of law and miscarriage of justice. For such purpose, this Court can certainly subject the allegations leveled in the FIR/charge sheet to scrutiny to find as to whether there is falsity or absurdity which is inherent in the very allegations. In the instant case, the allegations made in the First Information Report and also in the charge sheet are prima facie absurd and false and if on the basis of the said allegations, the petitioner who is a panchayat secretary is forced to undergo the ordeal of Sessions trial, it is nothing but abuse of process of law. This Court therefore is of the considered view that this is a fit case, wherein the charge sheet can be quashed in exercise of powers u/s 482 of Cr.P.C.

14. For the foregoing reasons, the entire proceedings in Sessions Case No. 29 of 2010 on the file of the Special Judge for trial of Cases under S.C. and ST (Prevention of Atrocities) Act, Prakasam District at Ongole are quashed.

Accordingly, the Criminal Petition is allowed. The Miscellaneous Petitions pending if any shall stand closed.