

(1996) 01 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 2498 and 2529 of 1994

S. Dashmantha Reddy and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 22-01-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1), 195, 195(1), 197, 344
Penal Code, 1860 (IPC) — Section 107, 120B, 172, 173, 176

Citation : (1996) 2 ALD 21 : (1996) 1 ALD(Cri) 484 : (1996) 1 ALT(Cri) 424 :
(1996) 2 APLJ 133 : (1996) 1 APLJ 133 : (1996) CriLJ 1804

Hon'ble Judges : D. Reddeppa Reddi, J

Bench : Single Bench

Advocate : R. Subhash Reddy, for the Appellant; Addl. Public Prosecutor, V. Venkataramana, for the Respondent

Judgement

1. The accused, eight in number, in Calendar Case No. 114 of 1994 on the file of the Judicial Magistrate of First Class, Gazwel, Medak District, have filed these two petitions u/s 482 of the Code of Criminal Procedure (for short "the Code") to quash the case taken cognizance of against them by Sri P. Prabhakar, the then Judicial Magistrate of First Class, Siddibet, Medak District, for offences under sections 172, 173, 176, 177, 181, 182, 193 read with Sections 107 and 120B, I.P.C., on the complaint given by himself on 8-4-1994 u/s 190(1)(c) of the Code. A-2, A-6, A-7 and A-8 are the petitioners in Criminal Petition No. 2498 of 1994. They are the practising advocates at Siddipet. A-1, A-3, A-4 and A-5 are the petitioners in Criminal Petition No. 2529 of 1994. A-2 is the advocate for A-1, A-5 is the sister of A-1. The interse relationship of other accused is not clearly stated in the complaint.

2. The facts, as culled out from the complaint, that are relevant for the purpose of these petitions may be stated thus : On 28-2-1994, A-1 made an application - Cri. M.P. No. 458/94 through her counsel (A-2), for issuance of search warrant u/s 197 of the Code in the Court of the Judicial Magistrate of First Class, Siddipet, complaining that her grand-daughter aged about 9 years and grandson aged

about 7 years (children of her deceased son) were wrongfully confined in the house of one Bitra Lakshminarayana. Again on 3-3-1994, she made another application - Crl. M.P. No. 489/94 in the same court for the same relief and through the same counsel against one Gadipally Krishna Moorthy of Sattupalli, Khammam District. Thereupon, the court appointed A-8, an advocate at Siddipet, as Commissioner, clothing him with a search warrant. He executed the warrant and produced the minor children before the court. On 4-3-1994, they were entrusted to A-1, duly obtaining an undertaking from her that she would produce them before the court as and when directed. Then on 8-3-1994. Smt. Sarada, the mother of the minor children filed Crl. M.P. No. 523/94 seeking custody of her children, duly serving a copy of the same on A-2. On the same petition, when the court directed A-1 and A-2 to produce the minor children, they failed to comply the same. Instead, A-1 on the advice of A-2 filed O.P. No. 136/94, in the court of the District Judge, Medak at Sangareddy, on 9-3-1994 with false allegations and obtained interim orders in I.A. No. 349/ 94. However, Smt. Sarada, the mother of the minor children having got the said order suspended by the High court filed Crl. M.P. No. 574/94 on 18-3-1994, wherein, the court directed the Sub Divisional Police Officer, Siddipet, to produce A-1 and the minor children. Accordingly, he produced them before the court on 19-3-1994. Thereupon, the Court, while passing final orders in Crl. M.P. No. 574/94 initiated proceedings against A-1 u/s 344 of the Code by registering S.T.C. No. 1/94. She was also given a show cause notice to explain as to why penal action should not be taken against her. Likewise, A-2 was also served with a notice on 28-3-1994 to show cause why the matter should not be referred against him to the Bar council of Andhra Pradesh and why penal action should not be initiated against him. It is stated that while A-2 submitted his explanation, A-1 did not choose to submit her explanation till 6-4-1994. At that stage, the court having stopped the proceedings in S.T.C. No. 1/94 laid a complaint before itself on 8-4-1994 against A-1 for offences punishable under Sections 172, 173, 176, 177, 181, 182, 183, 193 read with 107 and 120B I.P.C., against A-2 for offences punishable under Sections 173, 176, 177, 187, 193 read with S. 107 and 120B I.P.C; against A-3 and A-4 for offences punishable under Sections 173, 176, 177 read with S. 107 and 120B I.P.C. against A-5 for offences punishable under Sections 176 and 177 I.P.C., and against A-6 to A-8 for the offences punishable u/s 172 read with S. 107 and 120B I.P.C. It also took cognizance of the same on the very same day and registered it as Calendar Case No. 114 of 1994. The gravamen of the allegations against the accused is as follows : A-1 made a false statement before the court in Criminal M.P. Nos. 458/94 and 489/94 and flouted the direction of the court to produce the minor children. A-2 was aware of the false statement made by A-1 and thus abused the process of the Court. A-5 made a false endorsement on the report of the process server that A-1 had left for a long pilgrimage along with her two minor grand children on 8-3-1994. A-3 and A-4 certified the said endorsement of A-5 to be true and correct and on 18-3-1994 whisked away the minor children from Sarada Niketan High School, Siddipet, on the advice of A-1 and A-2. A-6 to A-8 actively assisted A-2 throughout.

3. It is stated that Sri P. Prabhakar was relieved of his office as Judicial Magistrate of First Class, Siddipet on 8-4-1994, the very day he laid the complaint consequent on his transfer to Punganoor in Chittoor District. It is borne out by record that on the request of his successor-in-office, the District Judge, Medak at Sangareddy, transferred the case to the court of the Judicial Magistrate of First Class, Gazwel.

4. Elaborate arguments have been addressed by the learned counsel for the petitioner and the learned Additional Public Prosecutor. Sri Vedula Venkataramana, who has been appointed as amicus curie has thrown much light on the subject. I place on record my thanks and appreciation for his valuable assistance. From what has been urged before me, the main points that emerge for consideration may be formulated as under :

(1) Whether the Court is competent to lay a complaint u/s 190(1)(c) of the Code ?

(2) Whether the Court is competent to lay a complaint before itself and take cognizance of the offences complained of ?

5. Point No. 1

There is no doubt that in the present case, the complaint has been laid by the Court u/s 190(1)(c) of the Code. Section 190(1)(a), (1)(b) and (1)(c) provide that the Magistrate specified therein may take cognizance of an offence, upon receiving a complaint; upon a police report and on information received from a person other than a police officer, or upon their own knowledge respectively. It looks obvious that the Court in the case on hand initiated action upon facts that came to its knowledge during the proceedings in CrI. M.P. Nos. 458/94, 489/94, 523/94 and 574/94. Certainly, u/s 190(1)(c), it is open to the Court to take cognizance of an offence if the facts that come to its knowledge constitute an offence. But, laying a complaint by the Court is not all contemplated under that provision. In the facts and circumstances of this case, the relevant provision that empowers the Court to lay a complaint is Section 195(1) of the Code. However, this is not to mean that the complaint is liable to be rejected on that score itself, for it is always open to the Court to entertain the same if it could be maintained under some other provision. It is already noted that the Court may lay a complaint u/s 195(1) of the Code. Therefore, the complaint filed by the Court under S. 190(1)(c) may be taken as one u/s 195(1) of the Code. This point is, accordingly, answered.

6. Point No. 2

The legal maxims-Nemo debet esse Judex in Propria Sua Causa (No man can be judge in his own cause) and Nemo Potest Esse Simul Actor et Judex (No man can be at once judge and suitor) provide a key to this point. These universally accepted principles are the foundation for fair and impartial administration of justice. Hobart, C.J., is reported to have said in *Day v. Savadge* (1614) 85 Hob

87 cited arg. in *Gorham v. Exeter* (Bishop of) (1850) 5 Exch. 630 that :

"even an Act of Parliament made against natural equity, as to make a man a judge in his own case, is void in itself; for *jura naturoe sunt immutabilia* and they are *leges legum*."

(Extracted from Herbert Broom's "A selection of Legal Maxims" Tenth Edition, page 72)

Fortunately, we find these principles engrafted in Section 352 of the Code. It reads as under :

"352. Certain Judges and Magistrates not to try certain offences when committed before themselves-Except as provided in Sections 344, 345, 349 and 350, no Judge of a Criminal Court (other than a judge of a High Court) or Magistrate shall try any person for any offence referred to in Section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding."

There can be no doubt that this section forbids the Court from trying a person for any offence referred to in Section 195, when such offence is committed before itself or in contempt of its authority. Sections 344, 345, 349 and 350 referred to therein are in the nature of exception to the general principle. They are self-contained provisions creating offences and also the procedure for the trial of the same. Hence, they are outside the purview of Section 352, which is undoubtedly a prohibitory provision. In the case on hand, admittedly, the offences are alleged to have been committed before the Court that laid the complaint. Thus, obviously, that Court is forbidden from holding the trial for the alleged offences. However, it is strenuously urged by the learned Additional Public Prosecutor that what Section 352 forbids is only the holding of trial but not taking cognizance of any offence referred to in Section 195. I am unable to agree. The reasons are obvious. The function of the Court, while taking cognizance of an offence is neither mechanical nor ministerial. Even at that stage, it has to necessarily apply its mind to the facts complained against the accused to satisfy itself whether a *prima facie* case is made out against him. Thus, there can be no dispute that the Court acts in its judicial capacity while taking cognizance of an offence. An enquiry or trial in a criminal case commences with taking cognizance of an offence. In fact, it is the first and important step in a criminal proceeding. It is needless to emphasize that the Court is expected to be fair and impartial at every stage of the proceedings. I see no reason to limit this fundamental principle to the trial alone . Such limitation is sure to result in prejudice or often a time, injustice to the accused. The settled principle of interpretation of statutes is that "that court will adopt that which is just, reasonable and sensible rather than that which is none of those things (*Holmes v. Bradfield Rural District Council* 1949) 1 All ER 381 p. 384 Finnemore, J.). (extracted from G. P. Singh's *Principles of Statutory Interpretation*, 2nd Edition, page 73). In the light of these, I feel compelled to hold that Section 352 of the Code forbids the Court from

taking cognizance of offences referred to in Section 195, when such offences are committed before itself or in contempt of its authority except as provided in Sections 344, 345, 349 and 350.

7. The matter may be viewed from another angle also. It is held under Point No. 1 that the complaint filed by the Court in the present case may be taken as one under S. 195(1) of the Code, which reads as under :

"No court shall take cognizance -

(a)(i) of any offence punishable under sections 172 - 188 (Both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 - 196 (both inclusive), 199, 200, 205 - 211 (both inclusive) and 228 when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable u/s 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate."

8. It is significant to note that the legislature empowered the public servant concerned or some other public servant to whom he is administratively subordinate and the Court concerned or some other Court to which such court is subordinate to lay a complaint in respect of offences specified in clauses (a) and (b) respectively. Thus, it is not as if, the Court in question alone was competent to lay the complaint. It could have as well requested the District Court, to which it is subordinate to lay the complaint. Or, in the alternative, it could have laid the complaint before another court having jurisdiction. It has not chosen to do either. Instead, it laid the complaint before itself for the offences referred to in Section 195(1) of the Code and also took cognizance of the same. Thus, there can be no doubt that its action is illegal. I find a clear authority for this proposition in *Harekrishna Sahu v. State of Orissa* 1986 Cri LJ 691. Reference may also be made to the following observation of the Supreme Court on judicial propriety of *Fakruddin Vs. Principal, Consolidation Training Institute and Others*, :

"Justice should not only be done but seen to be done. That is the basic structure on which confidence and faith in the institution rests. The judiciary from the bottom in hierarchy to the apex at the top commands respect because of its impartiality and objectivity. When a judge directs a case to be listed before another Court or Bench, as he knows one or the other party, it is not because any statutory law precludes him from hearing and deciding it but the propriety is practised and observed to exclude even the remotest possibility of any misgiving or doubt about the impartiality of the judge as even if he is just and fair and his decision is correct yet it may not be satisfying." (Para 2)

9. In the light of the above, it must be held that the Court is not competent to lay a complaint before itself and take cognizance of offences complained of. This point is, accordingly, answered.

10. From the above discussion, the conclusion could be that Sri. P. Prabhakar, the then Judicial First Class Magistrate, Siddipet, who took cognizance of offences against the petitioners, acted in violation of the provisions of Section 352 of the Code, throwing the judicial propriety to wind. Further, having regard to the facts and circumstances of the case, I do not consider it expedient to direct to fresh enquiry into the matter. Therefore, these petitions must succeed. Accordingly, they are allowed and proceedings against the petitioners in C.C. No. 114 or 1994 on the file of the Judicial First Class Magistrate, Gazwel, Medak District, are quashed.

11. Petition allowed.