

(1997) 10 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20166 of 1996

S. Raghuramaiah

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 20-10-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 106, 110, 156, 173, 190
Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 107, 120(B), 147, 148, 149

Citation : (1998) 1 ALD 304 : (1997) 2 ALD(Cri) 932 : (1997) 6 ALT 625 :
(1998) 1 ALT(Cri) 439

Hon'ble Judges : P.S. Mishra, C.J.; P. Ramakrishnam Raju, J

Bench : Division Bench

Advocate : Mr. K. Suresh Reddy, for the Appellant; Government Pleader for Home, Mr. P. Venugopal, Mr. S. Ramamurthy Reddy, Mr. M. Chandra Sekhar Reddy, Mr. B. Timma Reddy, Mr. O. Manohar Reddy, Mr. K. Jagan Mohan Reddy, Mr. B.D. Maheswar Reddy, Mr. H. Prahalada Reddy, Mr. C.V. Mohan Reddy, Mr. V.V.S. Rao and Mr. C.B. Mohan Reddy, for the Respondent

Judgement

P. Ramakrishnam Raju, J.—This writ petition is filed seeking for a direction to provide a gunman to the petitioner, as the Superintendent of Police, Kurnool failed to provide, in spite of several representations.

2. The petitioner states that he is a staunch supporter of Congress - (I) party since a long time, and had been a follower of late Madduru Subba Reddy, Ex.-Member of Parliament (MP) from Nandyal Constituency. One Sri Byreddy Rajasekhara Reddy, 16th Respondent, a sitting Member of Legislative Assembly (MLA) from Nandikotkur Constituency was opposed to late Madduru Subba Reddy. In the last Assembly elections, the 16th respondent contested on Telugu Desam Party (TDP) ticket; while Congress (I) fielded one Gidda Reddy. While the petitioner was extending support to Gidda Reddy, the 16th respondent attacked him and also one Gouri Venkat Reddy at Kollabapuram village while they were

canvassing for Congress - (I) candidate. After the said attack, gunman was provided to him. The followers of the 16th respondent had made attempts on the life of the petitioner on two or three occasions. At the instance of the Government, the fourth respondent submitted a detailed report stating that there is grave threat to the life of the petitioner. In spite of repeated requests, the third respondent has not provided a gunman to the petitioner, since he belonged to Congress - (I) party, although in all other cases where the intelligence department recommended for gunman, the fourth respondent has responded positively. Hence this writ petition.

3. On 14-10-1996, the following order is passed by this Court:

"We have disposed of Writ Petition No.20165 of 1996 with directions. But the allegations in the instant case appear to shake the faith in the law enforcing agencies to deal with some one who wields power in accordance with law. Learned Additional Advocate General has pointed out, however, that the petitioner and his men are also involved in unlawful activities and if there are some cases pending against Sri Rajasekhara Reddy and others for investigation there are no dearth of counter cases against the petitioner and his men. There are alarming reports of the district being infested by anti-social elements and instead of debates on public issues and manifesto of political parties, persons who are allegedly divided between rival political parties in the district are settling scores by guns and bombs. By providing any security guard to the petitioner, there shall only be encouragement and escalation to the faction fights in the district and it is felt desirable, on reports particularly of continuous violence, that matters should be tackled by such laws which wilt both be preventive and deterrent. Those who are accused and are enlarged on bail and are suspected to have indulged in further violence, it will be proper if steps are taken for cancellation of bail and those who are not yet named as accused in any case, but are acting in support of such persons, are dealt with strictly in accordance with law at the earliest. Should the situation warrant the law enforcing agencies be alerted to take such preventive measures by making appropriate reports to the competent authorities for detention, if necessary all such persons who are dealing only with bombs and guns with the life of their opponents or so-called enemies.

It is a fit case, for the said reason, for a direction to the District Superintendent of Police to make a report to this Court forth with about the situation of law and order in the district and who are the parties who are threatening the peace and who are creating administrative as well as legal problems in the district. The District Superintendent of Police is also directed to give report to the Court as to how many cases of murder and other ancillary offences have been registered which are traceable to the faction or political rivalry between various groups operating in the district. Suitable orders in this case shall be passed after receiving the report from the District Superintendent of Police. Let the District Superintendent of Police report within two weeks.

Post after two weeks.""

4. On 31-10-1996 the following order is passed in this writ petition:

"Heard.

This Court has found that a large number of persons have been seeking security for the protection of their life and property and moving this Court for directions to the State Government to provide as, according to them was required for their protection. The Court directed for hearing of all such petitions simultaneously to arrive at the conclusion how this Court and in what circumstances this Court would be exercising its extra-ordinary power and issuing directions for providing protection to the petitioners. By judgment dated 14-10-1996 in Writ Petition Nos.291 of 1995,10432 of 1996 and 12172 of 1996, this Court has felt that any petition for providing security can be entertained only in exceptional case and on this Court's satisfaction that the threat is either from the servants and agents of the State or from others when the Government of the State is not found to have provided adequate security for the maintenance of public peace and tranquility and has not chosen to act to prevent incidents of crime which have given rise to the apprehension of danger to the life and property of the petitioner. The instant application was taken up along with the above, but the Court, in view of the specific allegations, recorded,

"But the allegations in the instant case appear to shake the faith in the law enforcing agencies to deal with some one who wields power in accordance with law. Learned Additional Advocate General has pointed out, however, that the petitioner and his men are also involved in unlawful activities and if there are some cases pending against Sri Rajasekhara Reddy and others for investigation there are no dearth of counter cases against the petitioner and his men,""

The Court further recorded,

"There are alarming reports of the district being infested by anti-social elements and instead of debates on public issues and manifesto of political parties persons who are allegedly divided between rival political parties in the district are settling scores by guns and bombs-"

The Court, on the facts of the case, ordered as follows:

"By providing any security guard to the petitioner, there shall only be encouragement and escalation to the faction fights in the district and it is felt desirable, on reports particularly of continuous violence, that matters should be tackled by such laws which will both be preventive and deterrent. Those who are accused and are enlarged on bail and are suspected to have indulged in further violence, it will be proper if steps are taken for cancellation of bail and those who are not yet named as accused in any case, but are acting in support of such persons, are dealt with strictly in accordance with law at the earliest. Should the situation warrant the law enforcing agencies be alerted to take such preventive measures by making appropriate reports to the competent authorities for

detention, if necessary, all such persons who are dealing only with bombs and guns with the life of their opponents or so-called enemies."

Having ordered as above, the Court directed as follows:

"It is a fit case, for the said reason, for a direction to the District Superintendent of Police to make a report to this Court forthwith about the situation of law and order in the district and who are the parties who are threatening the peace and who are creating administrative as well as legal problems in the District. The District Superintendent of Police is also directed to give report to the Court as to how many cases of murder and other ancillary offences have been registered which are traceable to the faction or political rivalry between various groups operating in the district. Suitable orders in this case shall be passed after receiving the report from the District Superintendent of Police."

The District Superintendent of Police has since submitted the report stating that the law and order situation in the District is well under control and that all possible steps have been taken against the factionists. He has also stated in his report that no such parties who are threatening the peace and who are creating administrative as well as legal problems have come to light in the District. He has, however, added as follows:

""However, the following notorious factionists are operating in Kurnool District.

1. Challa Ramakrishna Reddy of Owk Village Congress -I) :

Challa Ramakrishna Reddy of Uppalapadu village is a factionist opposed to Bijjam Satyanarayana Reddy of Chennampalli. Both the factionists have large following in Owk, Kolimigundla, Koilkuntla and Sanjamala Mandals. Both factionists kept changing political parties. He was detained under MISA during emergency.

2. Bijjam Satyanarayana Reddy of Chennampalli Village (TDP-NCB): He is a factionist from Chennampalli village of Owk Police Station limits. He is opposed to Chella Ramakrishna Reddy of Owk with large following in Owk, Sanjamala, Kolimigundla and Koilkuntla Mandals. He was detained under MISA during Emergency.

3. Bijjam Partha Sarathi Reddy of Chennampalli Village (TDP-NCB) :

He is the elder son of Bijjam Satyanarayana Reddy. He is a factionist in the footsteps of his father. He has following in Sanjamala, Owk, Kotimigundla and Koilkuntla Mandals and he is active.

4. Katasani Rambhupal Reddy of Gundlasingavaram (Congress-I) :

Katasani Rambhupal Reddy hails from Gundlasingavaram village of Owk Police Station limits. He is now sitting MLA of Congress-I and leads faction group against Bijjam Satyanarayana Reddy of Chennampalli. He has large following in Bhanaganapalli, Owk, Kolimigundla, Bethamcherla, Sanjamal and Nandivargam Mandals. Both of his uncles i.e., Katasani Rami Reddy and Katasani Siva Reddy

are hard-core factionists of Gundlasingavaram village with large following.

5. Pakkir Reddy of Sangapatnam Village (TDP) :

Pakkir Reddy belongs to Sangapatnam village of Owk Mandal. He presently resides in Ramapuram village due to Slab polishing business. He is opposed to Chella Ramakrishna Reddy of Owk, Yarrobotula Venkala Reddy of Nayunipalli. He has sizable following in Sangapatnam and Ramapuram and other neighbouring villages.

6. G. Pratap Reddy, M.P. of Yermgudidinne Village (Cong.) :

He hails from Yarragudidinne village of Sirivel Mandal. He is a Member of Rajya Sabha (Cong.). He heads of faction group against Bhooma Nagi Reddy, Ex.MLA. Allagadda, Sirivella, Chagalamarri, Gosupadu and Rudravaram Mandals.

7. G. Prabhakara Reddy of Yerragudidinne Village (Cong.) :

G. Prabhakar Reddy of Yerragudidinne village is the younger brother of G. Pratap Reddy. He is a factionist oppose to B.V. Nagi Reddy, Ex. MLA., Allagadda.

8. Gangula Subhash Reddy of Yerragudidinne Village (Cong.) :

He hails from Yerragudidinne village. He is cousin brother of G Pratap Reddy. He is a much dreaded factionist in Allagadda and Nandyal Taluqs with sizable following.

9. Bhomma Nagi Reddy of Allagadda Town (TDP) :

He hails from Allagadda Town. He is sitting M.P. (TDP) from Nandyal Parliamentary Constituency. He is opposed to Gangulal Pratap Reddy of Yerragudidinne, Allagadda Assembly Constituency is vertically split between these two factionists. Bhooma Nagi Reddy has large following in every village of Allagadda Assembly segment.

10. Budda Vengal Reddy of Velpanur Village (TDP-NCB) :

He hails from Velpanur village of Velugode Mandal. He was M.L. A. thrice in the past. He is a factionist opposed to late Kedarnath Reddy of Velpanur. He has sizable following in Velugode, Almakur, Koltapalli, Pamulpadu and Gadivemula Mandals. He is involved in murder case of Hussain Saheb, Ex.-Sarpanch of Atmakur.

11. Budda Seeiharami Reddy of Velpanur Village (TDP-NCB) :

He is the elder son of Budda Vengal Reddy. He is an active factionist heading faction group against the followers of late Kedarnath Reddy of Velpanur. He is involved in many cases.

12. Byreddy Rajasekhar Reddy of Muchumarri Village (TDP-NCB):

He hails from Muchumarri village of Pagidyala Mandal of Nandikotkur Assembly

Constituency. He is a notorious factionist heading the faction groups against late Maddur Subba Reddy in Nandikotkur Assembly Constituency. He has large faction following in Nandikotkur Assembly Constituency.

13. Lakshmi Narayana Reddy of Cherukulapadu Village (Cong-I) :

He hails from Cherukulapadu village of Veldurthi Mandal of Panyam Assembly segment. He is a factionist opposed to K.E. Jayanna faction group of Krishnagiri Mandal. He has sizable faction following in Veldurthi Mandal.

14. Wane Sudhakar Reddy of Peapully Village (TDP-LP):

He hails from Peapully village. He is a factionist heading faction group against Chennaiah of Peapully village.

15. R.E. Krishna Murthy of Jaladurgam Village (TDP-NCB):

He hails from Jaladurgam village of Jaladurgam Mandal. He is a factionist heading faction groups against Wate Sudhakar Reddy of Peapully, R.E. Ravikumar of Dhoni. He has sizable faction following in Jaladurgam, Peapully and Dhoni Mandals.

16. K.E. Jayanna of Kambalapadu (TDP-NCB):

He hails from Kambalapadu of Krishnagiri Mandal. He heads the faction groups opposed to Narayana Reddy of Veldurthi, Wate Sudhakar Reddy of Peapully and R.E. Ravi Kumar of Dhoni. He is related to K.E. Krishnamurthy Ex-MLA of Dhoni. He has sizable faction-following in above Mandals. He is an active factionist.

17. Venkatappa Naidu of Kappatrala Village (TDP-NCB) :

He is a notorious factionist from Kappatrala village of Devanakonda Mandal. He has sizable faction-following in Devanakonda Mandal. He heads faction group against the followers of Late P. Seshi Reddy of Ternekal, Murahari Reddy of Pattikonda, Raghava Reddy of Yedduladoddi, Kistanna of Kodumur.

18. Kottakota Prakash Reddy of Kottakota Village (TDP-NCB):

He hails from Kottakota village of Gudur Mandal. He is a factionist having faction groups against Vishnuvardhana Reddy of Yedurur village in Kodumur Assembly segment area. He is sitting TDP MLA from Alampur Assembly Constituency of Mahboobnagar Dist. He has sizable faction-following in Kodumur Assembly segment area.

19. Vishnuvardhana Reddy of Yedurur Village (TDP-LP):

He is a factionist heading faction-groups against Kottakota Prakash Reddy in Kodumur Assembly segment area. He has large faction following in the villages of Kurnool, Kodumur, C-Belagal and Gudur Mandals.

20. Erukala Kistanna of Kappatrala Village (Cong-I) :

Erukala Kistanna hails from Kappatrala village. He is now living in Kodumur. He heads faction-group against Venkatappa Naidu of Kappatrala village. He has faction-following in Kodumur and Gonegangla mandals.

21. Pratap Reddy of Tuggali Village (Cong-I) :

He hails from Tuggali village of Tuggali Mandal. He heads faction-group against Nagendra of Tuggali village. He has faction-following in Tuggali Mandal.

22. Nagendra of Tuggali Village (TDP-NCB) :

He hails from Tuggali village of Tuggali Mandal. He heads faction-group against PratapReddy of Tuggali. He has faction-following in Tuggali Mandal.

23. RE Ravi Kumar of Dhone (Cong-I):

He hails from Dhone and heads faction-groups in Jaladurgam Mandal against RE. Krishna, Murthy and against K.E. Jayanna in Krishnagiri Mandal. He has faction-following in Jaladurgam, Peapully, Dhone and Krishnagiri Mandals.

24. Gowru Venkata Reddy of Brahmanakotkur Village (Cong-I) :

He hails from Brahmana-Kotkur village. He heads faction-groups against Byreddy Rajasekhara Reddy in Nandikotkur Assembly segment. He has faction-following in number of villages in Nandikotkur Assembly segment.

25. Yarrabotula Venkata Reddy of Nayitnipalli (Cong-I) :

He hails from Nayunipalli village of Kolimigundla Mandal. He is a factionist opposed to Pakkir Reddy of Sangapatnam. He has sizable faction-following in Kolimigundla Mandal."

The District Superintendent of Police has reported that in one case the petitioner was charged u/s 160 of the Indian Penal Code and convicted and sentenced to pay fine of Rs.100/- by the Judicial First Class Magistrate, Nandikotkur, in another case he is called upon to show cause u/s 107 of the Code of Criminal Procedure and in two other cases he is charged of the offence under various provisions of the Indian Penal Code and Sections 3 and 5 of the Explosive Substances Act, in which, of course, no one is alleged to have sustained any injury and u/s 5 of the Explosive Substances Act, which is, however, yet under investigation for want of sanction orders from theCollector and District Magistrate, Kurnool. The faction, which has, according to the petitioner, threatened above reports, is led by Sri Byreddy Rajasekhara Reddy of Muchumarri village, who has to his credit five cases including that of dacoity, arson and rioting in which case, however, he has been acquitted by the Assistant Sessions Judge, Nandikotkur, one case of similar nature, however, the Superintendent of Police states, was dropped in view of a Government order and one case, in which he is alleged to have participated in the murder of one Madduru Subba Reddy of Brahmanakotkur who was way laid and killed, is pending and he i.e., Byreddy Rajasekhara Reddy has obtained anticipatory bail.

The District Superintendent of Police has stated in the report that all factionists in the District have political links and have been indulging in the faction-crime either directly or indirectly and "factionists, since assumed the stature of a Politician in Kurnool District, faction-crime is also viewed as political crime." He has given the alarming report that as most of the village in Kurnool District are highly faction-ridden, the faction leaders of each village owe their loyalty to political rivals at Mandal and Assembly Constituency level and as a result, every incident of faction-crime involving rival factionists at village has direct bearing on the law and order at Mandal and District level. The reports show that the faction murders, rioting have in the last three years taken toll of about 600 lives and inflicted physical injuries to as many as 1900 persons. The list of cases of faction murders for the year 1996 i.e., upto 30-9-1996 shows that incidents are quite widespread, fire arms and explosive substances are commonly used and dead bodies are disposed of unceremoniously in most objectionable manner. The Superintendent of Police has ended his report by stating as follows:

"As regards steps taken by police, in accordance with the law, I am to state that various preventive steps have been taken to contain the menace of faction. During the year, 1995, 1508 countrymade bombs, 46 countrymade illicit fire-arms and 10 company made firearms were seized from the factionists. During the year 1996 so far 1965 countrymade bombs, 89 countrymade illicit fire-arms and 32 companymade firearms have been seized from the factionists. During the year 1996, so far 26 hired assassins with notorious criminal background have been arrested in various crimes in the District and a close watch is kept on their movements. I submit that a faction zone consisting of 1 Circle Inspector of Police, 3 Sub Inspectors of Police. 2 Head Constables and 8 Police Constables is formed in Kurnool District. The Faction zone is entrusted with the duty of detection of faction crime, conducting constant raids on various faction villages, seizure of illicit fire arms and bombs and nabbing of hired assassin gangs. Apart from the above, the following measures are being taken to tackle the faction:

- (a) Systematic documentation of history of all factionists in Kurnool District.
- (b) Systematic documentation of all hired-assassins including video-graphing, photo-graphing etc., in different postures and dress orders.
- (c) Total dis-arming of all licensed firearms.
- (d) Massive propaganda among the villagers about the adverse effects of their involvement in factions including how factionists are making use of them as pawns in their game of power and money politics, in order to bring attitudinal changes.
- (e) Systematic and frequent village-visiting, collection of information by all S.Is., C.Is. and S.D.P.Os.
- (f) Initiating security proceedings u/s 107 Cr.P.C. and 110 Clause (e) and (g) Cr.P.C. against factionists before Executive Magistrates.

(g) Improved Court attendance by Circle Inspectors and Sub-Divisional Police Officers and successful prosecution in all faction cases.

(h) Grouping of faction villages into 4 categories depending on the gravity of faction and strict implementation of faction bandobust scheme."

We do not propose to discredit the report of the District Superintendent of Police insofar as his attempts to streamline the police administration of the District is concerned and appreciate his efforts at least in showing concern for the maintenance of law and order and peace in the District. It is, however, still a matter of serious concern how, when faction leaders are fully identified and according to the report afore-mentioned, they are involved almost habitually in crimes, no deterrent action, except booking of some cases against them, has succeeded. Mr. K. Suresh Reddy, learned Counsel for the petitioner, learned Additional Advocate General and Mr. K.G. Kannabhiran, President of the High Court Bar Association have voiced the concern of the public at large and shared the Courts perception that all efforts should be made to improve the law and order situation in the District and to ensure that taking advantage of their political association, persons who otherwise can be identified as anti-social elements do not disturb the peace and the order and tranquility. All the learned Counsel are agreed that factions involved in crimes against each other are a real threat to the maintenance of law and order and peace and the Government of the State has to take all possible measures to remove such regular incidents of crime from the District altogether. It is a fit case, in our opinion, to implead Challa Ramakrishna Reddy of Owk village, " Bijjam Satyanarayana Reddy of Chennampally village, Bijjam Partha Samthi Reddy of Chennampalli village, Katasani Rambhupal Reddy of Gundlasingavaram, Pakkir Reddy of Sangapatnam village, G. Pratap Reddy of Yerragudidinne village, G. Prabhakara Reddy of Yerragudidinne village, Gangula Subhash Reddy of Yerragudidinne village, Bhoma Nagi Reddy of Allagadda Town, Budda Vengal Reddy of Velpanur village, Budda Rajasekhar Reddy of Muchumarri village, Lakshmi Narayana Reddy of Peapully village, R.E. Krishna Murthy of Jaladurgam village, K.E. Jayanna of Kambalapadu, Venkatappa Naidu of Kappatrala village, Kottakota Prakash Reddy of Kottakota village, Vishmivardhana Reddy of Yedurur village, Erukala Kistanna of Kappatrala village, Pratap Reddy of Tuggali village, Nagendra of Tugali village, RE. Ravi Kumar of Dhone, Gown Venkaia Reddy of Brahmanakotkur village and Yarrabotula Venkata Reddy of Nayunipalli village as party-respondents and call upon to show cause why directions be not issued to the respondent-State Government, Director General of Police, Andhra Pradesh and the Superintendent of Police, Kurnool to take all steps to restrain them from indulging in all or any unlawful activities in the District of Kurnool and/or any other part of the State and why they be not subjected to such preventive orders which are deemed fit and proper. Since the District Superintendent of Police has reported that several measures are being taken to tackle the factions, we do not make any specific directions in this behalf at this stage. The District Superintendent of Police, however, is directed to furnish all relevant informations how the above-

mentioned measures have been taken and how in course of implementing the above measures the newly added respondents have been dealt with.

Issue notice returnable in two weeks through the Director General of Police, State of Andhra Pradesh.

Put up after two weeks

ere upon the Court directed notices to all these respondents. We accordingly impleaded, to show-cause as to why actions should not be taken against them for preventive detention.

The 16th respondent is accused No. 6 in Crime No. 94/96 of IV. Town Police Station, Kurnool, relating to the alleged murder of Madduru Subba Reddy. The said case was pending trial - PRC No. 62 of 1996 on the file of I-Additional Judicial First Class Magistrate Court, Kurnool. The Government by G.O. Rt. No. 722, Home (Police-F) Department, dated 20-3-1997, passed the following order:

ORDER --The Government after careful consideration of the proposal for withdrawal of case registered against Sri Byreddi Rajasekhara Reddy MLA of Nandikotkur, have decided to withdraw the case in Cr. No. 94/96 u/s 147, 148, 302, 120B r/w 149 IPC and Section 3 and 5 of E.S. Act of IV town P.S. Kurnool pending trial vide PRC No. 62/96 on the file of IA.J.F.C.M. Kurnool District.

2. The District Collector, Kurnool District is requested to instruct the Public Prosecutor attached to the Court concerned for filing a fresh petition u/s 321 Cr.P.C, 1973 (Central Act No. II of 1974) for withdrawal of prosecution in the above case. A copy of the instructions so issued may be sent to Government for favour of information.

(By Order and in the name of the Government of Andhra Pradesh)

Sd/- Principal Secretary to Govt.

6. The 16th respondent in his counter-affidavit states that he is a Post-Graduate in Commerce from Andhra University. His father was a member of A.P. State Legislative Assembly for four terms and his grand-father was a member of A.P. State Legislative Council for one term. He was elected as member of the State Legislative Assembly from Nandikotkuru Assembly Constituency in the year 1994 with a majority of nearly 30,000 votes. Himself and his family have been in politics serving the Constituency for over 40 years and is held in high esteem by the voters. However, the party in power started harassing them by impleading them in criminal cases when they are supporting opposition parties. Neither himself nor his father was directly implicated in any serious offence, except in a criminal case u/s 120B of IPC in the case of murder of Mr. Madduru Subba Reddy. Complaints are made against him by his political rivals, more particularly Telugu Desam Party as his father was at that time a member of State Legislative Assembly, representing Congress Party. After the assassination of Late Rajiv Gandhi, former Prime Minister of India on 21-5-1991, about six cases were

booked against him by his political rivals and in all the cases, he was acquitted. Even at the relevant time of the alleged murder of Madduru Subba Reddy, he was a supporter of Telugu Desam Party (NTR), the therefore, he was falsely implicated. The alleged eye-witness -Mr. J. Raghava Reddy, made a statement before the Prl. District Munsif, Kurnool on 18-10-1996 stating that he was ignorant of the conspiracy alleged against him. The petitioner himself is an accused in PRC No. 6 of 1996, a crime registered u/s 302 IPC. He was all-through a supporters of himself and his family till 1993. However, misunderstandings arose thereafter. It has become a fashion now a days to get police security which has become a status symbol. The fourth respondent-Superintendent of Police has a grouse against him since he had dragged him before the Privileges Committee for making a statement against him as a member of Legislative Assembly.

7. The 16th respondent has also filed additional counter-affidavit with the following:

Although in the FIR it is stated that pursuant to a conspiracy hatched by five persons, including himself, in the 164 Cr.P.C. statement Raghava Reddy who is the witness to the conspiracy, stated that he was not aware of the alleged conspiracy. On the basis of the enquiries, the Deputy Inspector General of Police, Kurnool, submitted a proposal for withdrawal of the case registered against him which culminated in the issuance of G.O.Rt. No. 722, dated 20-3-1997 withdrawing the case against him.

8. u/s 202 of the Code of Criminal Procedure, any Magistrate on receipt of a complaint may enquire into the case himself or direct an investigation to be made by a police officer or by such other person for the purpose of deciding whether or not there is sufficient ground for proceeding. The Magistrate may take evidence of witness" on oath, and if the Magistrate is of the opinion that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. This procedure is relied upon by the learned Counsel for the petitioner to show that the Magistrate in a sessions case cannot consider the evidence or dispose of the case finally. In *Padmini v. State of Tamil Nadu* (1993) MLJ (Cri) 570. one of us - Justice P.S. Mishra, as he then was, exhaustively considered the scope of Section 190 of the Code of Criminal Procedure, which deals with cognizance of offences by Magistrate; Section 156 which deals with the power of Police Officer to investigate cognizable case, Section 173 - Report of Police Officer on completion of investigation and Section 202 -Postponement of issue of process, and held as follows:

"From a reading of the facts of this case, in the light of the aforementioned two judgments of the Supreme Court, it is clear that the Magistrate has exhausted the task of taking cognizance u/s 190 of the Code on the police report, but he has not done so on the complaint of the informant, which complaint has been disposed of by him only as a protest to the police investigation. It is, therefore,

open to the informant, if so advised, to file a proper petition of complaint, if an offence has been omitted in the police report or any accused has been left out. It is also clear that not much is possible at the stage of Section 209, narrow inspection by the Magistrate."

Glancing at the relevant provisions of the Act, as has been done in *Padmini v. State of Tamil Nadu* (supra), what is then relevant is the examination of scope of Section 321 of the Code of Criminal Procedure in this case.

9. Section 321 of the Code of Criminal Procedure empowers the Public Prosecutor to withdraw the prosecution against any person. Section 321 may be usefully extracted:

"321. Withdrawal from Prosecution :-The Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally, or in respect of any one or more , of the offences for which he is tried; and, upon such withdrawal:

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences;

Provided that where such offence:

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty.

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution."

A reading of Section 321 shows that the Public Prosecutor has the discretion to withdraw the prosecution at any time, but before the judgment is pronounced, of course, with the consent of the Court. This intun invests unfettered power with the Public Prosecutor, and the same can be exercised, subject to the consent of the Court, which consent is intended to prevent any abuse. It needs no

reiteration that the Public Prosecutor has to independently apply his mind to the facts of the case without being subject to outside or extraneous influence or interference. No doubt, this is an executive, function of discretionary nature which enjoins a duty on the Public Prosecutor to use his discretion on a sound rational principles with the avowed object of promoting public interest, but not in a whimsical or capricious manner. Section 321 is not reserved power of the executive to withdraw any criminal case on a mere wish or desire. Grounds of public policy only and not narrow considerations or short term political gains can be regarded as grounds for exercise of such a power by the Public Prosecutor. The Court has in its turn to apply its mind and record reasons in either accepting the proposal or rejecting it. If the Public Prosecutor has arrived at a conclusion which can by no means be termed as absurd or an abuse of the power, the same cannot be brushed aside or interfered with lightly by the Court, nor permissible for it to embark upon a roving enquiry into the reasons assigned by the Public Prosecutor in his application. What appears in the ultimate analysis is a statutory privilege on the Public Prosecutor, conferred u/s 321 Cr.P.C. for deciding upon the withdrawal, does not rest on considerations of narrow party interest or political pressures, but should be acted by larger public interest.

10. In Subhash Chander Vs. State (Chandigarh Administration) and Others, , the Apex Court observed :

"The fact that broader considerations of public peace, larger considerations of public justice and even deeper considerations of promotion of long-lasting security in a locality, of order in a factions milieu, or halting a false and vexatious prosecution in a Court, persuades the Executive, pro bono publico sacrifice a pending case for a wider benefit, is not ruled out although the power must be sparingly exercised and the statutory agency to be satisfied is the Public Prosecutor, not the District Magistrate or Minister. The concurrence of the Court is necessary. The subsequent discovery of a hoax behind the prosecution or false basis for the criminal proceeding may well be a relevant ground for withdrawal. For the Court should not be misused to continue a case conclusively proved to be a counterfeit.""

The Apex Court went on observing;

"Though the section is in general terms and does not circumscribe the powers from the Public Prosecutor to seek permission to withdraw from the prosecution the essential consideration which is implicit in the grant of the power is that it should be in the interest of administration of justice which may be either that it will not be able to produce sufficient evidence to sustain the charge or that subsequent information before prosecuting agency would falsify the prosecution evidence or any other similar circumstances which it is difficult to predicate as they are dependent entirely on the facts and circumstances of each case. Nonetheless it is the duty of the Court also to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely

because the Government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the Public Prosecutor to withdraw from the prosecution and the Public Prosecutor merely does so at its behest.""

11. Sri T. Bali Reddy, learned senior Advocate appearing for the petitioner submits that the Court has no power to drop the prosecution even before taking cognizance. Elaborating his contention, the learned Counsel submits that the offences are triable by a Sessions Court only, and as such, Magistrate of First Class, has no power to sanction or withdrawal of the prosecution. The said Court is a mere Post Office whose business is to forward the case record to the committal Court.

12. However, record discloses that the prosecution was dropped after taking cognizance of the alleged offence and after registering the same as PRC No. 62 of 1996. Therefore, the question is whether the learned Magistrate is competent to accord permission for withdrawal in the circumstances, or whether he has to merely transmit the records to committal Court having no power of examining the request of the Public Prosecutor.

13. A similar argument was advanced before the Supreme Court that the Court of committing Magistrate is not invested with the power of acquittal or discharging the accused, and therefore, it cannot grant consent for withdrawal of the prosecution, the Supreme Court overruling the judgment of a Division Bench of this Court in *A. Venkataramana v. Sanjeeva Ragudu* 1976 ALT Reports 317; in *Rajender Kumar Jain and Others Vs. State Through Special Police Establishment and Others*, held:

"In the first place there is no warrant for thinking that only the Court competent to discharge or acquit the accused under some other provisions of the Code can exercise the power u/s 321, Cr.P.C. The power conferred on the Court before whom a prosecution is pending and the exercise of power is not made dependent upon the power of the Court to acquit or discharge the accused under some other provision of the Code. The power to discharge or acquit the accused u/s 321 is a special power founded on Section 321 itself, to be exercised by the Court independently of its power of enquiry into the offence or to try the accused.

.....

In the second place it may not be accurate to say that the Committing Magistrate has no judicial function to perform under the 1973 Code of Criminal Procedure. Section 209 of the Cr.P.C., 1973 obliges the Magistrate to commit the case to the Court of Session when it appears to the Magistrate that the offence is triable exclusively by the Court of Session. Therefore, the Magistrate has to be satisfied that an offence is prima facie disclosed and the offence so disclosed is triable exclusively by the Court of Session. If no offence is disclosed the Magistrate may refuse to take cognizance of the case or if the offence disclosed is one not triable exclusively by the Court of Session he may proceed to deal with it under the

other provisions of the Code. To that extent the Court of the Committing Magistrate does discharge a judicial function. We therefore, overrule the first submission of Shri Ram Panpvani. We do not agree with the view taken by the High Court of Andhra Pradesh in *A. Venkatramana v. Sanjeeva Ragudu* 1976 ALT 317, that the Court of the Committing Magistrate is not competent to give consent to the Public Prosecutor to withdraw from the prosecution."

In our view, this judgment is a complete answer to the contention of the learned Counsel for the petitioner. The Apex Court in *Rajender Kumar v. State* (supra) left a word of caution.

"The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The Court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution."

Applying these tests, we have no hesitation to hold that the learned Magistrate has got power to consider the application filed by the Public Prosecutor for withdrawal, although the alleged offences are triable by Sessions Court. However, still the question whether the learned Magistrate has acted within his-bounds, while accepting the application of the learned Public Prosecutor to permit him to withdraw the case against the 6th respondent, in our view, cannot be decided in this proceeding, since the said issue does not directly fall for consideration before us. After answering the legal question about the power of the Magistrate, as above, we are of the opinion that the right of the petitioner to challenge the same before appropriate forum should be left open, and if such a petition is filed, the said question will be decided on consideration of the material and after examining relevant considerations. As such, we shall not be taken to have decided that question one way or the other.

14. Regarding the relief of providing gunman to the petitioner for his security, already there is an interim direction providing gunmen to the petitioner all-through, during the pending of the writ petition. Having regard to all these circumstances, we are of the view that this question also should be left in the hands of the Superintendent of Police to continue the security arrangement depending on the circumstances in the District as well as other relevant considerations, including threat to life of the petitioner from anybody.

15. The main issue, thus upon which, the instant proceeding has started, has culminated in the commitment of police establishment of the District and the Government of the State that nothing will be allowed to escalate any further violence in the District. If the effect of the interim order of the Court cannot be allowed and the measures which the District Superintendent of Police, as stated, have already been taken, are not continued, there is always a chance of recurring of unlawful activities and the ugly head of factionism again raising in

the District Documentation of factionists, hire assassins, disarmament of all licensed fire arms, must be propagated among villagers about the adverse affect of their involvement in factionism, including how factionists are making use of them in the commission of power and money politics. Systematic and frequent village visiting, collection of information by all Sub-Inspectors, Circle Inspectors, Sub-Divisional Police Officers, initiating security proceedings under Sections 106 Cr.P.C. and 110 Clauses (e)(g) Cr.P.C., against factionists before Executive Magistrates, improved Court attendance by Circle Inspectors and Sub-Divisional Police Officers and successful prosecution in all faction cases and grouping of faction villages into four categories, depending on the gravity and force and strict action, Bundobust, as envisaged in the report of the Superintendent of Police, must not remain a formality, but be a step for ensuring that a person who has already been accused and is facing investigation, enquiry, or trial as the case may be for any alleged criminal offences, is alleged to have indulged in any crime of the same nature or of similar intensity and similar propensity, is charged regularly in the Court of law and orders are obtained in appropriate cases for detention, cancellation of bail etc., in accordance with law, and no outside influence, including men in power is allowed to interfere with the course of law and justice in dealing with such persons. We have appreciated the response of the District Superintendent of Police, hoping that he and others in his possession shall see that those who are involved almost habitually in crime are dealt with such laws as are attracted and repetition of crime by them is prevented. It is therefore, necessary that the following measures are taken, besides the above, as and when occasion arises.

1. On any report by a witness or any other person who is connected with the case, that the accused in the case have threatened the witness or have interfered with the investigation of the case, otherwise, or prevented evidence to be produced in the Court, concerned Officer in charge, shall file a petition in Court for cancellation of bail without delay and the same shall be processed strictly in accordance with law unaffected by any other consideration;
2. If any person who does not desist from crime notwithstanding preventive measures taken in this behalf by the District Police, concerned Officer in-charge of the Police Station, shall report the matter to the District Superintendent of Police, who in turn shall take such steps for preventive detention which is permissible under law, and proceed strictly in accordance with law to deal with such a person;
3. As and when necessary in respect of any person or persons, the District Superintendent of Police and the District Magistrate, shall obtain order from the Court and/or competent authority for extermen for such period which is found reasonable of such person in accordance with provisions of law in this behalf and entry of such person thus will not be allowed to enter in the District until his conduct is cleared by the District Superintendent of Police.

Petitions are disposed of accordingly with the hope and trust that the District

Administration of the Police and Executive and the Government of the State shall not give any opportunity for any further escalation of violence in the District, and if any other Districts or area of the State is found infested by same type of factionists and violence, extend the rules as above, to be applied to such Districts and such areas as well.

16. The writ petition is accordingly disposed of No order as to costs.