
(1997) 08 AP CK 0058

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 481 of 1996 and Criminal Revision
Petition No. 478 of 1996

Samuel Rajendram Maisa

APPELLANT

Vs

K. Krishna Rao and Another

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 199, 251
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (1997) 2 ALD(Cri) 448 : (1997) 2 ALT(Cri) 698 : (1997) 3 APLJ 18 :
(1998) CriLJ 231 : (1998) 3 RCR(Criminal) 267

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : P. Radha Krishna, for the Appellant; J. Prabhakar and Public
Prosecutor, for the Respondent

Judgement

1. This Revision is directed against the order passed by the First Additional Judicial First Class Magistrate, Khammam in CrI.M.P. No. 649 of 1996 in C.C. No. 396 of 1995 dated 21-9-1996; whereby the respondent has been discharged of the offence u/s 500, IPC.

2. The facts giving rise to this revision in brief are that the respondent who was the District Educational Officer-Cum-District Commissioner of Scouts and Guides, Khammam, suspended the wife of the complainant, namely, Smt. Suguna Rajendram from the post of Secretary, District Scouts and Guides Association, Khammam, (vide confidential proceedings in R.C. No. 2081/B5/BSG/93, dated 15-10-1995) in which he had mentioned the following facts at page No. 6.

In a petition given by certain Assistant Secretaries and Council members and others, they have narrated certain "indiscipline and obscene activities indulged by the present Secretary Smt. Suguna Rajendram and Hanumantha Rao, ASOC, Guides, in Police Parade ground, Khammam on 27-5-1995, whereby Scouts and Guides of District have gathered to give guard honour to the Honourable Minister

for Sports and Youth Services."

The complainant lodged a complaint u/s 499, IPC punishable u/s 500, IPC alleging that the aforementioned allegations made against his wife Smt. Suguna Rajendram are defamatory and have been made to malign her character and she and her family members could not move in public for fear that they may be insulted by any body.

3. The trying Magistrate recorded the statement of the complainant-petitioner PW 1 as also Motukuri Satyanandam LW 2 and Smt. Satya Ponnamma LW 3 and registered a complaint and summoned the respondent. Before explaining the particulars of offence, the respondent filed Cri.M.P. No. 649 of 1996 alleging that the impugned order had been issued by him during the discharge of his official duty and the Court cannot take cognizance of the offence unless the complainant petitioner obtains sanction from the competent authority to prosecute him; that the complainant is incompetent to lodge the complaint because complainant is not an aggrieved party and that the allegations made are neither defamatory nor published so as to lower down the prestige of the complainant or his wife Smt. Suguna Rajendram.

4. The trying Magistrate held that the respondent had received the report of the Mandal Revenue Officer sent to the Collector against the wife of the complainant and other representations against his wife and, therefore, he issued the impugned confidential proceedings with a copy to the District Collector and State Secretary, Bharat Scouts and Guides and Deputy District Educational Officer and these proceedings were issued in discharge of his official duty and under these circumstances permission to prosecute him was necessary and that there was no publication of defamatory remarks imputing the reputation of the wife of the complainant and that there was no authorisation from the wife of the complainant to lodge complaint against the respondent and holding so, the trying Magistrate dismissed the complaint as not maintainable.

5. Feeling aggrieved by the impugned order of discharge, the complainant has preferred this revision.

6. It has been urged on behalf of the petitioner that the trying Magistrate had no jurisdiction to discharge the complainant because once the complaint is registered u/s 204, Cr.P.C. and the accused is summoned in a summons case, the trying Magistrate has to explain the particulars of the offence u/s 251 of Cr.P.C. and to record his plea and to proceed further according to law. If the trying Magistrate can be said to have the power u/s 251, Cr.P.C. to consider whether an offence is made out or not, it may run counter to the power under sections 200 - 204, Cr.P.C. in which sections he has given power to take cognizance and once cognizance is taken, he has to explain the particulars of offence when the accused appears, but he cannot take a contrary view u/s 251, Cr.P.C. It has been further urged on behalf of the petitioner that the order of suspension had been sent to other officers and, therefore, it amounts to publication of the defamatory

remarks continued in it. The character of the wife of the complainant has been assassinated and, therefore, the complainant is an aggrieved person to lodge the complaint. It has been lastly urged that the respondent was not the Government servant when he had exercised the alleged powers to suspend the wife of the complainant in the capacity of District Commissioner, Scouts and Guides, Khammam, because Bharat Scouts and Guides is an association registered under the Societies Registration Act and the post was a Honourary post.

7. On the other hand, it has been contended on behalf of the respondent that he was the District Educational Officer and Government servant and by virtue of his post he was made Ex-officio District Commissioner, Scouts and Guides, and it was his duty inter alia to attend the organisation and conduct programmes and activities of Scouts and, therefore, sanction to prosecute him was necessary. It is also contended on behalf of the respondent that the alleged remarks mentioned in page 6 of the impugned proceedings dated 15-10-1995 are not defamatory particularly because on the allegation made against her by other, he had ordered Enquiry and he himself had not made allegations. A copy of the impugned order was sent to the wife of the complainant and to the concerned Government officers as confidential message and, therefore, it cannot be said that the alleged defamatory allegations ever published and the remarks were made by the concerned officers and members of the public against the wife of the petitioner while she was on duty and, therefore, the complainant cannot be said to be an aggrieved person, because the wife of the complainant might have been aggrieved but not her husband-complainant. It has also been contended that in answer to the summons, the respondent had right to object the Criminal Proceedings against him on the ground that the trying Magistrate had no jurisdiction to proceed against him because he had committed no offence. Reliance has been placed on the case K.M. Mathew Vs. State of Kerala and another, .

8. u/s 204, Cr.P.C. a Magistrate is authorised to issue process to an accused on taking cognizance of an offence on the ground that there is sufficient ground for proceeding against him on a private complaint and if it is summons case, then he shall issue summons for the attendance of the accused. Even if wherein an offence is disclosed, there must be definite evidence of offence within the jurisdiction of the Magistrate receiving the complaint. The order of the Magistrate to issue process must be a speaking order and contain grounds which are sufficient for issuance of process. At this stage, he can only be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.

9. Section 251 of Cr.P.C. provides that when the accused appears or brought before the Magistrate, the particulars of the offence of which he is accused of; shall be stated to him. At this stage if he comes and raises a plea that the complaint against him is not maintainable in law and the Magistrate is satisfied that no offence is made out, then the question of explaining particulars would not arise. A Magistrate registers a complaint u/s 204, Cr.P.C. in the absence of the

accused, on his satisfaction that a prima facie case has been made out against him for proceeding further in the matter. But on appearance of the accused, if he can satisfy the Court that no offence is made out in law, then there appears to be no impediment in discharging the accused without proceeding further because that may be a futile exercise. To illustrate, if the accused person satisfies the Magistrate that it has no jurisdiction to try the case beyond its pecuniary jurisdiction or the complaint is bad in law for want of sanction etc.; it would be abuse of process of law if, the particulars of the offence are yet explained to him and the evidence is recorded, if he denies it and ultimately acquitting of the charges levelled against him. In the case of K. M. Mathew (1992 Cri LJ 3779) (supra), the Apex Court held as under (paras 8 and 10) :

It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused To ask the accused to undergo the trial of the case merely on the ground of the issue of process would be oppressive. No person should be tried without a prima facie case

10. For the foregoing reasons, there appears to be no inconsistency between Section 204, Cr.P.C. and Section 251, Cr.P.C. and, therefore, the question of applying the test laid down in the case of Sultan Begum v. Premchand 1997 (2) SC 373 (sic) for interpretation of those sections does not arise and I hold that when the accused in response to the summons appears before the Magistrate and raises objection to the maintainability of the complaint, the Magistrate is competent to decide the same before taking any further step.

11. True that the respondent being the District Educational Officer, Khammam was also functioning as the District Commissioner of Scouts and Guides, yet while discharging his duties as District Commissioner, Scouts and Guides, could not be said to be functioning as a Government servant because that post is "Honourary" in Bharat Scouts and Guides and which is an organisation registered under the Cooperative Societies Act and, therefore, no sanction was required to lodge Criminal complain against him in his capacity for the alleged offence committed by him while acting as District Commissioner, Scouts and Guides.

12. The petitioner has pleaded in para 8(c) of the complaint that in the said impugned proceedings, the accused in page No. 6 has alleged that the complainant's wife had illegal contacts with one Hanumantha Rao, ASOC, and in support of his abusive allegations he imputed and ascribed that the wife of the

complainant exhibited unashamedly lewd, lustful, absence and indiscipline behaviour in the presence of students and teachers, police personnel and general public with the said Hanumantha Rao on 27-5-1995 on a public meeting in the ground of police parade, where the State Minister attended the function.

13. In para 2 above, I have reproduced the material allegations contained in page No. 6 of the impugned proceedings and a plain look of it shows that it does not contain that the complainant wife had illegal contacts with one Hanumantha Rao, ASOC, as also the allegation that the complainant had exhibited unashamedly lewd and lustful behaviour. It only contains that in the complaint received by him, it is alleged that she has indulged herself in certain indiscipline and obscene activities and Hanumantha Rao, ASOC, Scouts too in police parade ground, Khammam on 27-5-1995. It is crystal clear that the respondent had himself not alleged anything against the reputation of the wife of the complainant but has only repeated the allegation made in the various complaints received by him while passing the order of suspension. Whether he was competent to issue an order of suspension or not, is not a question to be decided by the Criminal Court. The only question that falls for determination is whether mere mentioning the aforesaid statement of those complainants in the suspension order amounts to defamation ? The respondent has ordered a departmental enquiry regarding the allegations made against the wife of the petitioner. There is no mention in this order about the nature of the indiscipline and obscene activities of the wife of the complainant. The act of indiscipline relates to the laches of the complainant's wife in discharging her duties as Secretary of Bharat Scouts and Guides. What are such obscene activities are the matters to be investigated into during the regular enquiry. Prima facie, it appears that the repetition of allegations of certain acts of indiscipline and obscene activities of the wife of the complainant do not appear to be defamatory.

14. The suspension order has been communicated to the wife of the complainant as also to the State Secretary, Bharat Scouts and Guides, District Collector, Khammam and District Commissioner for Guides and Deputy Educational Officer (Women) Khammam for information. The Communication has been confidential. It is pertinent to note that M. Satyanandam PW 2 and Smt. Setty Satyaponnamma PW 3 have stated on oath that when the petitioner had met them at Khammam, he informed them that his wife had been suspended on the allegation of unchastity and his reputation is at stake. M. Satyanandam PW 2 has stated that the complainant had met on 21-11-1995 while he met M. Satyanandam PW 3 a week before she was examined in the Court i.e. to say on or about 1-12-1995 (She was examined on 7-7-1995). As noted above, the petitioner in his complaint has alleged that his wife, other members of the family and he himself could not move freely in the public for fear that they may be insulted by anybody. He has not stated in his deposition that after receipt of the order of suspension on 4-11-1995 any body in public ever insulted him or had initiated talks about his wife. On the other hand, he has stated that people were talking behind back about the unchastity and behaviour of his wife, but he had

not examined any such person. On the contrary from the evidence of PW 2 and PW 3, it appears that he himself had narrated about the allegations regarding the conduct of his wife in his own words to them.

15. From the aforesaid discussion of the material on record, no fault can be found out with the findings of the trying Magistrate that the order of suspension containing the aforementioned allegations were published by the respondent accused.

16. The husband may be an aggrieved person and lodge a complaint where the alleged offence is defamatory imputing unchastity to his wife or for defaming himself though imputation said to have made concerning his wife of where the remarks are scurrilous or when the imputation is of such a nature that it has got some direct connection attaching reputation of the wife. Section 199 of Cr.P.C. restricts the powers of the Court in taking cognizance of the case except upon the complaint filed by some aggrieved person. Whether the person who has filed complaint is, or, is not, really aggrieved within the meaning of Section 199 of Cr.P.C. is the question which could be decided on the basis of the nature of the accusation and the circumstances which are relevant. In the case on hand, as noted above, the respondent has himself not made any allegations against the wife of the complainant. He has only suspended her, rightly or wrongly, on the allegations made against her. In the written reports received by him regarding the acts of indiscipline and obscene activities in the police parade ground on 27-5-1995, he had ordered for a departmental enquiry and under these circumstances it could not be said that the complainant-husband was an aggrieved person within the meaning of Section 199 of Cr.P.C. particularly because the aforementioned allegations do not appear to be scurrilous.

In result, I do not see any merit in the Criminal Revision Case and therefore, it is dismissed.

Petition dismissed.