
(2014) 02 AP CK 0006

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 2577 of 2012

Shaheen Hussain Khan and Another

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3) 173 173(8) 190
Penal Code, 1860 (IPC) — Section 120B 34 406 420 474

Citation : (2014) 1 ALD(Cri) 727

Hon'ble Judges : S. Ravi Kumar, J

Bench : Single Bench

Advocate : Mahmood Ali, for the Appellant;

Judgement

S. Ravi Kumar, J.—This revision is preferred against orders dated 21-11-2012 in Crime No. 66/2009 on the file of XVI Additional Chief Metropolitan Magistrate, Hyderabad questioning taking of cognizance for the offences under Sections 406, 474, 420 & 477 read with 34 IPC. Brief facts leading to filing of this revision are as follows:-

Second respondent herein (herein after referred to as complainant) filed a private complaint before XVI Additional Chief Metropolitan Magistrate, Hyderabad on 18-03-2009 and the same was referred to S.H.O., Habeeb Nagar u/s 156(3) Cr.P.C. on the basis of which, police registered Crime No. 66/2009 for offences under Sections 406, 474, 420, 477, 506 read with 120B IPC on 21-0-3-2009, and after investigation, Inspector of Police, Habeeb Nagar filed charge sheet against three accused persons reserving right to file charge sheet against remaining accused i.e., A4 to A10, after verification of the documents and other materials to file charge sheet against them separately. That charge sheet was returned by the learned Magistrate with some objections but inspector of police without submitting the returned charge sheet after complying the objection, filed final report on 20-07-2011 referring the case as that of civil nature, after issuing necessary notice to the complainant. On that complainant, filed protest petition

in Crl. M.P. No. 2897/2011 and raised objection on the final report dated 20-07-2011. On receipt of said protest petition, trial Court directed police to file the charge sheet that was returned on 26-08-2009 with objections and that police only filed xerox copies of the charge sheet stating that original is not traced. Thereafter, learned Magistrate conducted enquiry and recorded sworn statements of complainant and his witnesses and on a consideration of the same, took cognizance against revision petitioners herein and another for offences under Sections 406, 474, 420 and 477 read with 34 IPC. Aggrieved by the said order, present revision is preferred.

2. Heard both sides.

3. The main contention of the revision petitioners is that relationship between parties is purely that of a co-owners of a joint property and a civil suit is already pending between them, which was filed by the complainant himself and the investigating officer rightly filed final report referring the matter as that of civil nature, but the Court below without considering the same, entertained protest petition and issued summons. Learned Advocate submitted that XVI Additional Chief Metropolitan Magistrate erroneously exercised jurisdiction and committed wrong in not accepting final report dated 22-06-2011 which resulted in gross miscarriage of justice. He further submitted that learned Magistrate ought to have considered that the complainant did not make any of the petitioners as parties to the protest petition filed for the final report dated 22-06-2011 and without hearing the revision petitioners herein took cognizance, thereby committed grave irregularity. He further submitted that all the allegations referred in the complaint have to be considered only in the civil suit which is pending before the civil Court and there is absolutely no material attracting ingredients of any of the offences for which cognizance is taken.

4. On the other hand, Advocate for complainant submitted that trial Court rightly took cognizance of the offence and there is no procedure of issuing notice to accused on the protest petition before taking cognizance and the order of the learned Magistrate is a well considered order. He further submitted contention of the revision petitioners that lower Court committed illegality by not accepting the final report of the investigating officer is absolutely untenable, because it is for the Court to decide whether final report has to be accepted or not to be accepted, basing on the material. He submitted in this case when the investigating officer has filed a charge sheet against the revision petitioners and another on the basis of material, again filing final report referring it as a case of civil nature by conducting further investigation on the petition given by accused is absolutely illegal and not in accordance with procedure. He submitted that learned Magistrate took cognizance of the offence, only after recording sworn statements of complainant and his witnesses as there is prima facie material for the inducement, misappropriation and cheating etc. He submitted that there are absolutely no grounds to interfere with the order of the learned Magistrate.

5. Now the point that would arise for my consideration is whether the order of

the Court below is legal, proper and correct?

6. Point:-Here admittedly, complainant filed a private complaint before the Court below, which was referred to police for investigation u/s 156(3) Cr.P.C. and S.H.O. Habeeb Nagar, after due investigation, filed charge sheet against three accused persons, which include the revision petitioners herein. It is also admitted fact that charge sheet was returned with some objections, which are technical in nature not relating to facts or offences alleged. But after return of the charge sheet according to revision petitioners, A1 gave a representation by producing material available with him to the police and considering that material, a final report is filed referring the case as that of civil nature. Here much is argued on behalf of the revision petitioners with regard to power of the police to conduct further investigation u/s 173(8) Cr.P.C. Revision petitioners also relied on two rulings of the Hon"ble Supreme Court for the proposition that police officer even after submission of charge sheet can gather further evidence.

7. In All Cargo Movers (I) Pvt. Ltd. and Others Vs. Dhanesh Badarmal Jain and Another, in which it is observed that allegations in the criminal complaint must disclose the necessary ingredients therefore, Court can for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court.

8. In Central Bureau of Investigation (CBI) Vs. R.S. Pai and Another, in which it is observed that additional evidence gathered during investigation can be produced by police officer even after submission of charge-sheet, Word "shall" used in sub-section (5) for requiring the police officer to forward to the Magistrate "all documents" is directory and not mandatory.

9. The propositions in these two decisions is not disputed by the other side. The only submission of the other side is that the point in this case is not on the power of the police officer to make further investigation but the point is regarding power of the Magistrate to take cognizance by not accepting the final report submitted by the police.

10. As rightly pointed out by the Advocate for complainant, the issue involved in this revision is whether the Magistrate was right in taking cognizance by not accepting the final report of the police. Section 190 Cr.P.C. deals with power of taking cognizance, which reads as follows:-

190. Cognizance of offences by Magistrates:-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence:-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1), of such offences as are within his competence to inquire into or try.

11. From a reading of the above provision, it is clear that Court is taking cognizance of the offence but not cognizance of the offender. For taking cognizance, there must be material before the Court attracting ingredients of offences under any Penal Statute. One of the contentions of the revision petitioners is that notice on the protest petition was not given to them and before taking cognizance by not accepting the final report, the Court ought to have heard the revision petitioners herein also and to support of his argument, he relied on a decision of Allahabad High Court reported in Gajendra Kumar Agarwal Vs. State of U.P. and Others, In that case, a single Judge of Allahabad High Court opined that it is unfair to hear only the person filing the protest petition without hearing the accused when referred final report is filed, complainant is heard before passing any orders on it. But I am not in acceptance with the said view because the procedure contemplated is to issue notice to the complainant when a referred charge sheet is filed for the simple reason that the investigation was conducted only on the basis of complaint given by the victim, therefore, it is incumbent to inform the victim as to the result of the investigation and orders thereon. Therefore, the contention of the revision petitioners questioning the order dated 21-11-2012 on the ground that they were not given any notice of the protest petition is not at all tenable.

12. Police, after registering F.I.R. in this case, arrested A1 on 28-05-2009 and sent him with remand report for judicial custody, subsequently, charge sheet is filed. After registration of the crime once the accused is arrested and was sent to Court with a remand report till the final report is closed by the Court, the matter has to be treated as pending before the Court and in pending matters, police have no right to take any representation or material concerning the case from accused persons without permission of the Court. When the crime was pending in the Court, collecting representation or material from the accused persons by the investigating officer in my view is absolutely incorrect and contrary to the procedure. If A1 has got any objection as to the crime registered against him, he should report to the Court but not to the investigating officer. Further, the investigating officer also, if accused submits any representation, he should forward the same to the Court but he cannot act on it. In a similar set of facts, this Court in Crl. R.C. Nos. 960 & 1137 of 2012 held as under:-

The investigating officer instead of following the prescribed and established procedure as per Cr.P.C., digressed and went astray in investigation by receiving petitions from prime accused persons and began making enquiry in order to give

favourable report of clean chit in their favour.

Investigating officer in this case exactly did the same thing. Power u/s 173(8) Cr.P.C., is to collect further evidence, which he could not collect at the time of filing charge sheet, but not to take representations from the accused and to file a contra report. A perusal of the final report, which was not accepted by the trial Court, disclose that the investigating officer acted like an adjudicator, which is not permissible under law. In his report dated 22-06-2011, it is stated as follows:-

The disputes arising out of sale of property of 7 flats between first accused Shaheen Hussain Khan and the complainant in Cr. No. 66/2009 of P.S., Habeebnagar is purely civil transactions and civil case is still pending in the civil Court. Hence, the S.H.O., Habeebnagar will be advised to close investigation in Cr. No. 66/2009 as it containing several inconsistencies not supporting the ground facts.

13. A reading of the above would clearly disclose that he has dealt with the matter as if he is an adjudicator by considering the defence of the accused. On a perusal of the material on record, I have no hesitation in holding that the investigating officer adopted a procedure unknown to criminal law. Suffice to say that the investigating officer acted beyond his jurisdiction and powers for which the concerned authorities shall enquire into the matter and do the needful to see that this kind of procedures are not adopted by any other investigating officers.

14. Here taking cognizance by considering protest petition when final report is referred as case of civil nature is questioned. According to revision petitioner, when Investigating Officer filed report treating the case as civil nature considering the protest petition is illegal. The said objection is untenable, because it is for the Court to accept or reject the report filed u/s 173 Cr.P.C., after considering the material filed along with the final report. Role of investigating officer is to collect evidence and submit it to the Court with a report. Ultimately, it is for the Court to decide on the basis of evidence produced with the final report whether to take cognizance or not. In the final report, investigating officer will give reasons as to how accused charged is liable or as to the reasons how accused is not liable. Beyond that he has no power or jurisdiction to decide the issue. In this case, investigating officer decided the issue and relevant portion in final report is already extracted above.

15. After investigation, if accused is challaned, in normal parlance, it is known as accused is charge sheeted, if not challaned, it is treated as final report. But as per 173 Cr.P.C., both are final reports. Whether it is challaned or referred on permitted grounds, Court must pass judicial order.

16. Here the learned Magistrate by considering the complaint allegation and sworn statements of complainant and his witnesses found that there is prima facie material for the offences under Sections 406, 474, 420 & 477 read with 34 IPC. I do not find any wrong in the proceedings of the lower Court for taking

cognizance. Learned Magistrate rightly considered the material on record for taking cognizance and there are no grounds to interfere.

17. For these reasons, I am of the considered view that there are no grounds to interfere with the order of the learned Magistrate, which is a well considered order based on material.

18. Accordingly, the Criminal Revision Case is dismissed. As a sequel, miscellaneous petitions if any pending in this Criminal Revision Case shall stand dismissed.