
(2014) 01 AP CK 0009

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 15378 of 2013

Shaik Abdul Gani Miah and 2 Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Arms Act, 1959 — Section 25(1-B) 27
Criminal Procedure Code, 1973 (CrPC) — Section 167 167(2) 173
Penal Code, 1860 (IPC) — Section 302 307 324 34

Citation : (2014) 01 AP CK 0009

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : B. Vijaysen Reddy, for the Appellant;

Final Decision : Allowed

Judgement

Dr. K.G. Shankar, J.—The petitioners are accused 1 to 3. They allegedly committed offences under Sections 302, 307 and 324 read with Section 34 IPC and under Sections 25(1-B) and 27 of the Indian Arms Act. The petitioners contend that they have been in jail for over 90 days without charge-sheet having been filed and that they consequently are entitled to be released, more or less, as a matter of right.

2. Both sides advanced submissions regarding the merits and de-merits of this contention.

3. Before going into the question whether the charge-sheet was deemed to have been filed on the given facts, I may consider the case on merits; for in the event the petitioners are found to be entitled to grant of bail on merits, the question whether charge-sheet was filed or not within 90 days from the date of arrest becomes redundant.

4. It is the case of the prosecution that the 1st petitioner, who is accused No. 1 is a habitual offender. He is said to be the master-mind of the whole incident. It is

further alleged by the prosecution that accused No. 1 was involved in yet another double murder case and that he also faced conviction. Accused No. 1 in the company of accused 2, 3 and 5 and in connivance with them allegedly opened fire resulting in injuries to 12 persons including a Sub Inspector of Police. Three persons died in the incident.

5. It is contended by the learned Additional Public Prosecutor that this is not a fit case for grant of bail. He further submitted that a Police Picket is situate in the village owing to communal unrest. Where the petitioners are involved in a triple murder case and where accused No. 1 is alleged to be even a habitual offender and more important, where a Police Picket exist in the village as on today, I consider that the petitioners do not deserve to be enlarged on bail at this stage. This, of course, is regarding the merits of the case.

6. Regarding the question whether the petitioners are entitled to be released as of right, the admitted facts are that on 18-12-2012, the petitioners were arrested and that on 16-3-2013 charge-sheet was laid.

The docket proceedings dated 19-3-2013 before the Committal Court shows that the charge-sheet was filed on 16-3-2013. The docket proceedings dated 02-4-2013 before the Committal Court shows that the charge-sheet was returned.

7. It would appear that the charge-sheet was returned for compliance of objection like sanction of permission from the District Magistrate under the Indian Arms Act and report from the Forensic Science Laboratory. The learned Additional Public Prosecutor submitted that these short-falls because of which the charge-sheet was returned are curable defects as the objections are technical objections. His contention is that in the light of these objections, the charge-sheet is deemed to have been filed.

8. The learned counsel for the petitioners, on the other hand, pointed out that the charge-sheet was returned by the Committal Court without any objections whatsoever, as can be seen from the docket proceedings. He submitted that the charge-sheet was filed indeed on 16-3-2013 and was returned. His case is that it was not even recorded that the charge-sheet was returned for compliance of objections.

9. The learned counsel for the petitioners further contended that the charge-sheet was filed initially on 16-3-2013 and again in June, 2013 and the charge-sheet was once again returned by the Court. Thus even by June 2013, the case was not taken cognizance of.

It is contended by the learned counsel for the petitioners that where the charge-sheet was not filed fully and completely, it shall be deemed that the charge-sheet was not filed providing a statutory relief to the petitioners to obtain bail, more or less as of right.

10. The learned counsel for the petitioners placed reliance upon Matchumari

China Venkatareddy and Others Vs. State of Andhra Pradesh, In that case, a learned Single Judge of this Court, after holding that taking cognizance is a judicial act held that when Police did not file complete charge-sheet within the prescribed period u/s 167(2) Cr.P.C., a right is conferred on the accused seeking for the release on bail.

11. In Julakanti Brahma Reddy v. State of A.P. 2001 (2) ALD (CrI.) 660 (AP), another learned Single Judge of this Court noted where the Police laid a preliminary charge-sheet without completing the investigation that the preliminary charge-sheet cannot be treated as charge-sheet within the meaning of Sections 167 and 173 Cr.P.C. and that indefeasible right of accused to be released on bail does not stand extinguished on the filing of a preliminary charge-sheet.

12. In Puligada Pitcheswara Rao and Another Vs. State of Andhra Pradesh, relying upon Julakanti Brahma Reddy (2 supra), another learned Single Judge of this Court again held that if an accused files a petition before filing of the charge-sheet and offers to furnish bail, the accused is said to have availed his right and when once such a right is availed by the accused, it would not be extinguished by subsequent filing of the charge-sheet.

13. It is the contention of the learned counsel for the petitioners on the basis of these decisions that once charge-sheet was returned and has not been taken cognizance of, it is deemed that the charge-sheet has not been filed. The filing of the charge-sheet as noted in Matchumari China Venkatareddy (1 supra) is a complete charge-sheet and not a charge-sheet with defects. I consider that the filing of any defective charge-sheet cannot be treated as complying with the provisions u/s 173 read with Section 167 Cr.P.C.

14. In the present case, the charge-sheet was indeed filed on 16-3-2013. The charge-sheet was returned. By 19-3-2013, the petitioners accrued the right to be enlarged on bail as 90 days" period has elapsed from the date of their arrest. It would not matter whether the prosecution subsequently laid correct charge-sheet or otherwise. However, it would appear that the prosecution laid corrected charge-sheet in June 2013, which again stood returned. I therefore hold that this is a case where the charge-sheet is not deemed to have been filed within the statutory period.

The petitioners consequently are entitled to be enlarged on bail on the ground that the charge-sheet has not been filed within the statutory period.

Consequently, this petition deserves to be allowed. In view of the drastic allegations, it would be appropriate to order release of the petitioners-accused 1 to 3 on bail on terms only. The petitioners are enlarged on bail on a personal bond of Rs. 10,000/- (Rupees ten thousand only) each with two sureties each in a like sum to the satisfaction of the Judicial Magistrate of First Class, Allagadda, Kurnool District. After their release, the petitioners shall not enter the District of Kurnool. The petitioners shall stay within Hyderabad City until further orders.

They shall also report before the Station House Officer, Narayanaguda Police Station on every Monday, Wednesday and Friday between 09.00 a.m. and 06.00 p.m.