

(2000) 07 AP CK 0095

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2478 of 2000

Sk Johny and Another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Penal Code, 1860 (IPC) — Section 166
Police Act, 1861 — Section 29

Citation : (2000) 2 ALD(Cri) 176 : (2000) 4 ALT 127

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—Crl.Petition No.2478 of 2000

"We all, judges and lawyers, must restore our old faith and rekindle new hopes. The future is yours, men and women of law, take it and redeem yourselves"

--Justice Sabyaschi MukharJ.

This is a petition filed u/s 482 of the Code of Criminal Procedure to quash the proceedings in C.C.No.9 of 2000 on the file of the learned Chief Metropolitan Magistrate, Visakhapatnam. The petitioners are A2 and A3 in the said case.

5. Before advertng to the question as to whether the petitioners are entitled for any relief, it may be necessary to notice the background facts and circumstances leading to filing of this petition by the petitioners. Having regard to the question that falls for consideration, the facts in somewhat detail are to be noticed. The facts are tell-tale.

6. One Mulakalapalli Appa Rao S/o. Somulu, R/o. Peda Gantyada, working as

Kalasi in Visakhapatnam Steel Plant gave a report on 30-4-1999 in Steel Plant (Law & Order) Police Station, Visakhapatnam against one Chavvakula Venkata Satyanarayana, Technician in the same organization. In the said report, it is alleged that during the course of employment, the accused therein abused the informant in the name of his caste and caught hold of his shirt collar and then beat him on 29-4-1999 at 10-00 A.M. The accused therein is alleged to have further stated that SC/ST people cannot do anything to him and he may report to whomsoever concerned and in the past, he gave the same treatment to one S.T. Officer by name M.R. Mandal and then the SC/ST Officials could not do anything. Some people are alleged to have witnessed the incident.

7. The first petitioner herein is the Assistant Sub Inspector of Police, Steel Plant Law & Order Police Station, Visakhapatnam and the second petitioner is the Assistant Commissioner of Police (South), Visakhapatnam City. On receipt of the said report, the first petitioner promptly registered a case in Crime No.25 of 1999 u/s 323 of the Indian Penal Code and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act"). He issued the first information report and sent the original to the learned VIII Metropolitan Magistrate, Gajuwaka and set the law in motion. Some witnesses were examined by him during the course of investigation. The second petitioner being the Assistant Commissioner of Police took up the investigation as is required under the provisions of the said Act. Some witnesses were re-examined by the second petitioner and after completing the investigation filed the charge sheet in the court of VIII Metropolitan Magistrate, Gajuwaka. The learned Magistrate took the case on file and duly committed the same to the court of Special Judge for trial of cases under the said Act. The case was taken on file as S.C.No.5 of 1999.

8. The prosecution in support of its case examined as many as six witnesses and marked five documents. However, PWs 1 and 3 were declared hostile by the prosecution and were cross-examined by the learned Public Prosecutor. The second petitioner herein being the Investigating Officer was examined as PW6 in the said Sessions Case. The de facto complainant Mulakalapalli Appa Rao was examined as PW2. He appears to have given contradictory versions, but he was not treated hostile by the prosecution. However, the corroborating witnesses who were examined as PWs 1 and 3 did not support the prosecution case and departed from their earlier statements recorded u/s 161 of the Code of Criminal Procedure.

9. The learned Special Judge by his judgment dated 6th April, 2000, upon appreciation of the evidence and material available on record, acquitted the accused in the said Sessions Case and held that there is no material placed by the prosecution to establish the guilt of the accused. The learned Special Judge, however, observed that the second petitioner herein without proper investigation filed a false case against the accused therein. It is observed by the learned Special Judge that "as seen from the report given by PW1, it is contrary to the

evidence given by PW1 and the statement given by PW2 and PW1 is contrary to their evidence." It is further observed that "in the statement PW1 stated about the offence, but did not state anything during his examination. Hence it can be safely held that the prosecution was filed against the accused without proper investigation and harassed the accused for all these years." The learned Judge further observed that "as the prosecution case is out and out false and intended to file false complaint against the accused and PW2 has no guts to depose in the court and give good bye to the earliest version. As such, he is liable to be prosecuted u/s 191 of Cr.P.C. for giving false evidence and creating false document also."

10. The learned Judge accordingly directed a notice to be issued to the de facto complainant for giving false evidence and for creating false document and also notice to the petitioners herein for not conducting the investigation properly.

11. In the notice dated 11-3-2000, it is mentioned that in S.C.No.5 of 1999 on the file of the Special Court, the petitioners herein have not properly conducted the investigation and resulting in acquittal of the case. The petitioners were accordingly directed to appear before the court on 19-4-2000 at 10-30 A.M. without fail.

12. The petitioners herein submitted a detailed explanation inter alia stating that PW2, de facto complainant, clearly stated in the statement before the second petitioner herein that the accused abused him in the name of his caste as "S.C. S.T. Na Kodukullara" and PW2 during the course of his statement clearly stated that the accused abused him as "Madiga Lanja Koduka", but he has changed his statement subsequently during the course of evidence in the court. It is stated by the petitioners herein in their explanation that the statements recorded by them reveal prima facie material attracting the provisions of S.Cs. & S.Ts. (Prevention of Atrocities) Act. Hence, the charge sheet was filed in the court. It was even brought to the notice of the learned Judge that the de facto complainant and the accused entered into a compromise in the presence of Trade Union leaders and for that reason, the de facto complainant might have given false evidence without knowing the consequences. The petitioners in their explanation submitted that there is no necessity for them to foist any case against the accused therein. It is categorically stated in the explanation that the statements recorded were duly verified before filing of the charge sheet and even on re-examination the witnesses have stated same thing as to what they have stated in their statements u/s 161 of the Code of Criminal Procedure before the first petitioner herein. The learned Special Judge after taking into consideration the explanation submitted by the petitioners, passed the following docket order, which speaks for itself.

DOCKET ORDER DATED 25-4-2000 IN S.C.NO.5/99 OF II ADJ-CUM-C.M.M.-CUM-SPECIAL JUDGE FOR SC/ST (POA) ACT, 1989 COURT, VSP., IN CRIME No.25/99 UNDER SEC.323 IPC AND 3(1)(x) OF SC/ST ACT OF STEEL PLANT L&O P.S., VISAKHAPATNAM CITY.

13. Heard both sides elaborately. Basing on the material available on record it is very clear that PW-2 M. Appa Rao gave false complaint and he gave statement contrary to his report and during the course of examination he gave different version. It is very clear he misused the process of court and finding given accordingly in that effect and in the judgment. Police Officers who investigated violated norms and directions and procedure established according to law as per the guidelines of AIR 1991 of Supreme Court page 1460. Hence for not investigating the offence properly and file complaint before C.M.M. against police for the offence under Sec.44 of District Police Laws and Section 29 of Indian Police Act, 1861 and Section 166 of IPC., and for giving false report prosecute PW2 M. Apparao for the offence u/s 191 for giving false evidence. Explanation filed were considered and there are no merits in the representation.

Sd/-, P. Jagannadha Rao, Spl. Judge for Cases under SC& ST (POA) Act, Visakhapatnam City.

14. The learned Special Judge thereafter filed a complaint on 2-5-2000 against the petitioners herein before the Chief Metropolitan Magistrate, Visakhapatnam (himself) and on the same day took the complaint on file u/s 44 of "District Police Laws" or Section 166 of the Indian Penal Code against the petitioners. May sound strange, but it is a fact. That is how the criminal law proceedings are set in motion against these petitioners. The petitioners pray for quashing of the very proceedings initiated against them.

15. Sri C. Padmanabha Reddy, learned Senior Counsel appearing on behalf of the petitioners contends that the allegations in the complaint, even if taken at their face value, do not constitute any offence either under the provisions of Andhra Pradesh (Andhra Area) District Police Act or u/s 166 of the Indian Penal Code. Learned Senior Counsel would also submit that the whole proceedings apparently are vitiated for the reason of non-application of mind by the learned Judge. It is submitted by the learned Senior Counsel that the learned Special Judge committed an act of impropriety in lodging complaint against the petitioners herein before himself. It is further submitted by the learned Senior Counsel that the petitioners herein have not contravened the provisions of Section 166 of the Indian Penal Code, as they have not disobeyed any direction of the law as to the way in which they have to conduct themselves as police officers. The whole procedure adopted by the learned Special Judge is invalid in law and ab initio void. The learned Public Prosecutor assisted the court but wisely without making any attempt to support the impugned proceedings.

16. Indeed, it is very difficult for this court to sustain the proceedings initiated by the learned Special Judge. The learned Special Judge adopted a very peculiar method and had not even bothered to look into the relevant provisions of law before setting the criminal law in motion against the petitioners herein. The learned Special Judge observed that "the police officers who investigated violated norms and directions and procedure established according to law as per the guidelines of AIR 1991 of Supreme Court, page 1460."(?) It is difficult to discern

as to what exactly the learned Judge intended to convey. Admittedly, the first petitioner herein (A2) registered the first information report upon a report given by A1 (who is not a party in this proceeding) and recorded the statements of some of the witnesses, that is to say, PWs 1 to 3, and other witnesses were examined by petitioner No.2 herein. The statements of the witnesses were recorded u/s 161 of the Code of Criminal Procedure by the petitioners herein during the course of investigation of the crime. In the complaint, it is alleged that the petitioners herein did not properly verify the truth or otherwise of the statements given by the witnesses. The Investigating Officer is bound to record the statements of the witnesses, which disclose the commission of an offence. Apparently, the first information given by the informant in Crime No.25/99 undoubtedly reveals the commission of an offence punishable under the provisions of S.Cs. & S.Ts. (Prevention of Atrocities) Act, 1989. The first petitioner herein in discharge of his statutory duties rightly registered the first information report and took up the investigation. The informant as well as the other witnesses in their statements during the course of investigation confirmed and reiterated the contents of the first information report. How can the learned Special Judge come to any conclusion that the petitioners herein have violated the norms and directions and procedure established according to law and guidelines given by the Supreme Court of India? What are those guidelines issued by the Supreme Court? What is that provision of law and norms alleged to have been violated by the petitioners? None. At any rate, the learned Special Judge failed to indicate the law that is alleged to have been violated by the petitioners. The learned Special Judge referred to a judgment of the Supreme Court stated to have been reported in AIR 1991 Supreme Court, at page 1460. There is no such judgment of the Supreme Court reported in AIR 1991 SC 1460. Obviously, the learned Special Judge failed to apply his mind to the facts before deciding to initiate the prosecution against the petitioners herein. It is nothing but an act of callousness on the part of the learned Special Judge.

17. In the complaint, it is alleged that the petitioners herein "did not investigate properly". What does it mean? The petitioners herein having investigated the case filed the charge sheet, as they are expected to do so in discharge of their statutory obligation. It is not as if the contents of the first information report and the statements of the witnesses recorded u/s 161 of the Code of Criminal Procedure during the course of investigation of the crime do not reveal the commission of any offence as such by the accused therein. It is nobody's case. It is not even alleged that the petitioners herein have abused their powers as police officers with a view to implicate the accused therein in a false case. It is alleged that the petitioners herein during the course of investigation created false record against the accused in S.C.No.5 of 1999 and thus "committed the offences u/s 44 of District Police Laws (?), and Section 29 of the Indian Police (1861) (?) and Section 166 of the Indian Penal Code." The complaint betrays nothing but ignorance. The learned Special Judge did not even bother to look into the relevant provisions of law. There is nothing on record to arrive at a conclusion

that the petitioners are liable to be punished u/s 166 of the Indian Penal Code, nor there is any reason to proceed against the petitioners u/s 44 of "District Police Laws".

18. The learned Special Judge in his capacity as Chief Metropolitan Magistrate, Visakhapatnam by proceedings dated 2-5-2000 taken the case on file u/s 191 of the Indian Penal Code against A1 and Section 44 of "District Police Laws" or Section 166 of the Indian Penal Code against the petitioners herein. Section 166 of the Indian Penal Code deals with public servant disobeying any direction of the law, with intent to cause injury to any person. It is a non-cognizable offence.

Section 44 of the Andhra Pradesh (Andhra Area) District Police Act, 1859 says that "every Police officer who shall be guilty of any violation of duty or willful breach or neglect of any rule or regulation or lawful order made by competent authority or who shall maliciously and without probable cause prefer any false, vexatious or frivolous charge or information against any individual, or who shall knowingly and willfully and with evil interest exceed his powers or shall be guilty of any willful and culpable neglect of duty, in not bringing any person who shall be in his custody, without a warrant before a Magistrate as provided by law, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable on conviction before a Magistrate to a penalty not exceeding three month's pay, or to imprisonment with or without hard labour not exceeding three months or both." There is no allegation in the complaint that the petitioners herein are guilty of violation of any duty as such. There is no allegation that the petitioners herein maliciously and without probable cause filed a frivolous and vexatious charge sheet against the accused in S.C.No.5 of 1999. All that is alleged against the petitioners in the instant case that the petitioners failed to follow the norms stipulated and guidelines of the Supreme Court of India regarding the investigation. It is further alleged that the petitioners did not investigate the case properly. It would be worthy remembering that S.C.No.5 of 1999 has not resulted in acquittal of the accused therein on account of any loopholes or improper investigation as such done by the petitioners. The de facto complainant failed to support the case of the prosecution. Some of the witnesses turned hostile. In such a situation, the petitioners herein cannot be held responsible for initiating the very prosecution of the accused in S.C.No.5 of 1999. There is nothing on record to show that some guidelines were issued by the Supreme Court in the matter of investigation of a crime and they were violated by the petitioners. It is, however, alleged that the petitioners created "false record against the accused in S.C.No.5 of 1999". What are those records? There are no records as such filed by the petitioners herein in S.C.No.5 of 1999, except the record forming part of the investigation. There is no finding whatsoever that any of the documents marked or any portion thereof in Ex.P1 to Ex.P5 are falsely created by the petitioners. There is no plea by the accused in S.C.No.5 of 1999, nor there is any finding to that effect by the learned Special Judge. In the circumstances, there is no doubt whatsoever that Section 44 of the Andhra Pradesh (Andhra Area) District Police Act, 1859

(wrongly described by the learned Special Judge as 44 of District Police Laws) has any application whatsoever to the facts on hand. The learned Special Judge in his capacity as Chief Metropolitan Magistrate took the case on file against the petitioners herein u/s 166 of the Indian Penal Code also. Section 166 of the Indian Penal Code deals with public servant disobeying law, with intent to cause injury to any person. In the instant case, there is not even an allegation that the petitioners herein being the public servants knowingly disobeyed any provision of law or direction contained in such provision of law in the matter of conducting themselves as public servants and such conduct has resulted in injury to the accused in S.C.No.5 of 1999. There is no such finding in the judgment, nor any allegation as such is made against the petitioners in the complaint filed by the learned Special Judge before himself.

As noticed hereinabove, the petitioners herein having registered a case on the basis of first information given by the informant, investigated into the same and promptly filed the charge sheet against the accused. There is neither any allegation nor any finding that in the process of investigation the petitioners herein maliciously and without probable cause filed any vexatious or frivolous charge sheet against the accused therein. The complaint does not reveal that the petitioners herein have violated any provision of law or direction contained as such in any provision of law. Yet, the learned Special Judge thought it fit to set the criminal law in motion against the petitioners.

Yet another aspect of the matter: The learned Special Judge files complaint against the petitioners herein before himself and takes it on file in his capacity as Chief Metropolitan Magistrate, Visakhapatnam. It is too fundamental to state that the courts are also bound to observe the principles of natural justice. The learned Special Judge in the instant case at once adorns the role of a prosecutor as well as that of a Judge. It is rather shocking to notice that such a procedure could have been adopted by the learned Special Judge who is of a rank of District Judge. I intend to say no more on this aspect of the matter.

If at all the complaint against the petitioners could have been filed before a Metropolitan Magistrate having jurisdiction to take cognizance of offences as empowered u/s 190 of the Code of Criminal Procedure. Be that as it may, let us now examine as to in what manner the learned Chief Metropolitan Magistrate has taken the case on its file. The proceedings dated 2-5-2000 reads:

"Taken on file u/s 191 of I.P.C. against A1, and Section 44 of District Police Laws or Section 166 of IPC against A2 and A3 and issue summons to A1 to A3 and call on 18-6-2000."

Does it reflect application of any mind at all by the learned Chief Metropolitan Magistrate? Obviously not.

19. It is well settled that the Magistrates are duty bound to examine meticulously the contents of the complaint and the statements of the witnesses, if any, examined and the documents filed along with the complaint before taking the

cognizance of the case. The whole exercise should reflect an intense application of mind by the learned Magistrate before taking the complaint on file. Setting criminal law in motion is fraught with serious consequences. The Supreme Court in *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, observed: "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused."

Such an exercise obviously could not have been undertaken by the learned Chief Metropolitan Magistrate in the instant case, as apparently it is a case of pre-judging the whole issue. Such a course is impermissible in law. On this ground alone the proceedings are liable to be quashed.

The learned Special Judge, if at all, could have acted u/s 340 of the Code of Criminal Procedure if the circumstances so warranted. But, it is required to notice that Section 340 of the Code of Criminal Procedure provides for procedure in cases mentioned in Section 195 of the Code and Section 195 of the Code in turn deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. It mainly deals with offences punishable under Sections 193 - 196, 199, 200, 205 - 211 and 228 of the Indian Penal Code, when such offences are alleged to have been committed in, or in relation to, any proceeding in any court or of any offence described in Section 463, or punishable u/s 471, Section 475 or 476 of the Indian Penal 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. But, even according to the complaint, no such offence or offences liable to be punished under those sections are alleged to have been committed by the petitioners herein. Judges are not knight-errants in robes.

Judiciary is also a part of candid democratic government. All its actions are required to be transparent and accountable. All Public Power is a people's trust and so even judicial power has a fiduciary component. Justice must not only be done, but must also appear to be done. "Judges are commanded to avoid not only actual impropriety but also the appearance of impropriety in all their activities." The maxim be you ever so high the law is above you is equally applicable to the judges. The learned Judge lost the sight of these fundamental principles of law and set the criminal law in motion against the petitioners herein without any basis whatsoever. It has resulted in miscarriage of justice, and in the

circumstances this court's interference is required as this court is duty bound to prevent the miscarriage of justice.

For all the aforesaid reasons, the proceedings in C.C.No.9 of 2000 on the file of the learned Chief Metropolitan Magistrate, Visakhapatnam are quashed.