
(2012) 03 AP CK 0023

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 8995, 9260 and 10228 of 2009

V.K. Rudrama Devi and others

APPELLANT

Vs

The State of A.P. and others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155, 156(3), 176, 187, 190
Penal Code, 1860 (IPC) — Section 463, 464, 465

Citation : (2012) 2 ALD(Cri) 101 : (2013) 1 Crimes 249

Hon'ble Judges : Raja Elango, J

Bench : Single Bench

Advocate : Damodar Rao, for the Appellant; Srinivas Velagapudi for R. 2, for the Respondent

Final Decision : Dismissed

Judgement

Raja Elango

1. Since the points raised in all these three petitions are one and same, they are heard together and being disposed of by this common order. CrI.P.No. 8995 of 2009 is filed seeking to quash the proceedings in C.C.No. 820 of 2008 on the file of the Judicial First Class Magistrate at Bhongir, Nalgonda District. Likewise, CrI.P.No. 9260 of 2009 is filed seeking to quash the proceedings in C.C.No. 821 of 2008 and CrI.P.No. 10228 of 2009 is filed seeking to quash the proceedings in C.C.No. 161 of 2009 pending before the same Court.

2. Brief facts leading to filing the present criminal petitions, in a nutshell, are as follows:

The complainant in respective cases preferred complaint invoking the provision u/s 200 of the Criminal Procedure Code (for short "Cr.P.C.") for an offence under Sections 463, 464 and 465 of the Indian Penal Code (for short "I.P.C."). On such filing, the learned Magistrate referred the matter by invoking the provision u/s 156 (3) Cr.P.C. to investigation agency for enquiry. On reference, the

investigation agency, registered First Information Report in respective cases for the said offences, arrested the respective accused and filed final report. On such filing, the learned Magistrate after taking cognizance issued summons to the accused. Being aggrieved over the same, petitioners, who are the accused in respective cases, preferred the present petitions.

3. Heard.

Petitioners raised the following points for consideration of this Court:

1) the offence u/s 465 IPC being a non-cognizable offence, the reference made by the Magistrate u/s 156 (3) Cr.P.C. instead of invoking the provision u/s 155 Cr.P.C. is erroneous,

2) the investigating officer should not have arrested the accused in a non-cognizable offence without obtaining a warrant from the competent Court and

3) after investigation, filing of a report before the concerned Court not amounts to complaint since it is a police report.

4. Thus, they submitted that the cognizance taken by the learned Magistrate is erroneous and illegal and liable to be quashed.

5. In Cr.P.C. nowhere it is explained specifically as to what is cognizable offence and non-cognizable offence. The only explanation for it is available in Section 2 of Cr.P.C. Relevant definitions are extracted below:

(a) "cognizable offence" means an offence for which and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

...

(a) "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer, has no authority to arrest without warrant;

6. Further, Section 190 Cr.P.C. explained in chapter XIV - "Conditions Requisite for Initiation of Proceedings" prescribes the procedures to be followed by the Magistrate while taking cognizance of offences. Said chapter speaks about taking cognizance and also the bar to take cognizance except following some procedures mentioned in the sections.

7. In the present case, it is true the offence is a non-cognizable one. Section 155 Cr.P.C. explains the procedures to be followed by investigation agency on receipt of a complaint for non-cognizable offence. Section 155 Cr.P.C. runs as follows:

155. Information as to non-cognizable cases and investigation of such cases:-(1) When information is given to an officer-in-charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall

enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in his behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer-in-charge of a police station may exercise in a cognisable case.

(4) Where a case relates to two or more offences of which at least one is cognisable, the case shall be deemed to be a cognisable case, notwithstanding that the other offences are non-cognizable.

8. The said Section of law mandates the Police Officer, on receipt of a complaint for non-cognizable offence, to refer the informant to the Magistrate. Further, it mandates the Police Officer to investigate a non-cognizable offence with the order of a Magistrate having jurisdiction.

9. The main contention raised by the learned counsel for the petitioner is that no order was passed by the Magistrate for investigation since the complaint is filed by the complainant by invoking the provision u/s 200 Cr.P.C. It is true that the order of the Magistrate is not u/s 155 Cr.P.C. but at the same time there is no bar for the Magistrate to invoke the provision u/s 156 (3) Cr.P.C.

10. It would be appropriate to refer Section 156 (3) Cr.P.C., which runs as follows:

156 (3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned

11. It is also relevant to note Section 190 Cr.P.C., which runs as follows:

190. Cognizance of offences by Magistrate :-(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-

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

(c) Upon a police report of such facts;

(d) 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.

12. The said Section of law empowers the Magistrate to take cognizance not only of the offences come under the category of cognizable offence and also of non-

cognizable offence. No specific bar is mentioned in the said Chapter. Section 155 Cr.P.C. speaks about the power of police to proceed on information. Further, Section 156 (3) Cr.P.C. clearly indicates that on receipt of reference by a Magistrate, the Police Officer has the power to investigate. Hence, this Court is of the view that forwarding of the complaint by the Magistrate u/s 156 (3) Cr.P.C. in a non-cognizable offence that too in a pre-cognizance stage does not cause any prejudice to the petitioners herein. The said act of the Magistrate cannot be held to be illegal or erroneous.

13. As far as the arrest of the accused by the police officer in a non-cognizable offence is concerned, it is not only erroneous but also illegal. Section 155 Cr.P.C. makes it very clear that in a non-cognizable offence only an order of the Magistrate empowers the investigation officer to investigate the case, but at the same time it specifies that the Police officer should not arrest the person without a warrant obtained from the competent Court. In the present case, the arrest of the petitioners is highly illegal, but at the same time, this Court cannot pass any orders to ventilate the grievance of the petitioner for the said act by invoking the provision u/s 482 Cr.P.C. However, the petitioners are always at liberty to seek their remedy in appropriate Forum by invoking appropriate provisions.

14. According to the learned counsel for the petitioners, filing of charge sheet before the concerned Court cannot be called as a complaint, as such, the Magistrate has no power to take cognizance. The said point raised by the learned counsel is not in merit acceptance since Cr.P.C. specifies the cases where the Magistrate has to take cognizance on the basis of a complaint. As far as Section 465 IPC is concerned, there is no specific bar to take cognizance by a Magistrate on the basis of a Police report.

Further explanation to Section 2 Cr.P.C. runs as follows:

Explanation.-A report made by a police officer in a case which discloses, after investigation the commission of a non-cognizable offence shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be the complainant.

15. In view of the fact that there is no bar to take cognizance in the absence of a complaint and also in view of the above referred explanation, the cognizance taken by the Magistrate cannot be called irregular or illegal. Even admitting for a moment and even accepting the contentions that the cognizance taken is erroneous in law, the same cannot vitiate the entire proceedings pending before the concerned Court in view of section 460 Cr.P.C. in Chapter XXXV of Cr.P.C. The said Section of law runs as follows:

460. Irregularities which do not vitiate proceedings.-If any Magistrate not empowered by law to do any of the following things, namely-

(a) to issue a search-warrant u/s 94;

(b) to order, u/s 155, the police to investigate an offence;

(c) to hold an inquest u/s 176;

(d) to issue process u/s 187, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;

(e) to take cognizance of an offence under clause (a) or (b) of sub-section (1) of Section 190;

(f) to make over a case under sub-section (2) of Section 192;

(g) to tender a pardon u/s 306;

(h) to recall a case and try it himself u/s 410; or

(i) to sell property under Sections 458 or 459;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

16. In the said provision, sub-section (e) makes it very clear that the cognizance taken by the Magistrate not empowered will not vitiate the proceedings.

17. Thus, this Court is of the considered view that the present complaints are not liable to be quashed.

18. Hence, all the criminal petitions are dismissed.

19. However, considering the nature of allegations, the presence of the petitioners before the trial Court is dispensed with except on the dates the learned trial Judge insists for the same. Miscellaneous petition filed in this petition, if any, shall stand closed.