
(2014) 02 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 36097 of 2013

Yakasiri Chinnaiah

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161 173(2) 41A 91(1)

Citation : (2014) 1 ALD(Cri) 775 : (2014) 2 ALT(Cri) 219

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : Syed Khader Mastan, for the Appellant;

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, J.—The action of the fourth respondent in not filing a charge sheet, in FIR No. 136 of 2013 dated 27.09.2013 on the file of the fifth respondent Police Station, is questioned in this Writ Petition as being arbitrary, illegal and in violation of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short, the 1995 Rules). A consequential direction is sought to the fourth respondent to file a charge sheet. The petitioner, a member of the Scheduled Castes, lodged a complaint with the fifth respondent on 26.09.2013 stating that, at 7.00 PM, the sixth respondent, (a person belonging to the Backward Classes), had attacked him with a knife and had abused him in the name of his caste by uttering the words "mala naa kodaka neeku inta bala ichhindi evadra", and made an attempt to kill him; the seventh and eighth respondents had also abused him in the name of his caste by uttering the words "mala naa kodaka rajakeeyalu neekenduku raa"; the accused had tried to stab him with a knife in his stomach; the knife hit him on his head, and he sustained bleeding injuries; and, in the meanwhile, the villagers rushed to the scene of the offence, and saved him from the accused. The petitioner has invoked the jurisdiction of this Court contending that, though the complaint was registered as FIR No. 136 of 2013, investigation had not been completed for

nearly three months thereafter.

2. In his affidavit dated 30.01.2014 the Superintendent of Police stated that investigation has been completed; a report u/s 173(2) Cr.P.C. was filed before the Judicial Magistrate of First Class, Kota, on 25.01.2014; and the said report is yet to be taken on file. In his affidavit dated 11.02.2014, the Superintendent of Police refers to a Memo dated 25.06.2008, issued by the Additional Director General of Police, wherein the caste certificate of the victim is required to be obtained and the caste of the complainant ascertained by the Investigating Officer from the Mandal Revenue Officer, or the authority concerned, during investigation. The delay in investigation is attributed largely to the failure of the Mandal Revenue Officers to forthwith furnish the caste certificates of both the complainant and the accused.

3. The Memo in C. No. 1762/C19/PCR/CUD/2004 dated 25.06.2008 contains the circular instructions issued by the Additional Director General of Police, CID whereby suggestions have been made to the Investigating Officers of the manner in which cases, under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the 1989 Act), and the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (for short, the 1993 Act), should be investigated. Paragraph 2 of the said instructions relates to registration and investigation and, clause (g) thereunder, requires the caste certificate of the victim to be obtained, and the caste of the accused ascertained by the Investigating Officer from the Mandal Revenue Officer, or the authority concerned, during investigation in the case, preferably prior to the apprehension of the accused in the crime.

4. Just as in the present case, in several other cases also Rule 7(2) of the 1995 Rules, which mandates completion of investigation of complaints registered under the 1989 Act within thirty days, has been observed more in breach than in practice on the specious plea that a letter has been addressed by the Investigating Officer to the Mandal Revenue Officer, seeking information of the caste status of both the accused and the victim; and no information has been received from the M.R.O. in this regard for several months.

5. It is necessary for the Investigating Officer to ascertain the caste status of both the complainant and the accused, as Section 3 of the 1989 Act would apply only to offences committed by a member not belonging to the Scheduled Castes and the Scheduled Tribes against a member of the Scheduled Castes and the Scheduled Tribes. The question which necessitates examination is whether the aforesaid guidelines dated 25.06.2008 can be cited as a justification for the inordinate delay in completion of investigation of complaints registered under the 1989 Act, and the failure to adhere to the statutorily prescribed time frame of completing investigation of such complaints within thirty days. In this context it is useful to refer to the provisions of the 1993 Act to the extent relevant. Section 3 of the 1993 Act relates to an application being made for grant of a community

certificate. Section 4(1) enables the competent authority, on an application made to it u/s 3, to satisfy itself about the genuineness or otherwise of the claim made therein and, thereafter, issue a community certificate within such period, and in such form as may be prescribed. Adequate safeguards are provided in the 1993 Act for cancellation of a false community certificate (Section 5); for imposition of penalties where a community certificate is obtained by furnishing false information, or filing a false statement, or any other fraudulent means (Section 10); for the benefits, secured on the basis of a false community certificate, to be withdrawn (Section 11); and for imposition of penalty for securing appointment on election to political offices etc., on the basis of false community certificates (Section 12). Section 13 also prescribes the penalty to be imposed on any person or authority, performing the functions of a competent authority under the said Act, if he intentionally issues a false community certificate.

6. The 1993 Act not only prescribes a detailed procedure for grant of a community certificate, but also for penal action being taken against the person who obtains a community certificate by furnishing false information, and against the officer who intentionally issues a false community certificate. Section 91(1) of the Code of Criminal Procedure, 1973, enables any officer in charge of the Police Station, if he considers the production of any document which is necessary, to issue a written order to the person, in possession of such a document, requiring him to attend and produce it before him. Sections 41A and 161 Cr.P.C. enable the Investigating Officer to direct either the accused or the complainant to appear before him for examination. The aforesaid provisions of the Code of Criminal Procedure empower the Investigating Officer to direct either the complainant or the accused to produce their community certificate issued under the 1993 Act.

7. It is only in cases where the complainant does not produce the community certificate, in support of his claim to be a member of the Scheduled Castes or the Scheduled Tribes, would the Investigating Officer be justified in seeking information regarding his caste status from the concerned Mandal Revenue Officer/Tahsildar. Ordinarily a community certificate issued under the 1993 Act, reflecting the caste status of the complainant to be a member of the Scheduled Castes or the Scheduled Tribes, should be accepted, and investigation should be completed as mandated by Rule 7(2) of the 1995 Rules. It is only in cases where the complainant does not produce the community certificate, or the Investigating Officer has bona fide reasons to doubt the genuineness of the certificate so produced, would he be justified in seeking information from the Mandal Revenue Officer/Tahsildar regarding the caste status of the complainant. While the accused cannot be said to have committed an offence under the 1989 Act, in case he also belongs to the Scheduled Castes or the Scheduled Tribes, it is for him to produce his community certificate, issued under the 1993 Act, before the Investigating Officer when he is asked to appear before him in accordance with Section 41A Cr.P.C., or at any time thereafter. The guidelines dated 25.06.2008 cannot be so read as to flout the aforesaid statutory provisions.

8. In the light of the aforesaid observations, the second respondent shall consider whether revised instructions should be issued to Police Officers in the State regarding the manner in which the caste status of the complainant/victim should be ascertained. The guidelines shall be in compliance with the provisions of the Cr.P.C. and the 1993 Act, and must also ensure speedy completion of investigation as stipulated under Rule 7(2) of the 1995 Rules. An additional affidavit is filed by the petitioner contending that, while a final report u/s 173(2) Cr.P.C. may have been forwarded to the competent Magistrate on 25.01.2014, the original complaint was not enclosed thereto. Learned Government Pleader for Home, on instructions, would state that the original complaint has been sent along with the final report to the competent Magistrate and the petitioner's apprehension, to the contrary, is unfounded.

9. In view of the submission now made by the learned Government Pleader for Home, on instructions, I see no reason to delve further on this aspect. Suffice it to observe that, since a final report has now been filed, I see no reason to keep the Writ Petition pending on the file of this Court, or to examine the allegations made therein, any further. The Writ Petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.