

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.2133 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C., petitioner/A2 challenges the order dated 24.12.2014 in Crl.M.P.No.5787 of 2014 in C.C.No.36 of 2012 passed by the learned II Additional Judicial First Class Magistrate, Sattenapalli dismissing the petition filed by the petitioner/A2 under Section 258 Cr.P.C. for stopping the proceedings against him in C.C.No.36 of 2012.

2) The factual matrix of the case is thus:

a) The petitioner and two others are facing trial for the offences under Sections 323, 427, 452, 506, 509 r/w 34 IPC before the learned II Additional Junior Civil Judge, Sattenapalli. It is a private summons case. The matter is in the mid way of defence evidence. At this stage, the petitioner/A2 filed a petition under Section 258 Cr.P.C. to stop the proceedings against him on the grounds firstly, that the allegations of complainant that incident took place on 18.05.2011 at 11 AM at Dharanikota is an utter false because at the relevant time the complainant herein appeared before the SHO, Bommuru PS, Rajahmundry in due compliance of the bail order conditions imposed in Crl.M.P.No.615 of 2011 dated 03.05.2011 passed by Judge, Family Court, Rajahmundry and secondly, that during evidence complainant changed the time of offence and stated as if offence took place at 11.30 P.M. and so there was no

consistency in her evidence on material facts.

b) Petition was opposed by the respondent/defacto complainant.

c) Learned Magistrate after due enquiry dismissed the petition on the grounds that benefit under Section 258 Cr.P.C. can be extended only to the cases instituted on police reports but not to the private complaints and that the inconsistency relating to time of the offence and alleged suppression of other material facts by the complainant and their effect on the veracity of evidence of *defacto* complainant can be decided only after completion of trial.

Hence the instant petition.

3) Heard.

4) The point for determination is:

“Whether there are merits in this petition to allow?”

5) Upon hearing both sides and on perusal of record, I find no merits in the petition. This is a case instituted on private complaint and it is a summons case. So, the procedure contemplated under Sections 251 to 259 is applicable to the case on hand. Section 258 deals with powers of Magistrate to stop proceedings in certain cases, which reads thus:

258. Power to stop proceedings in certain cases: *In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case,*

release the accused, and such release shall have the effect of discharge.

Under Section 258 of the Code, in appropriate cases, the Magistrate can stop the proceedings at any stage without pronouncing judgment. If stoppage of proceedings is effected after recording the evidence of principal witnesses, Magistrate has to pronounce the judgment of acquittal and in any other case, the Magistrate can release the accused and such release has an effect of discharging the accused. The underlying principle in empowering the Magistrate to stop the proceedings without pronouncing the judgment or pronouncing judgment of acquittal or releasing the accused is to prevent miscarriage of justice i.e. upon finding that there is no material to proceed further and such proceeding amounts to abuse of process of law and resulting in undue harassment to the accused. What is to be noted from Section 258 Cr.P.C. is that it applies only to those cases which are instituted on police reports but not to the cases instituted upon private complaints. This was made clear in the following judgments.

a) In ***John Thomas v. K.Jagadeesan***^[1] Apex Court held thus:

“One of the normal rules in summons cases is that once trial started, it should reach its normal culmination. But Section 258 is included in the Chapter XX of the Code in the form of an exception to the aforesaid normal progress chart of the trial in summons cases. But by S.258 the power of Court to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no material witness was examined at all.”

b) Similar view was taken in another decision reported in

Manjunath C.Kammar v. A.Kanthilak and Company^[2]

wherein Karnataka High court held thus:

“10. In these two matters, the proceedings are initiated on the basis of the complaints under Section 200 Cr.P.C. Under such circumstances, the learned Magistrate does not get Jurisdiction to proceed under Section 258 Cr.P.C. and the same can be exercised only if the proceedings are instituted otherwise than upon a complaint. In other words, the language of Section 258 Cr.P.C. is clear that this Section applies only to cases based on police report. As the present cases are based on private complaints, Section 258 Cr.P.C. will not apply to these cases. “

Therefore, from Section 258 Cr.P.C. and above precedential jurisprudence, it is clear that stoppage of proceeding at different stages as contemplated under Section 258 Cr.P.C. can take place only in those cases instituted otherwise than upon a complaint. As already stated, since the case on hand is one instituted upon private complaint, the benefit under Section 258 Cr.P.C. cannot be extended to it. So far as other points raised by the petitioner/A2 is concerned, the trial Court rightly held that whether the complainant deposed falsehood with regard to timing of the offence and other material facts or not can be decided only after due trial. In this petition the same cannot be determined which will amount to premature conclusion. So, at the outset, the impugned order does not suffer any illegality or irregularity warranting interference.

6) Accordingly, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 31.03.2015

Note: L.R. copy to be marked Yes /No

Murthy

[\[1\]](#) AIR 2001 SC 2651

[\[2\]](#) 2003 CrI.L.J. 2945