

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.4259 of 2015

ORDER :

This Criminal Petition is filed by the Petitioner/ accused No.2 under Section 482 Cr.P.C seeking to quash the proceedings in P.R.C. No.27 of 2015 on the file of Judicial First Class Magistrate, Kurnool, where the learned Magistrate has taken cognizance for the offences punishable under Sections 302 and 120 (B) IPC against the petitioner/ accused No.2 as instigator or co-conspirator in the commission of the offence by accused No.1.

2) Heard learned counsel for the petitioner/ accused No.2 as well as 1st respondent—State represented by learned public prosecutor before admission. Perused the material on record.

3) The *de facto* complainant is wife of deceased, accused No.1 is second son of the deceased and *de facto* complainant and the Crime is registered from her report dated 28.05.2013 at 20.30 hours in Crime No.117 of 2013 of II Town Police Station, Kurnool, for the occurrence taken place at about 7.30 hours of the police station within 4 kms. After registration of the crime by N.V.Ramaiah, ASI, LW.19 of the charge sheet, further investigation done by LWs.20, 21 and 22 of the charge sheet and filed final report by verification of the investigation with further investigation by LW.25—Sub Divisional Police Officer, Kurnool, who is incharge Inspector/ Inspector and SDPO. Among 25 prosecution witnesses shown in the charge sheet, LWs.11 and 12 are the witnesses to the scene observation panchanama scribed by LW.23 and LWs.13 to 15 are the witnesses of inquest panchanama scribed by LW.23; LWs.11 and 16 are the witnesses to arrest of A-1 vis-à-vis disclosure and seizure of weapon etc., covered by panchanama.

4) LW.17 is Assistant Director, RSFL. LW.18 did the autopsy on body of the deceased. Among the main witnesses to speak the occurrence and complicity of accused concerned are besides De facto complainant –LW.1, LW.2 is brother of A-1; LW.6 is sister of A1, and others LWs.7 to 10 to speak about panchayat and they acted as elders in

the dispute between A-1 and deceased, and LWs.3 to 6 speak the motive part regarding the incident.

5) The sum and substance of the report of de facto complainant setting the law in motion vis-à-vis her statement during investigation before the Investigating Officer is that the deceased is her husband and A-1 is her second son and their eldest son LW.2 is doing business at Hyderabad and A-1 is after completion of B.Sc., B.Ed. staying at Kurnool and A-1 was demanding the deceased (father) to hand over the two B.Ed Colleges running by deceased and also house at Nandikotkur Village and unable to bear with nagging and for the attempt earlier made, the wife of deceased reported the occurrence before III Town Police Station, Kurnool, the police registered the Crime No.37 of 2011 for the offences under Section 307 IPC and the case during trial ended in acquittal from the sympathy shown by the deceased, de facto complainant and others as he happened to be their son. However, there is no change in the attitude of A-1 and he has been harassing the deceased for parting with the property and threatening to do away. While so, on the fateful day i.e., 28.05.2014, the deceased went to Yemmiganuru to speak to College Principal and in the evening when he was returning to home, the de facto complainant—wife of deceased who was in the evening walk noticed as he getting down from auto and when they were coming together towards house from SLV Dish Net works, A-1 their younger son came there and demanded the deceased for the property and the deceased replied that to wait for some time so that he could give property to him. However, unheeding the same, picked up the knife concealed and cut the neck of the deceased therefrom, the deceased breathed the lost and on her cries, persons gathered and called for ambulance and hence to take action.

6) It is also stated that A-1 is not dare enough to commit the murder of his father but for instigation of one Maddilety (journalist) shown as A-3 in FIR and later deleted during investigation by not charging in the final report for no incriminating material against him from other statements and A-2, Chinthakunta Venkateswarlu, advocate and it is because of

their instigation and aiding the murder was committed by A-1, hence to take action.

7) LW.2—T.C.Venkataiah is a circumstantial witness resident of Hyderabad and who is no other than brother of A-1 and son of deceased and LW.1, and LW.6—daughter of deceased and LW.1 and sister of LW.2 and A-1 stated nothing. Coming to the other evidence, LW.5 through cited by prosecution as if eye-witness by name Ravikanth stated that on the cries of LW.1, he rushed there and noticed an old man in pool of blood and LW.1 old woman weeping by raising cries, and he dialed for 100 phone number for information to secure ambulance but for LW.1 there is no any eye-witness to the occurrence. On coming to circumstantial evidence, LWs.3 and 4 are relatives of deceased and accused and LWs.7 to 11, so-called elders of panchayat stated that there is property dispute between deceased and their son, after when they were altercated many a time panchayat conveyed and deceased was saying to give share to accused only after discharge of debts incurred in establishing the colleges and A-1 brought to the dispute his lawyer Vekateswharlu i.e., A-2, quash petitioner herein and one Maddilety—A-3 and in that dispute the deceased did not heed the words of his father and demanded to give share in the property immediately to A-1 and earlier for the attack by A-1 on deceased, which is reported to police, the case is registered and later compromised. Even thereafter, there is no change in the attitude of A-1, who has harassed his father and they came to know as a consequence of this, attack on the deceased by cut throated with knife by A-1 causing death and LW.4—T.Sriramulu another relative of A-1 and deceased also speak about conducting of panchayat many a time for compromise and on behalf of A-1, A-2 and A-3 also came and deceased refused to give any share in the property immediately by saying A-1 incurred debts in establishing the colleges and he could give share later only and for the consequences, he attacked. LWs.7 to 10, the elders who conducted panchayat concerned. LW.7—M.P.Giddaiah stated that the panchayat is about eights months prior to the murder and there was a last panchayat between A.1 and deceased regarding the

property sharing and they came to know A1—Krisha Mohan met his advocate A-2 and at his instigation, he decided to kill his father and attacked. Neither LW.1—de facto complainant nor even the Panchayatdar—LW.7 supra did speak regarding the instigation and how A-2 and A-3 instigated A-1 to kill the deceased and the motive, if any.

For not a case of A-2 also in the company of A-1 for any conspiracy or for any attack or any altercations with deceased along with accused. Even coming to LW.8—B.P Madhu, he reiterates what LW.7 stated that the dispute is eight months prior to the occurrence regarding partition of property and on that A-1 approached A-2. LW.9—M.S.C.Bose of Kurnool town, stated that the said A.1 without heeding the advice of elders raised the dispute and where earlier attacked his father and crime registered, which was ended in acquittal with no charge and without heeding elders advice or of the deceased, with the support his advocate —A-2 and A-3 to the dispute to distribute the property where they advised to settle amicably before the elders. However, A-2 stated to A-1 that he can see how he could not get the property and he could see that the property would get and from the support of A-2, A-1 decided to do away his father to get the property and thereby, there is instigation of said A-2.

8) LW.9 is not only a panchayatdar even according to him but for one of the panchayatdars among LWs.7 to 10 and they did not state but for presence of A-2 and A-3 and one of the panchyatdar on behalf of accused in disputing the property of the deceased and in the presence of elders supra, they did not speak about any instigation or aiding. That also what LWs.3 and 4 referred supra stated and practically from the material on record there is nothing to say much less A-3 even A-2 is a privy or instigator or abettor or aided A-1 in causing murder of father of A-1—deceased on fateful day. Practically, there is no material in support of the prosecution even to sustain the allegation much less to charge the petitioner/ A-2 for the offence under Section 302 r/w 120 B IPC. No doubt, as can be seen from Section 107 IPC the conspiracy is also part of aiding and instigation and as per the settled law, a charge under Section 109 IPC includes Section 120-B IPC and even it is not properly arrayed

in the charge since included it makes no difference. However, there must be factual foundation of aiding or instigation or privy to attribute any role against A-2 and A-3 but for their presence on behalf of A-1 in the panchayat with the father of A-1 i.e., deceased finding in the presence of other elders, there is nothing to say that too that incident lastly happened eight months prior to the murder committed by A-1 only. Even from the so-called disclosure leading to facts discovered by A-1 also, there is nothing to show complicity of A-2 and A-3. There is no even any little evidence from the statements but for A-2 and A-3 also present on behalf of A-1 in the panchayat eight months prior to the occurrence the demanding for share in the property by A-1 against his father—deceased.

9) In fact a perusal of the record shows Sri Shirdi Sainath Education Society, rep. by its General Secretary/ Correspondent M.A.Ismail Baig, Kurnool town filed a suit O.S. No.373 of 2012 on the file of Principal Junior Civil Judge, Kurnool against A-1. There the advocate for A-1 was one V.Venkateswarlu, M.V.Rajarammohan Rao of Kurnool and not the petitioner C.Vekanteshwarlu—A2. The mere presence on behalf of A-1 in the civil panchayat for property dispute in demanding to give share, either by A-2 or A-3 not suffice to rope them as abettors or instigators or privy or conspirators even taken for arguments sake. The stray sentence surprisingly in the statement of LW.9 that A2, who is the quash petitioner herein, stated with A-1 that he can see how he could not get the property and he could see that the property would get in any way from the refusal of deceased in giving property to A-1, that is no way sufficient to rope the petitioner/ A-2 as any manner main perpetrator of Crime. Thus, having exonerated the journalist A-3 when the petitioner/A-2 as not even in any little worst footing there is nothing to sustain the accusation against the petitioner/ A-2 and the police final report showing in charging him or for taking cognizance by allotting PRC to commit by the learned Magistrate. It is needless to say even at the stage of anticipatory bail, the relief obtained by petitioner—A2 in CrI.P.No.5809 of 2013 by this court categorically observed there is nothing to show as to

how and in what manner and what acts the petitioner is privy or abettor or instigator or conspirator to the murder of deceased by his son—A-1 to rope.

10) Having regard to the above, it is a fit case to quash the P.R.C. No.27 of 2015 on the file of Judicial First Class Magistrate, Kurnool against the petitioner/ A.2.

11) Accordingly, the Criminal Petition is allowed and all the proceedings relating to P.R.C. No.27 of 2015 on the file of Judicial First Class Magistrate, Kurnool against the petitioner/ accused No.2 are quashed and the bail bonds of the petitioner/ accused No.2, if any, are cancelled.

12) Miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.14.10.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:14.10.2015

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