

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.1598 of 2014

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioners-A.1 to A.3 to quash the proceedings in Cr.No.92 of 2010 on the file of the Pamaru Police Station, East Godavari District, registered for the offences under Section 324 read with 34 of IPC on the hospital intimation at 20 hours on 31.12.2010 through the statement of defacto complainant/injured T.Ramachandra Rao recorded by the Head Constable at Ramachandrapuram which reads that on that day morning at about 7.00 A.M., the accused persons Geddada Venkat Rao, Geddada Gangadhara Rao, including the petitioners 1 and 2 Lova and G.Suribabu, herein planted a Guava plant in the way towards his house in the site of the defacto-complainant and when it was questioned by his junior paternal uncle(L.W.2 Venkateshwara Rao), said accused persons replied as if it was their way and challenged to do what he could and pushed his paternal uncle and while they were beating his paternal uncle, the complainant went there at that time, one of the accused persons having crowbar in hand and Lava(1st petitioner herein-A.3) dealt a blow on his head and left ear region and threatened to do away with him and there is a bleeding on his head from that blow and G.Suribabu(2nd petitioner herein-A.4 of F.I.R) beat him with a stone on his left hand and all the persons thrown him down and A.1 and A.2 beat his paternal uncle also and the persons by names Geddada Durga and Geddada Kumari also pelted stones on his paternal uncle and he and his paternal uncle were shifted to Ramachandrapuram area hospital by his father for treatment. It is after police investigation by recorded statements of the defacto-complainant and his paternal uncle Vekateshwara Rao and his father Satyanarayana as L.Ws.1 to 3 and after examination of the doctor who treated them in the hospital as L.W.4 and the head constable who recorded the statements of injured as L.W.5, Sub Inspector of police as L.W.6, registered Crime and L.W.7 successor of L.W.6 verified the investigation and collected wound certificate and filed chargesheet and in the chargesheet it is mentioned that in the course of investigation from no evidence, A.3 to A.5 of FIR being students of below 21 years shown not involved in the commission of offence and they are not shown in the chargesheet but for the other three A.1,A.2 and A.6 of FIR, the 1st petitioner herein(A.3) is son of FIR A.1 and petitioners 2 and 3 (FIR A.4 and A.5)are son and

daughter of FIR A.1. The learned Magistrate therefrom taken cognizance for the offences supra against the A.1,A.2 and A.6 charged supra and after framing charges from securing presence of accused and hearing the trial commenced. It is in the course of trial, P.W.1-injured was examined in chief and his statement which is recorded in hospital is exhibited as Ex.P.1 referred supra. It is therefrom the CrI.M.P.No.635 of 2012 filed on behalf of the prosecution stating that P.W.1(injured L.W.1) stated in his evidence in Chief that on 21.11.2010 all the 6 accused persons were while planting guava plant in the pathway to house of P.W.1 and when L.W. 2 questioned them about the planting in the pathway from which there was a fight and on hearing the same, P.W.1 went to the scene of offence and tried to rescue his junior paternal uncle, then the three A.1,A.2 and A.6 along with three other accused who are the petitioners herein armed with crowbar beat the P.W.1 and L.W.2 (T.Venkateshwara Rao) and also pelted stones and caused injuries and on the same day, on received hospital intimation, the S.H.O., Ramachandrapuram police station recorded the statement of P.W.1 where he specifically stated that G.Lova beat him with crowbar on his head, G.Suribabu beat him with stone on his right elbow and also about beating him by remaining accused in registering crime against those persons, further stated in petition that however, the petitioners not shown in the chargesheet, hence prayed to implead the petitioners herein as accused along with A.1,A.2 and A.6 under section 319 of Cr.P.C. in the ends of justice.

2. The A.1,A.2 and A.6, having received the notice of the application under Section 319 of Cr.P.C., filed counter opposing the same, contending that whatever P.W.1 stated in his chief-examination and FIR is not the conclusive proof of the case, during the investigation, the prosecution categorically stated that the offence on the other alleged accused has not been proved and at this stage, the Court cannot take cognizance against the other alleged accused without having incriminating material against them in the chargesheet filed by the prosecution and it is settled law that the aggrieved party can file a private complaint against the accused left over by the prosecution, hence to dismiss. On the other hand, the learned Public Prosecutor argued that the proposed accused names are found place in F.I.R. given by P.W.1 are not added as accused in the chargesheet and the evidence of P.W.1 before the Court clearly and categorically shows with regard to involvement of the above proposed accused but their names are intentionally deleted, hence to add them as accused. In support of which the learned Public Prosecutor relied on the expression

of **Batcha @ Guramkonda Garika Prasad Vs. State of Andhra Pradesh** in which it was held that in the light of oral evidence of P.Ws. 1 to 4 in Court as well as on the basis of FIR and the statements of L.Ws. 1 to 4 recorded by the investigating officer, there is sufficient evidence against the revision petitioners which lead to their conviction, in case it is believed. Against which the contention of the learned counsel for the accused that police during investigation found no material against the proposed accused and there is no basis to charge them as laid down in **Vommi Chakram Vs. State of A.P.** in which it is held that if the Court is convinced that there is prima facie material to try any person as an accused for the offences for which the case was posted for trial, but, at the same time, the Court has to exercise the said power sparingly and it cannot be an automatic exercise of adding him as co-accused.

3. The learned Magistrate after hearing both sides held that it is relevant to refer F.I.R. which is earliest report of the incident and on perusal the F.I.R. no doubt, discloses the names of the proposed accused but it is pertinent to refer the evidence of P.W.1 which shows “ On seeing him, A.1 to A.3 and G.Suribabu and G.Durga instigated G.Lova in whose hands, the crowbar was there and all the above said five persons encouraged the said G.Lova to kill him with that crowbar” and it clearly discloses the role of the proposed accused even in the evidence of P.W.1 adduced before the Court and the P.W.1 was also cross-examined and at that time the petition filed under Section 319 of Cr.P.C. The learned Magistrate further held that no doubt, under Section 161 Cr.P.C. statements of the witnesses recorded by the Investigating officer are not conclusive proof of evidence but for that reason alone, the witnesses will be examined before the Court in order to prove or disprove the prosecution case. The earliest version of the incident is in the shape of Ex.P.1 report wherein the names of the proposed accused are found place and the evidence of P.W.1 before the Court on oath also discloses the names of the proposed accused which clearly establishes the prima facie case against the proposed accused about their participation in the alleged occurrence and allowed the petition. Now the said order is impugned herein opposing the impleadment of the proposed parties in the case contending that they are innocent and the allegations leveled against them are false and their impleadment is abuse of process.

4. Heard both sides and perused the material on record.

5. A perusal of the part-II C.D. shows the three eye witnesses to the occurrence. The

statement of L.W.1 defacto complainant as P.W.1 shows while A.1,A.2 and A.6 were altercating with his paternal uncle L.W.2, for the cries he went there and said accused attacked the defacto-complainant and one Gaddeda Gangadhar Rao hit him with crowbar on his head and he fell down and said accused beat him with stones and the children of A.1 and A.2 by names Lava and Suribabu, were standing at their house and witnessing the occurrence. However, he stated in the F.I.R. as if they were present and the statement of L.W.2 Venkata Rao also discloses the same so also that of L.W.3, and in view of that, section 319 of Cr.P.C. application allowed adding the proposed accused Lava, Suribabu, and Durga but the F.I.R. is clear about their role and presence and participation in sharing the common intention and object, as the case may be. An F.I.R. is a corroborative piece of evidence under Section 157 of the Indian Evidence Act, and statements under Section 161 of Cr.P.C. can be used for contradiction under Section 145 and 155(3) of the Indian Evidence Act.

6. From the above the law on the scope of Section 319 of Cr.P.C. is the requirement of the appearance during enquiry or trial of offence, from the evidence that any person not being accused as also committed the offence to try with other accused charged to mean the evidence during trial show with sufficient material of involvement of other persons in the offence to add them as co-accused as laid down by the Apex Court in **Khanna Vs. Chief Secretary** from the wording of section 319 sub section (1) of C.P.C and what is the material at this stage for appreciation if it appears from the evidence in trial that the person concerned also committed any offence. For that value of such evidence leads to conviction is that evidence is not a material consideration at this stage to invoke Section 319(2) of C.P.C. but for to say only during trial and on merits to decide whether on the accusation conviction case sustain or not. Thus, the details given by eye witnesses as to participation of such other persons also along with the chargesheeted persons faced trial, in the commission of the offence that is sufficient as required by law. No doubt, the newly added accused under Section 319(4) have to be afforded opportunity for recalling of P.W.1 for cross-examination. It is for the reasons from that provision, newly added persons are as if charged and as if cognizance taken against them at the beginning in the eye of law to proceed but for affording opportunity by recall of witnesses examined for their cross-examination by commencing the proceedings against them afresh by re-hearing the witness, thereby whether Section 161 statements are

contradictory or any material omission tantamounts to contradiction under Section 162 of Cr.P.C. is a matter so also on credibility of the evidence of P.W.1 in chief with reference to the F.I.R. as corroborative piece besides that of L.Ws. 2 and 3 to be examined to appreciate for ultimate conclusion. It is premature for this Court at this stage to go beyond and scan credibility of the evidence of P.W.1 by appreciation pending trial, but for to say the FIR named the newly added accused and in the investigation only mentioned passive role of presence nearby and in evidence of P.W.1 he deposed of their complicity, to say prima facie material only to add them as to accused, without prejudice to right of defence.

7. Having regard to the above for this Court there is nothing to sit against the order of the learned Magistrate, invoking Section 482 of Cr.P.C. as the order not suffers from any abuse of process to prevent much less requires interference to subserve the ends of justice.

8. In the result **the Criminal Petition is dismissed** without prejudice to the contest of newly added accused by impugned order of the learned Magistrate and none of the observations herein influence the mind of the trial Court in ultimate disposal of the case after full-dressed trial but for on own merits from the evidence on record with reference to law. Consequently, miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date:29.10.2015

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