

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.13773 of 2014

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.76 of 2013 on the file of XVI Chief Metropolitan Magistrate, Hyderabad against respondent No.1—State represented by public prosecutor and 2nd respondent—defacto complainant.

2) The Crime No.6 of 2007 of Shalibanda PS, South Zone, Falaknuma Division was registered on the report of Alfred Thomas, who is 2nd respondent herein, PC 3300, Task Force, Central Zone, Hyderabad against several accused persons. The police having registered the crime for the offences punishable under Sections 147, 148, 307, 427, 353 read with 149 IPC and Section 25 (1) of Arms Act, and Section 7 (a) of Criminal Law Amendment Act and filed final report by citing 23 witnesses. As per charge sheet, out of 14 accused, petitioner/accused No.2 is shown in abscondance, accused No.1 on P.T. warrant remanded to judicial custody on 20.05.2008, accused No.3 was arrested on 11.05.2007 and remanded to judicial custody, accused No.4 was surrendered before the Court on 19.02.2007, accused No.5 stated obtained anticipatory bail from the High Court, accused Nos.6 and 7 were arrested on 26.01.2007 and remanded to judicial custody and accused No.8 was arrested and remanded to judicial custody in another crime was on PT warrant produced in this case on 07.07.2008, accused No.9 was arrested in another crime of Task Force and on PT warrant was produced and remanded to judicial custody and in this case on 19.01.2008, accused No.10 was shown in abscondance, accused No.11 was arrested in another crime, accused No.12 is stated surrendered before the learned Magistrate Court on 23.05.2007, accused No.13 is stated surrendered before the Court on 12.06.2007 and was released on bail as directed by the High Court and accused No.14 was arrested on

11.05.2007 and remanded to judicial custody.

3) The police final report reads that on 19.01.2007, the Station House Officer received written report from the defacto complainant stating that he received credible information that one rowdy sheeter of PS Kalapather by name Ayub Khan, who was most wanted criminal of several crimes, attending a civil dispute settlement within the limits of Shalibanda. On that information, Sub-Inspector of police Shahalibanda (LW.21) along with his staff reached Shahalibanda limits to the house of one Mohammed Jahanuma on knowing that Ayub Khan was inside the house and his movements were watching by passing the information to the superiors to come over within few minutes to the spot with team. Meanwhile the said Ayub Khan and Ghouse, rowdy sheeter of Hussaini Alam P.S. came out of the house and started their pulsar vehicle and was proceeding towards Sattarbagh. On seeing them, the Sub Inspector of Police with constable Afzal started on their Hero Honda Splendor bike and chased them. When they reached near Sattarbagh main road, due to high speed, Ayub Khan lost control over the vehicle and fell down and left the vehicle on main road and started running by misleading towards the by-lane of Sattarbagh, which is to the dead end of the with no chance to proceed further for any but for return back. The accused supra immediately took out swords from their waist and attacked the police with an intention to kill them. In the meantime, his gang members of 15 to 20 also came there in a silver colour Quails vehicle bearing No. AP 12 5815 and other vehicles like Maruthi Van, Auto and on Motor Cycles and shouted as "Mardalo Makhelodonko". On seeking the gang members of Ayub Khan, the Sub-Inspector along with Afzal escaped therefrom with the assistance of local people with a great difficulty. In the mean time, the gang members of Ayub Khan damaged the Hero Honda Splendor motor cycle bearing No.AP 10 A 5920 by throwing stones on the vehicle. Immediately, the police team rushed to the spot and on seeing the police team, they fled away on their vehicles. He could identify Ayub Khan and his gang members Syed, Areef, Aadil, Mahmood, if he has seen them

again, hence to take action.

-

4) Heard learned counsel for petitioner and the learned public prosecutor representing State—1st respondent and perused the material on record.

-

5) Accused No.2 is quash petitioner Mohd. Ghouse, S/o.late Mohd. Sulthan of Hussaini Alam. The name of the accused No.2 is not specifically mentioned in the FIR. It is from the registration of the crime for the offences supra and in the course of investigation by recording statements of witnesses and apprehension of accused persons and after recording disclosure statements and seizure/ recovery of incriminating material covered by material objects, the police final report was filed against the 14 accused supra.

-

6) The learned Magistrate has taken cognizance of the case and allotted PRC No.18 of 2009 and committed the case to the Court of Sessions and the learned Sessions Judge has taken cognizance by allotment of Sessions Case No.19 of 2012 against all the 14 accused. Accused Nos.1, 3 to 8, 12 to 14 for others in abscondance and the case was split up and so far as accused No.12, the case is abated from his death. It was therefrom after full dressed trial from the evidence placed on record of 17 prosecution witnesses with reference to 69 exhibits and 5 material objects on behalf of prosecution, the learned Sessions Judge held by judgment dated 15.12.2010 that the accused Nos.4 to 8 and 13 for the charge under Section 147 IPC, Accused Nos.1, 3 and 14 for the charge under Section 148 IPC, Accused No.1, 3 to 8, 13 and 14 for the charges under Sections 353, 427, 307 r/w 149 IPC and 7 (a) of Criminal Law Amendment Act, 307 read with 109 IPC, Accused Nos.1, 3 for the charge under Section 25 (1) of Arms Act are not found guilty and acquitted them under Section 235 (1) Cr.P.C. by canceling their bail bonds. However, for the purpose of Section 437-A of Cr.P.C, they shall execute bond which would continue for six months. It was held further that the Accused No.1 shall be set at liberty, if he is not required in any

other case. M.Os 1 to 5 and unmarked property shall be dealt in the cases separated and pending against A-2 and A-9 to A-11 vide P.R.C. No.84 of 2009.

7) It is later the split up of the case so far as the petitioner/accused No.2 is concerned, came for consideration. As can be seen from the material, he obtained anticipatory bail on 19.08.2008 in CrI.P. No.4919 of 2008 in the Crime stage. However, he did not avail the concession and did not appear before the Court to face the trial and he was thereby shown as absconding in the charge sheet and in the split up PRC No.76 of 2013 he has to appear before committal Magistrate to commit the case to Court of Sessions to appear and face trial on framing of charges after pre-charge hearing. Instead of he is seeking to quash the proceedings saying when the main case against main accused persons covered by the acquittal judgment passed on 15.10.2010 in S.C. No.19 of 2010 for the same offence, even there is nothing to find any complicity of the petitioner as accused to face trial. He placed reliance upon judgment of this Court in ***Pothula Suresh vs The State of A.P***^[1]. Therein said Pothula Suresh was accused No.1 in Crime No.43 of 1999. After completion of investigation, the police filed charge sheet in the year 2001 against 23 accused, including the accused No.1. Originally the case was numbered as S.C. No.825 of 2004 on the file of Additional Sessions Judge, Hindupur. After filing of charge sheet, accused Nos.2, 5 and 6 were died in the interregnum, as such the case against them was abated. Since some of the accused were absent from attending the Court, the case against them was split up. Accused Nos.4, 7 to 12, 15, 16, 19 and 22 were tried in S.C. No.825 of 2004 and so far as accused No.3, 13, 14, 17 and 18 are concerned, their case was split up and were tried in S.C. No.531 of 2006 and some of them were acquitted and so far as some others concerned in S.C. No.177 of 2005, trial conducted and they were acquitted and for accused No.1 concerned S.C. No.2 of 2011 is shown pending. It is, at that stage, the A.1 sought for quashing of the

SC. No.2 of 2011 saying when the trial conducted in three Sessions Cases by splitting up the main case against some of the accused and all were acquitted, there is no purpose in continuing the proceedings and for that he placed reliance on the judgment of this Court in ***J.Rambabu vs State of A.P***^[2]. It was for the reasons that material witnesses in the case turned hostile and did not support the prosecution. Though as held in ***Kumari Rinki vs State of UP***^[3] that merely because of some of the co-accused faced trial were acquitted, it is not a ground to acquit the others, for each case depends on own facts. However, from the witnesses turned hostile and not supported the prosecution case against the accused in the earlier trial and from that evidence, there is nothing to show complicity of this accused to the crime. When it is not a case of even there is evidence against some of the accused to proceed with trial, is a fit case to quash the proceedings is a conclusion arrived.

8) Coming to the case on hand as referred supra, the petitioner—accused No.2 is not a main culprit and his name is not there even in the FIR and even from the acquittal judgment passed on 15.12.2010 in S.C. No.19 of 2010 of accused No.1, 3 to 8, 13 and 14 from said prosecution evidence, there is no whisper worth against him and he was not even identified any weapons of recovery is doubtful, even those weapons are considered to be prohibited under Arms Act. Thus, from the perusal of the entire judgment, there is no any specific reference of any substantial evidence that can be worth to consider to face trial by the quash petitioner/ accused No.2.

9) A perusal of para No.29 of judgment, no doubt show main accusations are against (1) accused formed into unlawful assembly, (2) accused committed offence of rioting with deadly weapons, (3) accused obstructed the Government Officials from discharging their public duties or prohibited under Section 353 IPC and Section 7 (a) of Criminal Law Amendment Act, (4) A1, A2 and A3 were in possession of swords without any license. (5) Accused attempted to commit murder of PWs.1 and 2;

and (6) Accused caused damage to the motor cycle of PW.1 and committed offence of mischief.

10) In para No.35 at page No.18 of the judgment, it is mentioned that accused No.1 along with Ghouse, rowdy sheeter—accused No.2 came out of the house and started pulsar vehicle. FIR allegation is the movement of FIR accused Nos.1 and 2 started proceedings, PW.1 and 2 chased them and it shows what Ex.P1—complaint reflects also from the police final report at page No.2 line number No.2, the name of the accused No.2—Ghouse. The fact remains that accused No.1—Ayub Khan, was acquitted having faced the trial covered by the judgment passed in S.C. No.19 of 2010 dated 15.12.2010; equally for accused No.2, there is nothing to continue the prosecution from said evidence.

11) Even from the depositions of PWs.1 to 7, chief examination of PW.1 at page No.1 last but 6th line speaks that Ghouse and Ayub Khan started running in a lane and the police including LW.1—defacto complainant chased till dead end of the lane and what he speaks Ayub Khan took out knife (talwar) raising cries and the followers of Ayub Khan came there and SI of police and complainant ran away. It is not even with any specific allegation against the petitioner/ accused No.2 of his raising talwar or knife to attack.

12) There is also from the evidence of PWs.2 and 3, nothing about accused No.2 but for saying another person. There is thus no specific overtact against the petitioner—accused No.2; so also from the evidence of PW.4 or 5, who did not even name the accused No.2, so also from the evidence of PWs.14 to 17.

13) Having regard to the above, there is nothing to continue the proceedings against the petitioner/ accused No.2.

14) Accordingly and in the result, the Criminal Petition is allowed and all the proceedings relating to P.R.C. No.76 of 2013 on the

file of XVI Chief Metropolitan Magistrate, Hyderabad against the petitioner/ accused No.2 are quashed and the bail bonds of the petitioner/ accused No.2, if any, are cancelled.

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

Dr. B. SIVA SANKARA RAO, J

Dt.01.04.2016
knl

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

-
-
-
-
-
-
-
-
-
-

CRIMINAL PETITION No.13773 of 2014

-
-

-

Date:01.04.2016

knl

-
- [\[1\]](#) 2011 Cr.LJ 609 (NOC)
 - [\[2\]](#) 1992 APLJ CrI. 183
 - [\[3\]](#) 2009 CrI LJ 990