

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.23260 of 2006

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:-

“...to issue a writ of Mandamus or any other appropriate Writ, order or direction, declaring the action of the Vth Metropolitan Magistrate, (1st Addl. C.M.M) Vijayawada in taking cognizance in P.R.C.No.13 of 2003, registered against the petitioner and others without obtaining prior sanction from the competent authority as contemplated Under Sec.197 Cr.P.C. as illegal, arbitrary and contrary to the provisions of Criminal procedure Code, and further direct the Hon'ble-1 Addl.C.M.M. Vijayawada to defer all further proceedings in P.R. C.No.13/2003 till the competent authority issues orders under Sec.197 Cr. P.C.”

Heard Sri Mavidi Rama Rao, learned counsel for the petitioner and the learned Government Pleader for Home for 1st respondent. Despite service of notice, none appears for the 2nd respondent.

The petitioner herein is a retired Assistant Commissioner of Police. While he was working in the said capacity at Vijayawada, an incident of murder took place and in connection with the said incident, a case in Cr.No.451 of 2002 was registered on the file of Governorpet Police Station, Vijayawada, for the offence under Section 302 IPC against one Sri K.Sinivasa Rao @ Budda Santhan and two others. On 13-07-2002, the accused in the said crime were arrested and produced before the Court of V Metropolitan Magistrate, Vijayawada and since 13-07-2002 was a public holiday, the learned Magistrate directed the police to produce the accused on 15-07-2002 and the accused were brought to the police station. Sri K.Sinivasa Rao-A1 in the said crime died in the police station on the early hours of

14-07-2002 while in police custody. Basing on the report of the Sub-Inspector of Police, Cr.No.458 of 2002 was registered against the police personnel including the petitioner herein (A2) for the alleged offences under Sections 307 and 100 IPC. Thereafter, investigation was entrusted to the Sub-Divisional Police Officer, Avanigadda, as per the guidelines issued by National Human Rights Commission. On 15-11-2002, the Additional District Magistrate and the Joint Collector, Krishna, submitted a report, stating that the police resorted to the said action in self-defence.

The Sub-Divisional Police Officer, Avanigadda, completed the investigation and after obtaining permission from the Commissioner of Police, filed a final report before the V Metropolitan Magistrate, Vijayawada on 19-10-2006 with a request to treat the case as 'action abated' and the I Additional Chief Metropolitan Magistrate, Vijayawada, accepted the said report and closed the case as 'abated'. Thereafter, on 01-08-2002 the 2nd respondent herein, who is the paternal aunt of the deceased, lodged a private complaint under Sections 199 and 200 Cr.P.C. on the file of the V Metropolitan Magistrate, Vijayawada. The learned Magistrate took cognizance of the case as PRC No.13 of 2003 on 02-05-2003. Questioning the very taking of cognizance by the learned Magistrate, A1 (Commissioner of Police) and A2 (petitioner herein) filed Criminal Revision Case Nos.699 and 700 of 2003 before this Court. By way of a common order dated 21-04-2006, this Court allowed Crl.R.C.No.699 of 2003 filed by A1 Commissioner of Police and dismissed Crl.R.C.No.700 of 2003 filed by the petitioner herein. Subsequently, against the said order passed by

this Court in CrI.R.C.No.699 of 2003, the complainant filed Special Leave of Appeal (Criminal) No.451/2007 before the Hon'ble Supreme Court. On the directions of the Hon'ble Apex Court, the Central Bureau of Investigation (CBI), Chennai, registered a case vide Rc.No.4(S)/2008 and investigated into the matter and filed a report before the Hon'ble Apex Court. The CBI in the said report, observed as follows:-

“During investigation of this case, by the local Police the Finger prints on the .38 service revolver which was allegedly used by the deceased accused K.Srinivasa Rao were not taken. Further, the hand wash of the accused was also not taken. In the absence of both the above relevant materials, the handling of the .38 revolver by the deceased accused could not be proved conclusively. During investigation of CBI, though efforts were made to lift finger prints, if any, from the .38 revolver but could not yield result due to lapse of time and handling of the weapons in the interregnum by APFSL, Hyderabad and by the Police officials at the time of deposit of the weapon in the court. This leaves the investigation to rely upon only the oral evidence on record. When analysed with the outcome of Polygraph examination, the logical conclusion that could be drawn is that the police was forced to open fire on the deceased accused K.Srinivasa Rao in the exercise of right of private defence to save the life of the SI of Police of Governorpet P.S. The Magisterial enquiry which was conducted in the year 2002 had also come to such a conclusion. The witnesses including the petitioner could not substantiate the allegation that the killing of the deceased accused K.Srinivasa Rao @ Budda Santhan was a case of murder. Mere suspicion or doubts cast upon the police officials cannot be considered as evidence. Thus, the investigation could only arrive at the conclusion that the death of deceased K.Srinivasa Rao @ Budda Santhan was caused only in the exercise of right of private defence by the police.”

The Hon'ble Apex Court, after taking into consideration the reports submitted by the CBI observed that it is a case of police firing in exercise of right of private defence on the deceased accused

Sri K.Srinivas Rao. While observing so, the Hon'ble Apex Court dismissed the said appeal vide order dated 04-08-2009.

A4 and A5 also moved this Court by way of filing CrI.R.C.Nos.656/2007 and 1402 of 2009, questioning the committal order dated 01-12-2006 passed by the learned Magistrate in PRC No.13 of 2003. This Court by way of order, dated 17-10-2014, allowed the said Criminal Revision Cases, setting aside the order, dated 01-12-2006, passed by the learned Magistrate in PRC No.13 of 2003.

According to the learned counsel for petitioner, the further continuation of criminal prosecution against the petitioner is a patent abuse of process of law, in view of the report of CBI submitted before the Hon'ble Apex Court and the order of the Hon'ble Apex Court and the orders of this Court referred to supra. It is also the further submission of the learned counsel for petitioner that since no permission is obtained for prosecution under Section 197 Cr.P.C. the very prosecution against the petitioner herein is impermissible. It is also the further submission of the learned counsel that since this Court did set aside the very committal order passed by the court below on 01-12-2006, the further continuation of the prosecution against the petitioner herein cannot be permitted.

The information available before this Court manifestly and vividly discloses that there is absolutely no dispute on the reality that pending Special Leave of Appeal (Criminal) No.451 of 2007, CBI submitted a report of investigation concluding that the death of the deceased K.Srinivasa Rao occurred only in exercise of private defence by the police. The Hon'ble Apex Court also categorically

found in the order dated 04-08-2009 in the said appeal that the present case was a case of police firing in exercise of right of private defence on the deceased Accused K.Srinivas Rao. Another significant aspect which needs mention in this context is that A4 and A5 preferred CrI.R.C.Nos.656 of 2007 and 1402 of 2009 before this Court against the order of committal and this Court by way of common order, dated 17-10-2014, while taking into consideration the report of CBI, report of District Collector dated 15-11-2002 and the order of the Hon'ble Apex Court had set aside the order of committal dated 01-12-2006 passed by the learned Magistrate. Another contention raised by the learned counsel for the petitioner is that in the absence of any sanction as provided under Section 197 Cr.P.C., the prosecution cannot be permitted to be proceeded further.

Section 197 Cr.P.C. reads thus:-

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

¹ Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for

the expression" State Government" occurring therein, the expression" Central Government" were substituted.]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted.

(3A) ¹ Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magis- trate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

In the instant case, there is absolutely no material on record to show that the authorities obtained sanction as provided under Section

197 Cr.P.C. As per Section 197 Cr.P.C, no court shall take cognizance of the offence except with the previous sanction of the authorities mentioned therein.

In the instant case, admittedly, no such sanction was obtained. It is also important to note that the Hon'ble Apex Court in the order in Special Leave of Appeal (Criminal) No.451 of 2007 observed that it is a case of police firing in exercise of right of private defence on the deceased accused. In fact, this court in order dated 17-10-2014 in Crl.R.C.Nos.656 of 2007 and 1402 of 2009 extracted the report of Joint Collector, which is as follows:-

“In the circumstances I am of the opinion that the deceased Mr.Kodeboina Srinivasa Rao was a person with high emotions, has history of criminal misdeeds including murder. None including his mother, sister and brother denied the murder committed by him. In fact, all of the family members and close relatives were either victims or suffers of his highly unpredictable behaviour in one way or the other. Since his marriage, for last two years, he has been away from his mother and brother. He has no fixed income. He has no settled in any particular business or acceptable profession. He lost his father at young age and was a school dropout. He along with some young friends used to include in some criminal activities. He did not have very normal relations with his family members and relatives. He was also alcoholic according to the statements given by his family members. Almost he was boycotted by all of them.

Considering all these facts it appears that he snatched the revolver belonging to Sub Inspector of Police.

Hence, I conclude that police had to resort to forced killing of the criminal in self defence.”

From the above, this court has absolutely no scintilla of hesitation nor traces of any doubt to hold that the further continuation of prosecution initiated against the petitioner herein is a patent abuse of process of law and cannot be sustained in the eye of law.

For the aforesaid reasons, the writ petition is allowed, quashing the proceedings in PRC No.13 of 2003. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

A.V.SESHA SAI, J

Date: 15.12.2016
Prv





