

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.7874 of 2013

ORDER:

In this petition filed under Sec.482 Cr.P.C, the petitioner/Accused No.2 in split up C.C.No.4 of 2008 (hereinafter referred as "A2") seeks to quash the proceedings in C.C.No.4 of 2008 on the file of Judicial Magistrate of First Class, Udayagiri.

2) The charges against the petitioner and other accused are under Sec.143, 147, 452 and 427 IPC. Originally the petitioner was arrayed as A.4 in main C.C.No.126 of 1989 on the file of Judicial First Class Magistrate, Atmakur. The case was split up against the petitioner, A.1 and A.21 and renumbered as C.C.No.357 of 1996. The said C.C.No.357 of 1996 was transferred on point of jurisdiction to Judicial Magistrate of First Class, Udayagiri and numbered as C.C.No.4 of 2008.

3) The prosecution case is that on 27.12.1988 at about 3:30pm, all the accused armed with sticks and stones went to Dornal P.S and threatened the PC 95 and Sentry PC 947 who were on duty and damaged the wooden furniture and removed the VHF set installed at the P.S and thus caused vandalism on the pretext that the S.I of Police was showing partiality and causing arrests of the persons belonging to the accused party. On the report given by PC 95, case in Crime No.46/1988 of Dornal P.S was registered for the

offences under Sec.143, 147, 452 and 427 IPC and after investigation charge sheet was filed against all the accused.

4) The trial in main case C.C.No.126 of 1989 was proceeded against A.2, A.3, A.5 to A.20 and A.22 to A.29 and it was ended in acquittal. Subsequently A.1 and petitioner herein/A.2 filed Crl.P.Nos.2688 of 2013 and 7874 of 2013 respectively under Sec.482 Cr.P.C seeking to quash the proceedings in C.C.No.4 of 2008 on the file of Judicial Magistrate of First Class, Udayagiri.

5) In order dt:29.09.2015, the Criminal Petition No.2688 of 2013 was allowed by the High Court and proceedings against A.1 were quashed mainly on the ground that the main case C.C.No.126 of 1989 ended in acquittal and none of the witnesses therein supported the prosecution case and they turned hostile.

6) Heard both sides.

7) Producing the copy of the order in Crl.P.No.2688 of 2013, learned counsel for petitioner/A.2 submitted that the proceedings against petitioner/A.2, who stands on the same footing as that of A.1, may also be quashed.

8) Opposing the petition, learned Public Prosecutor argued that the main case ended in acquittal against some of the accused for the reason some of the witnesses turned hostile cannot be a ground to quash the proceedings against the petitioner/A.2 against whom there is a *prima*

facie case. He submitted that there can be no presumption that in the ensuing trial against the petitioner/A.2, the witnesses who turned hostile earlier would not speak any incriminating facts. Further, the prosecution due to some difficulties, could not examine LWs.5, 7 to 9 in C.C.No.126 of 1989 and there may be every possibility of prosecution examining these witnesses to establish the guilt of A2 in the trial against him. Therefore, he contended, it is premature to conclude at this stage that since the case was ended in acquittal against some of the accused, the trial against the petitioner/A.2 would be futile. The result in the said case is not germane for consideration. On this aspect he relied upon the decision reported in ***G.Venkataratnam Kumar vs. State of A.P***^[1]. Referring the order in CrI.P.No.2688 of 2013, learned P.P argued that during enquiry in that petition unfortunately the judgment in ***G.Venkataratnam Kumar***'s case (1 supra) was not presented and therefore, the said order may not be taken as precedent in the instant case.

9) In the light of above rival arguments, the point for determination is:

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

10) **POINT**: In C.C.No.126 of 1989, A.2, A.3, A.5 to A.20 and A.22 to A.29 faced trial and the case ended in acquittal with the following observation of the trial Court:

“Para 8: The case against A.1, A.4 and A.21 was split

up and numbered as C.C.No.357 of 1996. PWs.1 and 2, the eye witnesses turned hostile. They denied having stated before police as in Exs.P.1 and P.2 recorded under Section 161 Cr.P.C. There is no identification of accused by PWs.1 and 2 in the mob who came upon police station, damaged furniture etc., PW.3, the police constable who was on sentry duty is also treated hostile. There is no identification of accused by PW.3. He denied having stated before police as in Ex.P.3 recorded under Sec.161 Cr.P.C. The prosecution has failed to produce LWs.5, 7 to 9 inspite of final notices given, hence their evidence was closed. No overt act is attributed to any of the accused by PWs.1 to 3. There is also no identification of accused by PWs.1 to 3. The prosecution is therefore failed to establish the guilt of accused beyond all reasonable doubt”.

In addition, in Para 5 of the judgment, the trial Court observed that LWs.2 and 6 reported dead and prosecution failed to produce LWs.5, 7 to 9 inspite of summons issued on several times and hence their evidence was closed.

11) So at the outset, the main case ended in acquittal because PWs.1 to 3—the eye witnesses turned hostile and did not support the prosecution case. Basing on the observations of the trial Court, a learned single judge of this Court quashed the proceedings against A.1 in CrI.P.No.2688 of 2013. The learned Judge observed thus:

“It is evident from the record that none of the witnesses supported the case of the prosecution and they turned hostile. They turned hostile not only against the accused persons those who faced trial before the Court in C.C.No.126 of 1989, but they also denied their statement and also the contents of the complaint lodged by them against all the accused including the petitioner herein and as a result, the case was ended in acquittal.

The petitioner herein is also on the same footing as that of the accused who faced trial and were acquitted by the trial Court. Hence, this Court is of the view that no purpose would be served in continuing the impugned proceedings against the petitioner herein and the same is liable to be quashed.”

a) Basing on the above observation now the petitioner/A.2 seeks to quash the proceedings against him also. However, the submission of learned Public Prosecutor is that when there is a *prima facie* material against the accused, proceedings against him cannot be quashed on the ground that the case against some of the accused was ended in acquittal. In **G.Venkataratnam Kumar**'s case (1 supra), another learned Single Judge of this Court expressed similar view. He observed thus:

“Para 4: The police after conducting investigation laid the charge sheet against the petitioner also as aforesaid, which discloses prima facie case against the petitioner. There has been no legal bar as such to maintain the case against the petitioner before that Court. The sufficiency or otherwise of the evidence against the accused-petitioner to warrant a conviction at the time of the trial is not germane for consideration at this stage to quash the proceedings. Similarly, the fact that the split up cases against the other accused in this case ended in acquittal cannot be the sole ground for throwing away the case against the petitioner without there being any trial by invoking the inherent jurisdiction of this Court under Sec.482 of the Code of Criminal Procedure. Even the ground that the eye-witnesses have not stated the name of the petitioner herein in their previous statements while implicating the other accused equally cannot be a valid ground for quashing the proceedings against the petitioner. If the eye-witnesses speak the name of the petitioner tomorrow at the time of

the trial, their omission to mention the name of the petitioner in their previous statements becomes a matter of appreciation by the Court below. But, from that it cannot be concluded that there is no case against the petitioner.”

b) Now coming to the instant case, in the FIR the names of 5 accused was mentioned and it was further mentioned that along with them 300 other persons came in 2 Lorries, 5 Tractors, One jeep and One Car and committed the offence. The name of petitioner/A2 was not specifically referred in FIR. Of course FIR is not be all and end all of the matter. The police after investigation laid charge sheet against 29 accused and petitioner/A.4 is one among them. It is true that in **G.Venkataratnam Kumar's** case (1 supra), learned Single Judge took the view that when there is a *prima facie* case against the petitioner, other things such as sufficiency or otherwise of the evidence against the accused-petitioner to warrant conviction at the time of trial or the split up case against other accused ending in acquittal are not germane for consideration to quash the proceedings against the said accused-petitioner. However, in the latest order in CrI.P.No.2688 of 2013 which arise in the same case, another learned Single Judge of this Court took the view when the witnesses have not spoken anything not only against the accused who faced the trial but also all the accused including the petitioner/A.1, the proceedings against the petitioner/A.1 who stands on the same footing can be quashed. Since the said observation was made by

another learned Single Judge of this Court in the very same case, I am inclined to follow the above observation. The present petitioner/A.2 in split up case stands on the same footing as that of petitioner/A.1 and therefore, even if he is directed to face trial, no useful purpose will be served in my view and thereby the trial would amount to abuse of process of the Court.

12) Accordingly, this Criminal Petition is allowed and the proceedings against the petitioner/A.2 in C.C.No.4 of 2008 on the file of Judicial Magistrate of First Class, Udayagiri are quashed.

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

U. DURGA PRASAD RAO, J

Date: 04.04.2016

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[\[1\]](#) 2001 (2) ALD (Cr.) 851 (AP)