

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CRIMINAL PETITION No.2168 OF 2010

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ORDER:

This petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioner/A.4 in Crime No.75 of 2004 on the file of the Station House Officer, Ibrahimpatnam Police Station, Karimnagar District.

2 The learned counsel for the petitioner submitted that the case against accused Nos.1 to 3 and 5 ended in acquittal; therefore, no purpose will be served by keeping the proceedings pending against the petitioner. He further submitted that the allegations made in the complaint do not constitute any offence much less the offence alleged to have been committed by the petitioner. He also submitted that it is a fit case to quash the proceedings against the petitioner.

3 On the other hand, the learned Public Prosecutor submitted that mere acquittal of the co-accused is not a valid ground to quash the proceedings against the petitioner herein. He further submitted that this is not the stage to decide the merits of the main case so far as the petitioner/A.4 is concerned.

4 The facts leading to filing of the present petition, briefly, are that basing on the complaint lodged by the second respondent, the Station House Officer, Ibrahimpatnam Police Station initially registered a case in Crime No.75 of 2004 as man missing. Subsequently, the Section of law was altered to Section 302 read with 34 and 201 I.P.C. After completion of the investigation, the investigating officer submitted the charge sheet before the Judicial First Class Magistrate, Metpalli. The learned Magistrate, after supplying the copies of documents to accused Nos.1 to 3 and 5 as contemplated under Section 207 Cr.P.C. committed the case to the Court of Sessions, Karimnagar Division as the offence under Section 302 read with 34 I.P.C. is exclusively triable

by a Court of Sessions. The learned Sessions Judge, Karimnagar has taken cognizance of the offences against accused Nos.1, 2 and 5 under Sections 302 and 201 read with 34 I.P.C. and numbered it as S.C.No.579 of 2007 and made over the same to II Additional Sessions Judge, Karimnagar at Jagtial. Subsequently, the learned Sessions Judge has taken cognizance of the offences against accused No.3 for the offences punishable under Sections 302 and 201 read with 34 I.P.C. and numbered it as S.C.No.247 of 2008 and made over the same to II Additional Sessions Judge, Karimnagar at Jagtial for trial. The learned II Additional Sessions Judge conducted a joint trial in S.C.Nos.579 of 2007 and 247 of 2008. After full-fledged trial, accused Nos.1 to 3 and 5 were found not guilty for the offences punishable under Sections 302 and 201 read with 34 I.P.C. and acquitted them.

5 I have carefully perused the judgment of the trial Court in S.C.Nos.579 of 2007 and 247 of 2008 in order to ascertain whether the prosecution witnesses have deposed anything against accused Nos.1 to 3 and 5 apart from accused No.4/petitioner herein. PWs.1 to 3, who are the material witnesses, did not support the case of the prosecution. In those circumstances, even if the petitioner is forced to face the trial, no purpose will be served, except wasting the precious time of the trial Court and it is nothing but a futile exercise.

6 Now the crucial question that falls for consideration is whether acquittal of co-accused is a valid ground to quash the proceedings against the other accused or not. In order to resolve this issue, I am placing reliance on the following decisions:

i. Thallapalli Rajaiah @ Pogula Rajaiah Vs. State of A.P.^[1] wherein this Court held at para Nos.8 and 9 of the judgment as follows:

8. The petitioner was said to be absconding, however, he was arrested on 10.6.1999 and has been in jail as the bail application is said to have been dismissed. Under the circumstances, inasmuch as same witnesses have to be examined there is no even a remote possibility of the trial ending in the conviction of the petitioner herein. It would be abuse of the

process of the Court if the petitioner is compelled to go through the ritual of facing the trial.

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9. Following the judgment of this Court in the case of *Janayavula Rambabu Vs. State of A.P.*{1992 (1) APLJ 343}, I think it is a fit case where the proceedings in the relevant P.R.C. can be quashed.

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ii. **Janayavula Rambabu Vs. State of A.P.**^[2] wherein at para No.5 it was held as follows:

5. The same witnesses have to be examined even during the trial in S.C.162 of 1991 and I find that no useful purpose will be served except wasting the Court's time and the public money by proceeding with trial against the petitioner in S.C.162/91. I feel that such procedure only results in abuse of process of Court and nothing else. Hence I feel that it is desirable that proceedings in S.C.162/91 should be quashed in the interest of justice."

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iii. **Azghar Ahmed Khan Vs. State of A.P.**^[3] wherein this Court at para No.6 of the judgment observed as follows:

"Previously, this Court has concurred with the view taken by Sri Justice M. Ranga Reddy. I once again state that the principles laid down by the Sri Justice M. Ranga Reddy followed by Sri Justice Vaman Rao are on the right lines. If the prosecution story is not adhered to before the Court in respect of the accused whose cases have been split up, then it must be taken that they are not speaking truth and they are having reservations. Moreover, when the witness turned hostile, it cannot be imagined that he will again speak to the prosecution story and mention the name of the accused person, who has been absconding and who has made appearance subsequently. There is no slightest possibility of mentioning the name of the accused by the witness, if they have not spoken to already regarding the overt acts of the absconding accused. Viewed from this angle, I disagree with the reasoning mentioned in G. VEnkataratnam Kumar's case (supra) and I agree with the reasoning mentioned in the aforesaid decisions referred to by the learned counsel for the petitioner. In that view of the matter, I am of considered view that it is waste to continue the proceedings and it is abuse of process of the Court if the trial were continued knowing fully well that the witnesses have already turned hostile in judicial proceedings. Hence, the proceedings are liable to be quashed and I, accordingly quash the proceedings. The petition is, accordingly, allowed."

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iv. **Central Bureau of Investigation Vs. Akhilesh Singh**^[4] wherein the

Hon'ble Supreme Court held as follows:

".....Once the main accused who is alleged to have hatched the conspiracy and who had the motive to kill the deceased was discharged, and when that matter had attained finality, the learned single Judge was fully justified in holding that no purpose would be served in further proceeding with the case against the respondent."

7 As per the principle enunciated in the cases cited supra, if both the accused were charged with the same offences arising out of the same crime and after full fledged trial if one of the accused is acquitted, the co-accused is entitled to file a petition for quashing of the proceedings since no useful purpose will be served even if the co-accused is forced to face trial. When the prosecution witnesses, including the *de-facto* complainant, have not come forward to support the case of the prosecution, the purpose of conducting trial once again, is nothing but abuse of process of Court and waste of public money.

8 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that no purpose will be served by forcing the petitioner to face trial. On the other hand, continuation of criminal proceedings against the petitioner/A.4 would certainly amount to abuse of process of Court.

9 Accordingly, this Criminal Petition is allowed and the proceedings against the petitioner/A.4 in Crime No.75 of 2004 on the file of the Station House Officer, Ibrahimpatnam Police Station, Karimnagar District are hereby quashed.

10 Consequently, Miscellaneous Petitions, pending in this Criminal Petition, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 19.04.2016

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[\[1\]](#) 2000 (1) ALT (CrI.) 174 A.P.

[\[2\]](#) 1992 (1) APLJ 343

[\[3\]](#) 2002 (2) ALD (CrI.) 951 (AP)

[\[4\]](#) AIR 2005 SC 268