

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Criminal Petition No.1350 of 2013

Between:

Uppari Sekhar

.... Petitioner/A.2

And

SHO, Aiza Police Station, Mahabubnagar Dist.

Rep. by Public Prosecutor

and another.

....

Respondents

DATE OF JUDGMENT PRONOUNCED: 01.04.2016

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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Respondents

! Counsel for Petitioner : Sri O.Manohar Reddy

^ Counsel for Respondent No.1 : Public Prosecutor for Telangana

^ Counsel for Respondent No.2 : NP

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> Head Note:

? Cases referred:

1. AIR 1989 SC 885
2. 2002 Cri.L.J. 90 (SC)

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL PETITION No.1350 of 2013

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ORDER :

This criminal petition is filed under Section 482 Cr.P.C. by petitioner/A2, seeking to quash the proceedings against him in P.R.C.No.38 of 2012 on the file of Judicial First Class Magistrate, Gadwal.

2. On the complaint of *de facto* complainant, the Police of P.S.Aize, Mahabubnagar District

registered a case in Crime No.28 of 2012 against A1 and petitioner/A2 for the offence under Section 307 IPC.

3. The case of complainant is that on 15.02.2012 at about 17.30 hours, when he went to *choppa doddi* in order to bring cattle fodder, A1 and A2, who are his brother and brother's son respectively, keeping grudge in view of the previous enmity, attacked the complainant with an intention to kill him and A1 beat with a stick on his back and A2 hacked him with a sickle on his head causing bleeding injuries. On the cries raised by the complainant, his wife and others came and seeing them, the accused fled away.

a) The Police, after investigation, laid charge sheet on 02.04.2012 against A1 alone submitting that no offence is established against A2 and hence the name of A2 was deleted from the charge sheet. While so, the learned Judicial Magistrate of First Class, Gadwal, in his docket order dated 19.05.2012, took cognizance of the matter thus: "*Cognizance was taken for the offence U/s.307 IPC against the accused No.1 and 2. Register as preliminary registered case. Issue fresh summons to accused No.1 and Non Bailable Warrant against accused No.2. Call on 27.6.2012.*"

4. The case was registered as P.R.C.No.38 of 2012 on the file of Judicial Magistrate of First Class, Gadwal. Aggrieved by the learned Court taking cognizance against him, petitioner/A2 filed the instant petition seeking to quash the P.R.C. proceedings against him.

5. Heard both sides.

6. The submission of learned counsel for petitioner is that when the Police have filed charge sheet against A1 alone observing that no offence is established against A2, learned Magistrate ought to have accepted the said charge sheet against A1 alone, but he took cognizance against petitioner/A2 also without writing any speaking order as to how he was convinced that there is incriminating material against petitioner/A2. He thus, sought for quashment of the proceedings in P.R.C.No.38 of 2012.

7. On the other hand, learned Public Prosecutor argued that as per the 161 Cr.P.C. statement of the victim, the attack is made on him not only by A1 but also by the petitioner/A2 but the Police missed that part of his statement and filed charge sheet against A1 alone. Learned Magistrate having gone through the entire material on record, might have taken cognizance against petitioner/A2 also and therefore, the said order cannot be challenged merely on the ground that in the impugned docket order, Magistrate in so many words has not mentioned about the existence of incriminating material against petitioner/A2 warranting him to take cognizance against him also. The learned P.P. submitted that under Section 190 (1) (b) of Cr.P.C., Magistrate is empowered to take cognizance of the case upon the Police report and in doing so, the Magistrate is not confined to take cognizance as per the charge sheet and if he finds that there is incriminating material against the omitted accused, he is well within his power to take cognizance against such accused also.

8. In the light of above rival arguments, the point for determination is:

"Whether there are merits in the petition to allow?"

9. **POINT:** The charge sheet shows that so far as petitioner/A2 is concerned, the investigating officer mentioned that no offence was established against A2, hence his name was deleted.

However, by impugned docket order dated 19.05.2012 which is extracted supra, learned Magistrate has taken cognizance against both the accused for the offence under Section 307 IPC. In this context, a perusal of the 161 Cr.P.C. statement of LW1-Raja Naganna/*de facto* complainant shows that in his statement, he clearly mentioned that when he went to *choppa dodd* for bringing cattle fodder, suddenly his elder brother Thimmappa (A1) attacked him with a stick and his son Sheker (A2) attacked him with sickle with a view to kill him and A1 beat him on his back with the stick and A2 hacked him with sickle on his head. Therefore, in his 161 Cr.P.C. statement, the *de facto* complainant has clearly mentioned the method and manner in which A1 and petitioner/A2 attacked him and caused injuries. Probably this statement might have prompted the Magistrate to take cognizance against both the accused. Under Section 190 Cr.P.C. the Magistrate is empowered to take cognizance of an offence upon a police report constituting commission of an offence. It must be noted that Magistrate can take cognizance of an offence but not offenders. Therefore, when the Magistrate is satisfied from the record placed before him that an offence is indeed committed, he will take cognizance of the offence and direct that all the persons responsible for commission of such offence be brought before him to face the trial. The power of Magistrate is not restricted to summon only those accused who are arrayed in the charge sheet to stand for trial, rather Magistrate's power is vast enough to direct any person including those who were deleted in the charge sheet by the police on the submission that no case is made out against them, to face the trial provided in the considered opinion of the Magistrate the record produced by the police divulges the commission of offence by any person including the persons who are omitted. This power of the Magistrate has been reiterated by the Apex Court on a number of occasions.

10. In ***India Carat Pvt. Ltd. V. State of Karnataka***^[1] the Apex Court observed as follows:

"Para 16: The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1) (b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also."

11. In another instance in ***Rajinder Prasad v. Bashir***^[2] the Apex Court held thus:

*"Para 11: Under this section, a Magistrate has jurisdiction to take cognizance of offences against such persons also who have not been arrested by the police as accused persons, if it appears from the evidence collected by the police that they were prima facie guilty of offence alleged to have been committed. Section 209 of the Code prescribes that when in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions he shall commit, after compliance with the provisions of Section 207 or Section 209, as the case may be, the case to the court of Sessions and subject to the provisions of the Code, pass appropriate orders. This Section refers back to Section 190, as is evident from the words "instituted on a police report" used in Section 190(1)(b) of the Code. While dealing with the scope of Section 190 this Court in *Raghubans Dubey v. State of Bihar* 1967 (2) SCR 43 held that the cognizance taken by the Magistrate was of the offence and not of the offenders. Having taken cognizance of the offence, a Magistrate can find out who the real offenders were and if he comes to the conclusion that apart from the persons sent by the police some other*

persons were also involved, it is his duty to proceed against those persons as well."

Therefore, in the instant case, there can be no demur about the power of the Magistrate to direct A2 to face trial along with A1.

12. Of course, in the docket order, he has not delineated as to the nature of the incriminating material that is available against petitioner/A2 to take cognizance against him also. The Magistrate should know that his power to take cognizance under Section 190 Cr.P.C. depends not by his subjective satisfaction but based on objective assessment of the charge sheet and other accompaniments placed by the police which in his opinion make out a case against the person(s) whom he proposed to direct to face trial before him. The judicial discretion should be backed by sound reasoning. Though in the instant case, the Magistrate has not given specific reasons for taking cognizance against A2, still in view of the fact that the materials produced by the police *prima facie* depicts case against him as narrated supra, Magistrate's order cannot be set aside. Therefore, I do not find merits in the petition to quash the proceedings in P.R.C.No.38 of 2012. If the petitioner/A2 is so advised, he can appear before the trial Court and seek for his discharge by taking all the necessary pleas legally available to him. It is informed that NBW is issued against petitioner/A2. On the request of learned counsel, petitioner/A2 is permitted to surrender before the Judicial Magistrate of First Class, Gadwal on or before 18.04.2016 and on such surrender, learned Magistrate shall recall the NBW issued against him and proceed with P.R.C.No.38 of 2012.

13. With the above observations, this criminal petition is dismissed.

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

U. DURGA PRASAD RAO, J

1st April 2016

ajr/Murthy

N.B : Issue C.C. by 04.04.2016.

(b/o)

ajr

[\[1\]](#) AIR 1989 SC 885

[\[2\]](#) 2002 Cri.L.J. 90 (SC)