

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 8056 OF 2017

ORDER :

The petitioners are A.6 and A.7 of PRC No.33 of 2013 pending on the file of the IV Addl.Chief Metropolitan Magistrate, at Hyderabad. They are among 7 accused. The original crime vide Cr.No.163 of 2011 was registered on 24.06.2011 by the SHO, Kachiguda for the offences punishable u/ sec.302 r/ w 34 & 109 IPC and 25(1)(A) of Arms Act only against 5 accused/ A.1 to A.5 and not against the petitioners/ A.6 and A.7 herein. The police filed final report against the A.1 to A.5, dt.10.12.2011 before the learned Magistrate who has taken cognizance of the case triable by the Court of Sessions from perusal and consideration of the material by allotting PRC No.46 of 2011 in committal of the case to the Court of Sessions. The case against the A.1 was split up therefrom and so far as the A.2 to A.5, the case was committed to the Court of Sessions where they faced trial in S.C.No.646 of 2013 and the IV Metropolitan Sessions Judge, Hyderabad, ultimately acquitted them by contesting judgment/ Calander, dt.23.09.2016. so far as the petitioners concerned, there was subsequent investigation u/ sec.176(8) CrPC from the statements of the wife and parents of the deceased covered by the supplementary chargesheet filed by police on 21.08.2012 for the said offences and the same was taken cognizance by allotting PRC No.22 of 2012 and the split up case so far as the A.1 originally of PRC No.46 of 2013 later covered by PRC No.22 of 2012 of these petitioners, were clubbed together and

numbered as PRC No.33 of 2013. At this stage, they sought for quash of the proceedings. Their main contention is that as per the original allegation at the instance of A.1, A.2 to A.5 brutally killed the deceased and escaped in auto. So far as the petitioners 1 and 2-the brothers concerned, their claiming as innocent and they settled in Dubai and their names not find place in the original FIR, and original police final report but by deliberate subsequent false implication by bringing into existence the supplementary chargesheet. The other contention is once the case from the main evidence against the A.2 to A.5 ended in acquittal, they cannot be tried much less to end the in conviction but for futile exercise even considering the evidence on record.

Heard the learned counsel for the petitioners and the learned Public Prosecutor representing the State and perused the material on record.

The conviction judgment which is part of the record from the evidence of 17 witnessed including the Investigating Officer and the doctor who conducted autopsy on the body of the deceased besides two eye witnesses by names Dayashankar and N.Chandrasekhar with reference to Exs.P.1 to P.18 and Exs.P.1 and P.2 are the 161CrPC statements of above referred so called eye witnesses did not support the prosecution case and there is nothing from that evidence to point out anything so far as the petitioners A.6 and A.7. Exs.D.1 to D.4 are the portions of contradictions in 161CrPC statements from the evidence of P.Ws.8,12 and 15 respectively and the M.Os. 1 to 14 were also marked. The trial

Court in the acquittal judgment running in 24 paragraphs observed that except the evidence of P.W.14 Hastimal Jain-agent of Western Union Money Transfer at Tilaknagar, there is no other evidence to link the A.2 to A.5. The paltry amount sent to A.2 from the evidence even cannot be assumed as consideration for committing heinous crime propounded by the prosecution, however relationship between the A.1 and A.2 is not even explained to assume even of the money transaction is relating to any other transactions not connected with the crime of any privy between the A.1 and A.2 to do away with the deceased. The panchas to the so called confession-cum-seizure panchanama not even supported the case of prosecution and the so called deadly weapons allegedly used i.e. the dagger and axe not proved so also the alleged offence under Arms Act and in a case resting on circumstantial evidence, there should be no gap left in the prosecution case and in the absence of proof mere suspicion will not bring any guilt of the accused to home. Thereby the prosecution miserably failed to prove the guilt of any of the accused beyond doubt.

So far as the supplementary charge sheet against the petitioners 1 and 2 herein as A.6 and A.7 is concerned, the L.Ws. 1 to 3 cited therein are parents and wife of the deceased and L.W.4 brother of the deceased only as circumstantial witness and in the supplementary charge sheet stated as per the statements of wife and parents of the deceased alone of A.6 and A.7 discloses as privy with other accused to murder pre-meditated outcome and A.6 and A.7 in abscondence.

The main accusation criminal conspiracy between the A.1 to A.5 on one hand and also by supplementary chargesheet of any privy with the A.6 and A.7-the petitioners herein, once the A.2 to A.5 were tried and the case ended in acquittal with no any evidence direct or circumstantial, leave about the A.1 if at all abettor and perpetrator of crime mainly not before the Court so far as these petitioners A.6 and A.7 concerned also there is nothing to show any sustainable complicity to face trial that too these witnesses are father, mother, wife and brother of the deceased of whom P.Ws.8,9 and 12 were examined as sister, mother and wife of the deceased also in the earlier case ended in acquittal against the A.2 to A.5 and even from their evidence, what the learned Sessions Judge, observed of no worth evidence much less by circumstances to bring home the guilt of any accused. Thus there is nothing to continue the committal proceedings insofar as the petitioners-A.6 and A.7 concerned. In view of the case against the A.2 to A.5 ended in acquittal with no evidence from the self-same material and said conclusion is also substantiated from the Division Bench expressions of Panjab & Haryana High Court in Sudo Mandal @Diwarak Mandal Vs. State of Punjab¹, the single Judge expression of this Court in Azghar Ahmed Khan Vs. State of Andhra Pradesh² and of the Single Judge expression of Delhi High Court in Urmila Devi Vs. State (Govt. of NCT of Delhi)³.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings against the petitioners/ A.6

¹ (2011) 2 RCR (Cr) 453

and A.7 in PRC No.33 of 2013 on the file of the Court of the IV Addl.Chief Metropolitan Magistrate, Hyderabad. They are acquitted and their bail bonds shall stand cancelled. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:10.10.2017
vvr



² (2002) 2 ALD (CrI) 951

³ (2007 137 DLT 265