

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.2026 of 2016

ORDER:

This revision case is filed under Sections 397 and 401 of Cr.P.C challenging the order dated 18.04.2016 in Crl.R.P.No.7 of 2015 passed by the Principal Sessions Judge, Kadapa directing the Magistrate to enquiry further and pass appropriate orders while setting aside the order dated 18.02.2015 in C.F.R.No.854 of 2014 passed by the Judicial Magistrate of First Class, Pulivendula.

2. The petitioners filed a private complaint before the Judicial Magistrate of First Class, Pulivendula making serious allegations of committing murder. But curiously, the learned Magistrate accepted the exercise of right of private defence and dismissed the complaint at the stage of enquiry as the right of private defence is a matter of evidence and such right of private defence can be a ground to dismiss the complaint.

3. Aggrieved by the order passed by the Judicial Magistrate, the 2nd respondent filed Crl.R.P. before the Sessions Judge questioning the ssaid dismissal order. Upon hearing, the Sessions Judge, considering the entire material, passed the following order:

“In the result, revision petition is allowed. Impugned order passed by learned Judicial Magistrate of First Class, Pulivendla, dated 18.02.2005 in CFR No.854/2014 be and hereby set aside. Learned Magistrate is directed to restore the complaint to its original file and conduct further enquiry into the matter and proceed with the matter in accordance with law.”

4. Questioning the order passed by the Sessions Judge, the present revision case is filed on various grounds and mainly contending that the revisional Court cannot direct the Magistrate to take cognizance when the Magistrate already concluded that the petitioners in exercise of right

of private defence put an end to the life of two persons snatching gun and pistol from the hands of the 2nd respondent, who made an attempt against these petitioners. The revisional Court by exercising power under Section 397 Cr.P.C. passed the order illegally without considering the material facts and committed an error, hence, requested to set aside the order passed by the Sessions Judge.

5. It is the case of the 2nd respondent that on 09.06.2013 at about 06.00 PM Ravichandra Reddy-A2, Ramanath Reddy-A3, Kadiyam Naga Subba Reddy @ Kodigandla Subba Reddy-A6 came to the houses of Brahmananda Reddy, at that time Brahmananda Reddy was not in the village and that complainant and deceased No.1 were present at the house of Brahmananda Reddy. A2, A3 and A6 told the 2nd respondent and deceased No.1 that A1 sent them for discussions with regard to setting up of candidates for panchayat elections. As Brahmananda Reddy was not readily available, the complainant and deceased No.1 started going to the house of A1 and on their way in the village, they crossed Deceased No.2, who also followed them to Himakuntal village. The complainant, deceased Nos.1 and 2 were taken to the farm house of A1, where all the accused were already present, as if waiting for Brahmananda Reddy. On seeing the complainant, deceased Nos.1 and 2, A2 asked complainant, deceased No.1 as to why Brahmananda Reddy did not come. Then they told that he was not in the village and went to elsewhere, then A1 flared up saying that Brahmananda Reddy without consulting him trying to set up candidates for the village panchayat elections in Simhadripuram Mandal and started abusing Brahmananda Reddy in filthy language. Thereupon, deceased Nos.1 and 2 also retaliated by abusing A1, there was a scuffle. A1 to A3 and A6 picked up eethapululu (hunting sickles) and A4, A5 and A7 picked up iron rods, which were lying in the farm house. Then A1 attacked the complainant

with eethapuli and dealt a blow on his head, as such the complainant was injured, and fell down. Thereupon, A1 to A3 and A6 attacked deceased No.1 with eethapululu and they hacked him indiscriminately. A4, A5 and A.7 attacked deceased No.2 with iron rods. Then the complainant to save his life, escaped himself by running away from the farm house, while deceased Nos.1 and 2 were crying as Amma Nayana. Then, the complainant hide in the cheeki bushes near the farm house. After some time, complainant saw all the accused going away with weapons towards the village from the farm house. Then he slowly went to the farm house and found dead bodies of deceased Nos.1 and 2 in pool of blood with bleeding injuries. Thereafter, he complained to the police at about 10.30 or 11.00 PM and gave oral complaint to police, which was not reduced into writing, but the complainant was detained in the police station till he was produced before the Magistrate for remand on 12.06.2013. Thereafter, the police did not take any action and remanded him to judicial custody. Instead of taking action against the accused, police received complaint from A1, investigated into the same and filed charge sheet against the complainant in Crime No.35 of 2013 for the offence punishable under Sections 120(B), 452, 324, 307, 109 read with 34 of IPC and Sections 25(1B) and 27 of Arms Act.

6. Since the police did not register the case, against the accused based on complainant, he filed private complaint before the Magistrate. On the strength of right of private defence and based on other material, the trial Court dismissed the complaint.

7. Aggrieved by the said order, revision petition was filed before the Sessions Judge. The Sessions Judge relying on the principles laid down in various judgments of Allahabad High Court and other High Courts concluded that the right of private defence is a question of fact, which has to be decided only during trial, not at the stage of taking complaint

on file. The Magistrate though considered filing of the complaint against these petitioners, dismissed the complaint against them, which is erroneous and the same maybe set aside.

8. During argument before this Court, learned counsel for the petitioners while contending that the revisional Court cannot exercise jurisdiction under Section 397 Cr.P.C when the petitioners were already deleted in the charge sheet filed against them and except by exercise of power, after examination of witnesses, the Court can implead these petitioners as accused and relied upon judgment of the Apex Court in **Hardeep Singh v State of Punjab and others**¹.

9. Whereas, learned counsel for the 2nd respondent contended that when a private complaint is filed and recorded statement of witnesses by the Magistrate exercising power under Section 201 Cr.P.C. dismissal of the complaint on the ground that the petitioners and others, while exercising right of private defence, committed murder and that filing of charge sheet against the other accused and deleting these accused is a serious error committed by the Magistrate and supported the order passed by the revisional Court.

10. No doubt, the order of the Magistrate show, he recorded a finding that the petitioners exercised right of private defence at page 8 in para 7 and concluded that by exercise of right of private defence, the petitioners and others killed two persons and at the same time, the Court also relied on the judgment of the Apex Court in **Hardeep Singh's** case referred supra, where the Supreme Court held that at the pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial, such as, ensuring compliance with Sections 207 and 208 Cr.P.C, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate to conclude that the Magistrate at the stage of Sections 207 to 209 is forbidden, by

¹ (2014) 3 SCC 92

express provision of Section 319 Cr.P.C, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session. The law declared by the Apex Court is not in quarrel, but here the facts are different. The 2nd respondent filed private complaint where the Magistrate recorded the statement of witnesses i.e. PWs.1 to 9 and marked several documents and a charge sheet was filed on 24.09.2014 against Bhumireddy Narapureddygari Sarveswara Reddy, Pamula Ramanaiah @ Ramanji, Bhuymireddy Narapureddygari Brahmanandareddy @ Brahman and Linga Reddy Veera Prathap Reddy @ Gandluri Veera Prathap Reddy, but not against these petitioners. Subsequently, a private complaint is filed. When the police complaint and private complaint are filed, the duty of the Court is to follow the procedure under Sections 210(2) Cr.P.C. But instead of following such procedure, the Magistrate totally exonerated the petitioners from their liability, on the ground that they invoked the right of private defence. Instead of passing an order, the Magistrate ought to have followed the procedure under Section 210(2) Cr.P.C. But before the Magistrate or Sessions Judge, no such contention was raised. As both Courts did not follow procedure under Sections 210(2) Cr.P.C. this Court directs the Magistrate to follow the procedure under Sections 210(2) Cr.P.C by setting aside the order passed by the Sessions Judge, without restoring the order of the Magistrate and decide the matter in accordance with law.

11. With the above direction, the Criminal Revision Case is disposed of.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 24.08.2017
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