

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CrI.R.C.No.2076 of 2017

ORDER:

This criminal revision case, by the petitioners-A1 to A9, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code', for brevity) is directed against the orders, dated 18.07.2017 of the learned Judicial Magistrate of First Class, Badvel, Y.S.R. Kadapa District, passed in Crime No.156 of 2017 of Badvel Urban Police Station, Badvel.

2. I have heard the submissions of *Sri V.R. Reddy Kovvuri*, learned counsel appearing for the petitioners/ A1 to A9, and of the learned Public Prosecutor (AP) representing the 1st respondent. I have perused the material record.

3. The facts, in a nutshell, are as follows:

On the first information received by the aforementioned police, the aforesaid crime was registered, on 03.07.2017, against five named accused and others for the offences punishable under Sections 147, 148, 323, 324 and 307 read with 149 of IPC. The allegations in the information report, in brief are as follows: - 'Gogula Nagaiah, who is a resident of Ramapuram village, that is the same village of the informant, is having disputes with A1. The disputes and the fight between them are with regard to agricultural land in the village. Gothala Ramanaiah, the informant's uncle, used to tell them to sit and clear the issue instead of fighting with each other. On 08.07.2017, at 11:30 AM, the informant, his said uncle, Gothala Ramanaiah, Gogula Nagaiah/ A8, Gogula Pedda Nagaiah, Gogula Papaiah S/o. said Pedda Nagaiah went to Badvel and assembled near Indian Oil Petrol Bunk on Nellore Road and sat there for discussing the ways and means to solve the said issue related to the agricultural land with Kethuboina Ramanaiah/ A1. The said Ramanaiah/ A1 keeping in mind the fight and with an intention to kill them came to the place along with Aala

Pedda Chenchaiyah/ A2, Aala Chinna Chenchaiyah/ A3, Polliboina Subbarayudu/ A4, Gothala Venkata Subbaiah/ A5 and others and started abusing the informant and the others present there along with him and beat them with iron rods which were brought by them. Aala China Chenchaiyah/ A3 beat the informant on his head on the left side and he sustained a blood injury. When all others also beat him he sustained injuries. Kethuboina Ramanaiah/ A1 and Pedda Chenchaiyah/ A2 caught hold of his uncle Gothala Ramanaiah and beat him with iron rod on the left side of his shoulder and he sustained an injury; thereafter all of them beat him and he sustained injuries on his entire body. When the informant and his said uncle fell down, all the said persons escaped. Gogula Nagaiah, Pedda Nagaiah and Papayya called 108 ambulance and shifted both of them to Government hospital and the Doctor treated and referred them to RIMS hospital, Kadapa. They both were treated at RIMS hospital. He furnished the information to the police when he was examined at the said hospital.' After registration of the crime, the investigating officer examined some of the witnesses and recorded their detailed statements and inspected the scene of offence, according to his version in the remand report. Further, according to the remand report, on 18.07.2017, at 08:00 AM, he received credible information that the accused were at Seelamvaripalli Cross Road, Badvel Mandal and that he went there and eventually arrested them at 08:40 AM as per the procedure stated in his remand report, dated 18.07.2017; and, he filed the remand report before the Court of the learned Magistrate requesting to remand the accused to judicial custody for a period of 15 days to enable him to complete investigation and finalise the case. However, in the said remand report, he stated that eyewitnesses, LWs3 to 7, stated that the accused did not come with iron rods and beat LWs1 & 2 with iron rods; but, the accused formed into an unlawful assembly and hurled stones on LWs 1 & 2 and that due to stone hits the said witnesses sustained injuries and that no attempt was made by the accused to beat LWs1 & 2 with iron rods and to kill them and that in the

incident both groups quarrelled with each other and hurled stones at each other and hence, Sections 147, 148 and 307 read with 34 IPC are not attracted to the facts of the case and that only a *prima facie* case is made out for the offences punishable under Sections 143, 323 & 324 read with 34 IPC. In the above stated factual background the learned Magistrate while considering the request of the investigating officer for remand of the arrested accused noted in the impugned orders that in the FIR Sections 147, 148, 323, 324 and 307 read with 34 IPC were mentioned, but, in the remand report Sections 143, 323 & 324 read with 34 IPC were only mentioned while seeking remand and hence, remanded the petitioners-A1 to A9 under the sections 143, 323, 324, 147, 148 and 307 IPC till 01.08.2017 and directed the Circle Inspector concerned to submit explanation at the time of filing of the charge sheet for deleting the Sections 147, 148 and 307 read with 34 IPC. Aggrieved of the said remand orders the petitioners-accused are before this Court.

4. Learned counsel for the petitioners would submit as follows:

The crime was registered for various offences; the investigating officer having commenced the investigation examined some of the witnesses and also visited the scene of offence. On the investigation, thus far conducted, he came to an opinion that the accused did not come to the place of incident armed with iron rods and did not beat LWs1 & 2 with iron rods and that they have not tried to kill LWs 1 and 2 and that they only hurled stones and that LWs1 & 2 sustained the injuries due to stone hits and that in the said incident both groups quarrelled with each other and hurled stones at each other. Thus, he gave his own reasons in the remand report in support of the statement or opinion that Sections 147, 148 and 307 read with 34 IPC are not attracted. The investigation is still in progress. At the time of passing orders remanding the accused to judicial custody on the request of the Investigating Officer, the learned Magistrate has no power and jurisdiction to take cognizance or pass orders of remand with regard to penal provisions, which are not mentioned in

the remand report. The Magistrate can exercise the powers for taking cognizance for offences not mentioned in the charge sheet or final report only at a later stage. At pre-cognizance stage the Magistrate has no power to add further sections to the sections mentioned in the remand report and pass orders of remand in respect of the penal provisions, which are not mentioned in the remand report. Only when a final report or charge sheet is filed under Section 173 of the Code and when the learned Magistrate is not satisfied with the investigation done then only he can alter the charge or take cognizance for any penal provisions, which are attracted but not before the filing of the final report or charge sheet. Therefore, the remand order remanding the accused by also mentioning the penal provisions under Sections 147, 148 and 307 IPC, though the said penal provisions are not attracted to the case, is illegal and unsustainable under facts and in law.

5. Learned Public Prosecutor would submit as follows:

In the FIR all the penal provisions viz., 147, 148, 323, 324 & 307 read with 34 IPC are mentioned. Whereas in the remand report, even without completing the investigation and even before the investigation reached an advanced stage, based on the statements of some of the witnesses, an opinion was expressed that some of the penal provisions attracting graver offences are not attracted to the case. The investigating officer ought not to have formulated such an opinion at a preliminary stage of investigation and he ought to have waited till the advanced stage of investigation. He ought to have sought remand by mentioning all the penal provisions in the remand report instead of expressing his premature opinion. Hence, the learned Magistrate is justified in passing the order impugned in the revision. Hence, the revision case is liable to be dismissed.

6. I have given earnest and thoughtful consideration to the facts and submissions.

7. Undisputedly, based on the first information, the crime was registered for the offences punishable under Sections 147, 148, 323, 324, 307 read with 149 IPC. However, after examining some witnesses including LWs 3 to 7 and arresting the petitioners/ accused, the Investigating Officer produced them along with a remand report before the learned Magistrate *inter alia* expressing an opinion that the accused did not come to the place of incident armed with iron rods and did not beat LWs1 & 2 with iron rods and that they have not tried to kill LWs 1 and 2 and that they only hurled stones and that LWs1 & 2 sustained the injuries due to stone hits and that in the said incident both groups quarrelled with each other and hurled stones at each other. He thus gave reasons in the remand report for stating that Sections 147, 148 and 307 read with 34 IPC are not attracted. However, while remanding the accused to judicial custody, the learned Magistrate noted that the crime was registered by mentioning the said Sections also and accordingly remanded the accused to judicial custody by including the said penal provisions also in the remand orders. Aggrieved thereof, the petitioners/ accused are before this Court.

8. As rightly contended, the crime was registered, on 03.07.2017, and the remand report was filed on 18.07.2017 based on the investigation thus far conducted; and, the further investigating into the crime is in progress. It is the prerogative of the Investigating Officer to formulate his own opinion independently based on the result of the investigation and his opinion shall not be subject to any outside influence. The order of remand passed in the instant case being a judicial order, as rightly pointed out, is likely to interfere with the independence of the Investigating Officer in formulating a final opinion and filing the final report either way. The contention of the petitioners/ accused is that the remand orders mentioning the penal provisions, which are not mentioned in the remand report filed by the Investigating Officer, are likely to cause prejudice to them as they may come in the way of the Investigating

Officer independently formulating his own opinion at the end of the investigation and at the time of filing final report either way. It is their apprehension that such order of remand may effect the judicial discretion that has to be exercised by a learned Magistrate or Judge, who may be required to dispose of the application for grant of bail that may be filed by the petitioners/ accused in the instant crime. This Court finds that there is some considerable force in the submissions of the learned counsel for the petitioners/ accused. On the above analysis, this Court finds that this is a fit case for redressal of the grievance of the petitioners/ accused. However, this Court further finds that the revision can be disposed of with certain observations without interfering with the impugned remand order passed in the said crime by the learned Magistrate, as anyhow cognizance would be taken at a future date, if necessary, after filing of the final report either way.

9. In the result, the Criminal Revision Case is disposed of with the following observations: 'The Investigating Officer shall be at liberty to formulate his own opinion in the matter independently based on the result of the investigation done by him and accordingly he may file the final report either way, without being influenced by the remand order impugned in this revision. The application for grant of bail, if any, filed by the petitioners/ accused shall also be disposed of by the learned Magistrate/ Judge concerned purely on its merit and the record/ CD file that may be produced by the investigating agency, however, uninfluenced by the contents of the order of remand.'

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

24.07.2017

Note:- furnish CC by 25.07.2017

(B/ o)

Vjl