

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.2594 of 2016

ORDER:

The revision petitioner is the accused No.5 in S.C.No.549 of 2015 on the file of the Special Sessions Judge for SCs and STs(POA)-cum-IV Addl. Sessions Judge, Guntur and in the above Sessions Case, he filed a petition CrI.M.P.No.157 of 2016 seeking to discharge him from the prosecution but the same was dismissed by order dated 06.09.2016.

2. The averments in the petition of the revision petitioner in CrI.M.P.No.157 of 2016 before the trial Court are that the respondent-State filed chargesheet against him in Cr.No.289 of 2013 of Mangalagiri Rural Police Station, for the offence u/ sec.302 r/w34 IPC, though he has nothing to do with the commission of the alleged offence and he has been falsely implicated in the case and thus the complainant resorted to abuse of process of law. The petitioner is running a medical shop as well as working as a private Medical Practitioner at Mangalagiri and though he amply proved by producing closed circuit camera footage before the police to negative the contention of his presence at the time of commission of the alleged offence, the police arrested him along with the other accused. The petitioner though tried to prove his non-involvement in the commission of offence at the alleged incident, but the same was not considered by stating that the said facts are to be considered by the police during investigation and at the time of trial of the case, and the respondent/ police carried away by the influence of the persons behind the defacto complainant. The defacto-complainant did not make any mention about the involvement of the petitioner/ A.5 either in report or 161 CrPC statements. The petitioner is ready to produce the video footage mentioned above for perusal of the Court, and prays to discharge him.

3. The respondent-Complainant filed counter in CrI.M.P.No.157 of 2016 and submits that during investigation it is revealed that the A.1 and deceased did real estate business, and later due to misunderstandings, when the deceased refused to pay the amount invested by A.1, A.1 along with the other accused on 17.12.2013 committed murder of deceased by hacking him with axe by beating with iron rods and stabbing him with knife to death. The petitioner/ A.5 is resident of Mangalagiri and younger brother of A.1. The offence committed by the A.5 is severe in nature and he is responsible for the said offence, thus he is not entitled for discharge at this stage and the case against him shall be decided after full-dressed trial only as there was strong evidence in this case, hence to dismiss the petition.

4. After hearing both sides, the trial Court held that while considering the application under Section 227 CrPC, it must be determined by the Court having regard to the entirety of material brought on record by prosecution and not on part of the defence and quoted the decision of the Apex Court in *State of Madhya Pradesh Vs. Sheela Sahai*¹. Further held that at the stage of framing of charge, the Court is not required to minutely or meticulously go into the merits of the evidence collected by prosecution. The consideration for the Court to say that there is no sufficient ground for proceeding against the accused, would depend upon the facts of each case and it is difficult to lay down a rule of universal application. The allegations leveled against the petitioner/ A.5 disclose that there is prima facie case against him and there are no any cogent reasons to discharge him and hence dismissed the petition.

5. Impugning the same, the revision petitioner preferred this revision with the grounds in the revision that the trial Court erred in dismissing the application to discharge him, that the trial Court should have seen that the

¹ 2009 CrI.L.J.4436 (SC)

police did not investigate the case properly and not considered the video recording of the Close Circuit Camera footage at the time of alleged commission of offence. The trial Court should have seen that at the time of grant of bail, the petitioner established his plea before the Special Judge, Guntur, but the same was not considered by stating that the said facts are to be considered during investigation. The trial Court failed to see the effort of the revision petitioner is for establishing his non-involvement in the commission of offence at the time of alleged incident and the respondent-State carried away by the influence of the persons behind the defacto-complainant and filed the charge sheet. The learned trial Court should have seen that the defacto complainant at the initial stage did not make any mention about the involvement of the petitioner in his report with specific overt acts and the alleged Section 161CrPC statements said to have been given by the witnesses also do not point out anything against the petitioner. The trial Court without application of mind and without appreciation of all the facts supra, erred in dismissing his application instead to discharge him. The trial Court failed to see that before proceeding with trial and before framing charges, if any application is filed u/ sec.227 CrPC, the Court ought to have considered all the materials placed before him. The trial Court is not justified in framing the charges against the petitioner/ accused. The trial Court observed wrongly that at the time of framing of charge the Court is not required to minutely or meticulously going to the merits of evidence collected by the prosecution. Trial Court should have seen that, even as per the charge sheet, there is absolutely no allegation against the petitioner. The learned Judge ought to have discharged the petitioner before framing charges.

6. The learned counsel for the revision petitioner-A.5 reiterated above grounds in impugning the order of the lower Court. Whereas, it is the submission of the learned Public Prosecutor in support of the dismissal of the discharge petition saying there is nothing to interfere by sitting against in revision. Heard both sides and perused the material on record including the impugned order of the trial Court.

7. The legal position on the scope of material to be considered in a discharge application if at all there are grounds to discharge or to frame charge, also as the case may be, is only from the prosecution material as to prima facie accusation and not by considering any new material than that of prosecution, even to permit the accused to file and it is not required to consider at this stage the ultimate evidence for success of the prosecution. From this principle to be kept in mind as laid down in *State of Orissa Vs. Debendra Nath Pathi*² and also referred in the impugned order of the lower Court of the expression of the Apex Court in *Sheetla Sahai supra*. Coming back to the facts, the occurrence was dated 17.02.2013 at about 9P.M. at old bones factory, after passing Kuragallu village, and near Patha Bomikalu Mill, and the report of the defacto complainant by name Yadala Svanagaraju lodged in Mangalagiri Rural Police Station was by 10.30 p.m., which is within a distance of 2KMs west to the place of occurrence in registering above crime vide Cr.No.289/ 13 punishable u/ sec. 302 read with 34 IPC against the accused by names Tadiboina Uma Maheswararao(A.1), Nallagorla Rama Rao(A.2), Ala Subbarao(A.3), Tadiboina Mahesh(A.4), Tadiboina Mahesh (the petitioner herein-A.5), Darsi Yohan(A.6), Pullaguru Koteswara Rao(A.7) and Ala Gopi Raju(A.8) and some others and the report further reads the deceased Battula Nagasai who is his (defacto-complainant) maternal aunt's son (cousin brother) who was Bethapudi village surpanch

² (2005) 1 SCC 526

asked him come to go to Thulluru and then he came to Bethapudi and it was at about 12 noon, in the Indica Car bearing No.AP 04 D 9858, the deceased Nagasai, his driver Gundala Chandrasekhar, Gowruboina Bullaiah, Gowruboina Raghavamma, Gurivisetty Vennkateshwarlu and Tadiboina Dhanalakshmi, started in the car at Bethapudi village towards Thulluru. It is in connection with the settlement of family dispute pending at Tulluru police station in relation to the Raghavamma's family and the defacto-complainant and his brother followed the car on their Splendor bike after completion of the work at the police station at about 9.00 P.M. when they reached near Patha Bomikalu Mill, after passing Kurugallu village, there was Tata India car bearing No.AP37 S3636 and some people got down therefrom armed with axes and iron rods while raising cries Chapandi and broke open the window screen glasses of the car where the deceased Nagasai and some others supra were travelling and Nagasai was dragged out from the car and the defacto-complainant and Venkateshwararao when tried to rescue Nagasai, some of the persons above who were known to him i.e. Thadiboina Usha, Nallagorla Rama Rao, Ala Subba Rao, Puppala Ramakrishna, Thadiboina Mahesh, came to them and threatened to do away with them and out of fear of death, they could not rescue and they inhumanely killed the deceased and fled away and it is in relation to the real estate business of the deceased with A.1-Tadiboina Uma Maheswara Rao, in relation to site of 400 sq.yards from the differences leading to animosity.

8. The very report of the defacto-complainant as eye witness besides two persons named as witnesses including in their statement when clinchingly pointed out attribution of specific role of the petitioner-A.5 also in framing the charge by dismissing the discharge application, there is nothing for this Court while sitting in revision to interfere.

9. Accordingly and in the result, the revision is dismissed. However, it is made clear that during trial, these observations will not come in the way to their defence. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:21.02.2017
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