

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.3028 OF 2016

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C, challenging the order dated 09.09.2016 passed in CrI.M.P.No.1580 of 2016 in C.F.No.1891 of 2013 in Cr.No.102 of 2012 by Judicial Magistrate of I Class, Udayagiri, for the offences punishable under Sections 302, 120B, 149, 150, 20, 342, 218 r/w 34 I.P.C against the accused nos.1 to 10.

It is the case that, on 30.11.2012, the defacto complainant was informed by her son that her husband was found dead in the haystack. Thereupon, on a complaint filed by the defacto complainant, the Judicial Magistrate of I Class, Udayagiri, by exercising power under Section 156(3) Cr.P.C referred the matter to police for investigation and in turn, the police registered the case in Crime No.102 of 2012 under Section 174 Cr.P.C on 01.12.2012. Later, it was altered to Section 302 I.P.C on 11.01.2013, after receipt of post mortem certificate. The investigation revealed that A-1 and the deceased are friends and habituated to commit theft of buffaloes and sell them to A-3. Thereafter, they used to enjoy with the sale proceeds. In this connection, A-1 and deceased committed theft of buffaloes of one Gurala Malakondaiah and Surabhi Subbalaxmaiah of Appasamudram village and sold them to A-3. Thereafter, the deceased apprehended that A-1 cheated him several times in giving share of sale proceeds to him and the deceased started blackmailing A-1, as A-1 informed about all the thefts to the villagers. A-1 was afraid of the deceased and hatched plan to do away with the deceased. A-4 confessed before one Pandala Jayanthulu Reddy that he was engaged by A-1 to A-3 to

do away the husband of the defacto complainant. Accordingly, A-1 & A-2 hatched a plan and on 29.11.2012, A-1 & A-2 along with the deceased consumed alcohol, where the deceased picked up quarrel with A-1 and demanded money. In that process, A-2 caught hold of the legs of the deceased and A-1 put his towel and covered the mouth and nose of the deceased, as a result of which the husband of defacto complainant lost his breath. Thereafter, in order to escape from the offence of murder, A-1 & A-2 shifted the dead body on motor cycle to the haystack and thrown the dead body in the heap of logs and covered the same with hay, in order to create a scene of accidental death.

The Magistrate took cognizance of the offence only against respondents 2 to 5 and did not take cognizance against other respondents. Thereupon, the defaco complainant filed CrI.M.P.No.1580 of 2016 contending that there is substantial material to proceed against the other respondents also for various offences stated above. But, the Magistrate recorded a finding that there is absolutely no material to establish *prima facie* involvement of the other accused who are arrayed in P.R.C. and thereby, question of conspiracy, common object of hiring and unlawful assembly between the accused does not arise to take cognizance under Sections 149 I.P.C. In paragraph 8 of the order, it is made clear that there is no whisper in the evidence of complainant witnesses except evidence of Pradeep Reddy about the tampering of record and evidence in the case to screen the offenders and as such there is no material is produced by complainant to establish *prima facie* commission and involvement of other respondents and dismissed the petition.

Aggrieved by the order passed by the Judicial Magistrate of I Class, Udayagiri, the present criminal revision case is filed contending that there is prima facie material against the petitioner to take cognizance of the offence punishable under Section 302 against A-3, A-5 & A-8 and other provisions of law. But the Trial Court did not take into consideration the statements recorded under Section 164 Cr.P.C and committed an error.

During hearing, Sri Suresh Kumar Reddy Kalava, learned counsel for the appellant while reiterating the grounds raised in the revision, drawn attention of this Court to the statement record under Section 164 Cr.P.C of Pradeep Reddy. There is a bald reference about the participation of the other accused/respondents and the statement of Pradeep Reddy reads as follows:

“..... After death of my father-in-law, Narayana Reddy went to Khammam. On enquiry by Jayaganath Venkateswara Reddy, Tirupal Reddy, Thangedapalle Madhu, Malakondaiah and Venkata Swamy kill Subba Rami Reddy at the tope of Ramana Reddy, S/o Chandra Reddy.

Basing on the statement of Pradeep Reddy, son-in-law of the deceased, it is contended that this material is suffice to take cognizance of the offence against other respondents as accused for offences stated supra and proceed further in the matter. As seen from the allegations in the statement recorded by the Magistrate under Section 164 Cr.P.C, the said Pradeep Reddy received information from one Jayanthulu Reddy. But, when he was examined and his statement was recorded by the Judicial Magistrate of I Class, his statement is totally silent with regard to giving information to Pradeep Reddy, as stated by him. Admittedly, Pradeep Reddy is not an eye witness to the incident, but his statement is passed on by the information based on Jayanthulu

Reddy. Except the alleged statement of Pradeep Reddy, nothing is brought to the notice of this Court to rope the other respondents for the offences punishable under Section 302 I.P.C. When there is no evidence on record, muchless, *prima facie* material against the other respondents, refusal to array them as accused and proceed against them by the Magistrate cannot be faulted. Even after reconsidering the material available on record, I find no *prima facie* material to proceed against the other respondents who were not arrayed as accused in the P.R.C.No.07 of 2013. Based on the statement of Pradeep Reddy, who allegedly received information from Jayanthulu Reddy, the Court cannot proceed against the other respondents by taking cognizance, as issuing notices in such criminal offences will have its own serious consequences and it is nothing but subjecting them to harassment unnecessarily without any evidence. Therefore, I find that it is not a fit case to interfere with the order passed by Judicial Magistrate of I Class, Udayagiri dated 09.09.2016 in CrI.M.P.No.1580 of 2016 in C.F.No.1891 of 2013 in Cr.No.102 of 2012. Consequently, the criminal revision case is liable to be dismissed.

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:03.08.2017
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