

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case No.1760 of 2012

Between:

S. Yadagiri Reddy

and three others.

.... Petitioners/Accused 1 to 4.

AND

State of Andhra Pradesh,

Rep. by Public Prosecutor,

High Court at Hyderabad.

.... Complainant/Respondent

DATE OF JUDGMENT PRONOUNCED: 19.11.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment?

Yes / No

2. Whether the copies of judgment may be
marked to Law Reporters / Journals?

Yes / No

3. Whether His Lordship wish to
see the fair copy of the Judgment?

Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for Petitioners

: Sri K.V.L. Narasimha Rao

^ Counsel for Respondent

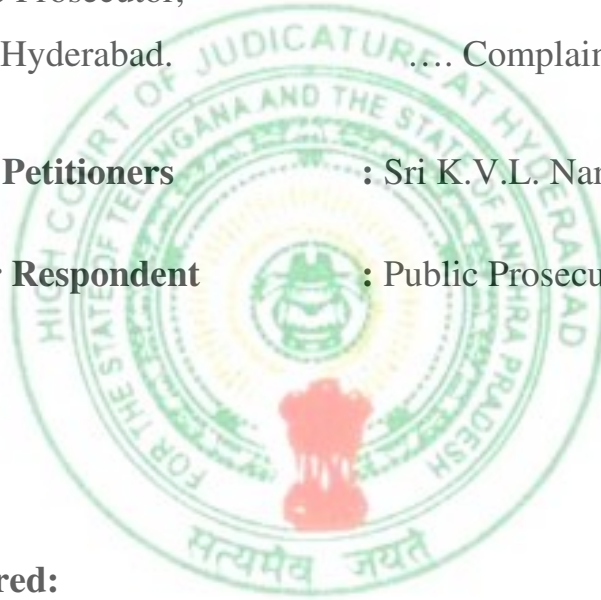
: Public Prosecutor (Telangana)

< Gist:

> Head Note:

? Cases referred:

1) 2011 ALT (CrI) 159 = 2011 ALD (Cri) 170



HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.1760 of 2012

ORDER:

The challenge in this CrI.R.C at the instance of petitioners/A.1 to A.4 is the order dated 31.07.2012 passed by the Judicial Magistrate of First Class, Bhadrachalam, according permission to investigate the offence under Section 182 Cr.P.C in Crime No.127 of 2012 of Burgampahad PS.

2) The factual matrix of the case is thus:

a) An official enquiry was conducted against one R.Ravishankar Reddy, former SDPO, Kothagudem and seven others, who were indulged in corrupt practices while discharging their official duties. Prior to conducting the official enquiry by Sri K.Pradeep Chandra, IAS, Inquiry Authority, Commissioner of Inquiry, a preliminary enquiry was conducted by the-then Additional Superintendent of Police, Administration, Khammam, who during the course of such preliminary enquiry recorded the statements of petitioners/A.1 to A.4 and some others. During the course of official enquiry, the petitioners and others gave *volte-face* and did not support the version that was given by them before the Additional Superintendent of Police regarding the corrupt practices of the delinquent officials. On the contrary, the petitioners and others have given false statements to help corrupt delinquent officials. On account of the petitioners and others turning hostile, the Superintendent of Police, Khammam District, vide

his letter dated 13.07.2013 in CA No.2046/A6/2011 directed the Additional Superintendent of Police, Kothagudem to lodge complaint against them for the offence under Section 182 IPC and accordingly, on the instructions of Additional Superintendent of Police, the S.I of Police, Burgampahad PS, lodged the report and the same was registered as Crime No.127/2012 for the offence under Section 182 IPC against the petitioners. Since the offence alleged is a non-cognizable offence, the complainant sought for permission of the Judicial Magistrate of First Class, Bhadrachalam in terms of Section 155(2) Cr.P.C to investigate the matter. Learned Magistrate has passed the following impugned order:

“Heard and perused the record. Accorded permission to investigate within the purview of Section 155 Cr.P.C. Vide separate proceedings.”

Hence the instant CrI.R.C by petitioners/A.1 to A.4.

- 3) Heard both sides.
- 4) The contention of the petitioners is twofold. Firstly, it is argued that as per Section 155 Cr.P.C, the police are not authorized to register FIR in respect of the information received by them which discloses the commission of a non-cognizable offence. On the other hand, the Station House Officer of concerned Police Station shall only enter the substance of the information in the General Diary and refer the informant to the concerned Magistrate and upon receiving the order from the concerned Magistrate only the police officer shall investigate

into the matter. The next argument is that the learned Magistrate except according permission, did not pass any speaking order.

5) Per contra, learned Addl. Public Prosecutor supported the impugned order and prayed to dismiss the revision.

6) The point for consideration is:

“Whether there are merits in the Crl.R.C to allow?”

7) **POINT**: I have given my anxious consideration to the submissions made by either side. Section 155 Cr.P.C which is the bone of contention in this case, reads thus:

“Section 155 - Information as to non-cognizable cases and investigation of such cases:

(1) *When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.*

(2) *No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.*

(3) *Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.*

(4) *Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”*

As per Section 155(1) Cr.P.C, when the information relating to the commission of a non-cognizable offence is given to the officer in-charge of a Police Station i.e, Station House Officer, he shall enter or cause to be entered the substance of the information in a “book” to be kept by such officer in such form as the State Government may prescribe in this behalf and refer the informant to the Magistrate. In that view, the precise question, is the “book” referred in Section 155(1) Cr.P.C is whether the General Diary of the PS or the FIR book. In other words, whether the substance of the information relating to the commission of a non-cognizable offence shall be entered in the General Diary or whether FIR can be registered and entered in the FIR register. In this regard the submission of learned counsel for petitioners is that as per the Andhra Pradesh Police Manual, the substance of the information relating to non-cognizable offence shall be entered in the General Diary and the Station House Officer is not authorized to register the FIR basing on the aforesaid information as in the instant case. Such registration of FIR and then seeking permission of Magistrate for investigation would amount to violation of the mandatory provision laid down under Section 155 Cr.P.C. He submitted the Andhra Pradesh Police Mandal, Part-I, Volume-II, wherein Order No.409-6 under the heading “The First Information Report (F.I.R) to the Police Station”, reads thus:

“6. Whenever a report relating to commission of non-cognizable offence is presented in a police station the SHO shall enter the substance in the G.D and advise the informant to go to Court and

present it there as he is not competent to register and investigate such cases. But if one of the offences among the contents of the report is of cognizable nature it becomes a cognizable case and he must register and investigate the case.”

So a close scrutiny of the above order shows that the information relating to commission of non-cognizable offence shall necessarily be entered by SHO in the General Diary and he is not authorized in this regard to register FIR. This order further shows that upon entering the substance in the General Diary, the SHO shall advise the informant to go to Court and present his report there as the SHO is not competent to register and investigate such cases. Therefore, the order is emphatic to the effect that in terms of Section 155 Cr.P.C, the SHO is not authorized to register and investigate the non-cognizable offences without prior permission of the Court.

a) In the instant case, contrary to Section 155 Cr.P.C and also the orders of the A.P Police Manual, the SHO of Burgampahad PS, registered Crime No.127/2012 on receiving the complaint from the S.I of Police, Burgampahad PS and thereafter only sought for permission of the Magistrate for investigation. The aforesaid violation is an incurable one in view of the mandatory provision laid down under Section 155 Cr.P.C and also the A.P. Police Manual.

8) Then coming to the second argument, as rightly submitted by learned counsel for petitioners, except according permission to investigate the matter, learned Magistrate has not assigned any

plausible reasons which prompted him to grant such permission. In *Sajjal Agarwal v. State of A.P.*¹, this Court observed thus:

*“**Para 10:** It is contended by the petitioners counsel that the Courts below in these two cases granted permission under Section 155(2) Cr.P.C without giving any reasons for grant of such permission. In case a police officer or a complainant approaches the Magistrate for permission under Section 155(2) Cr.P.C, it is not incumbent on the Magistrate to grant the permission invariably. It is open to the Magistrate either to grant permission or refuse to grant permission. When there is such discretion vested in the Magistrate, it is desirable that the Magistrate should give reasons for empowering a police officer to investigate a non-cognizable case, so that an aggrieved party will be in a position to question the same in higher Courts and will be in a position to know for what reasons his application was considered or not considered. This Court is of the opinion that the Magistrate should not be casual in granting permission under Section 155(2) Cr.P.C. simply because a police officer requested for such permission. The Magistrate has to consider entire gamut of the case and take into account whether a police officer will be in a position to collect better material during investigation than the complainant himself furnishing material in support of his case. Otherwise there is every possibility of misuse of Section 155(2) Cr.P.C in case such power is given to any unscrupulous police officer misusing his official position and harassing the named accused persons.”*

However, in the instant case Magistrate has not recorded reasons for according permission.

In view of the procedural violations, the impugned order is liable to be set aside.

¹ 2011 ALT (Cri) 159 = 2011 ALD (Cri) 170

9) In the result, this Criminal Revision Case is allowed and the impugned order is set aside.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 19.11.2018

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