

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

CRIMINAL PETITION No.3612 of 2018

Between:

Dr. Kurri Shiva Nagi Reddy

.....Petitioner

and

State of A.P. rep. by its Public Prosecutor and another

.....Respondents

Date of Judgment pronounced on : 05-12-2018

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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> HEAD NOTE:

! Counsel for the petitioner : Sri Sita Ram Chaparla

^ Counsel for the respondents : Sri B.Venkateswar Rao for R.2
Learned Public Prosecutor for
R.1-State

? Cases referred



HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**CRIMINAL PETITION No.3612 of 2018****ORDER:**

The petitioner is the 2nd accused in SC.No.446 of 2015 pending on the file of learned VI Additional District & Sessions Judge, Guntur. The 2nd respondent is the defacto complainant-LW.1, which is outcome of his report registered as crime No.79 of 2015 registered by Pattabhipuram Police Station, Guntur Urban, for the offences punishable under Sections 302, 380, 120-B r/w 34 IPC. The police after investigation by citing as many as 29 witnesses including the IO as LW.29 from registration of the crime till filing of the charge sheet including LW.28-Fingerprint expert and LW.27-Assistant Professor, Department of Forensic Medicine, Guntur Medical College, Guntur, filed the charge sheet for the offences against 2 accused of whom A.1-Shaik Jani Baji (died) and the factum of his death and abatement of the proceedings were recorded before the Sessions Court on 29.12.2017, thus A.2 alone is facing the accusation from the police final report covered by PRC.No.14 of 2015 in taking cognizance for committed the case to the Court of Session and Sessions Division under Section 193 Cr.P.C. allotted the post cognizance SC.No.446 of 2015 supra.

2. The contentions in the quash petition are that the defacto complainant is working as Assistant Professor in Guntur Medical College and she married one K.Siva Nagi

Reddy who is the petitioner/A.2 a dentist R/o. Macherla working at Gannavaram in General Hospital as Dentist and in their wedlock a female child was born to them now aged 8 years and student of Bhasyam Blooms School. The petitioner/A.2 worked 5 months prior to the filing of the report at Macherla and later transferred to Gannavaram at Krishna District and he used to go to the defacto complainant's house. The defacto complainant and her mother Subbayamma were staying together. It was on 12.03.2015 at about 09.00 AM she attended to her duties and returned to her house by evening at 04.00 PM, she is also a doctor by avocation by name Rajya Lakshmi at R.Agraharm. The door of the house found opened and she called her mother and entered into the house and her mother in a pool of blood in kitchen room found lying she examined pulse and found pulse not detected and she telephoned to her PG student and they secured 108 ambulance and shifted her mother Subbayamma to Government General Hospital, Guntur, where admitted in casualty and Doctor on duty tested and declared her died. She stated that her mother was done to death by unknown persons while the lights in the house were illuminating. She stated her husband as got first wife and he is amicably with first wife and children and previously one Jani Baji-A1 since died worked as compounder at the hospital under her husband-A2, used to get patients to her hospital and on previous Sunday to the report while she

was in the way from house said Jani Baji-A.1 came and took clothes of her husband representing that he asked him to bring the dress of her husband, at that time her mother handed over the dress and it is also reported that the behaviour of said Jani was abnormal and causing fear in the mind of her mother, as intimated by her mother. While so on 11.03.2015 at about 07.30 PM while she was in the clinic, A.1-Jani Baji came and requested money and she arranged money of Rs.100/- through her nurse Aruna who was in the clinic and the behaviour of said Jani Baji was suspicious hence to take action. It is therefrom the crime was registered for the offence punishable under Section 302 IPC originally on 12.03.2015 itself. It is therefrom the investigation taken up and the statement of the defacto complainant repeats the same of the contents of the FIR. Jani Baji made a disclosure in the course of investigation on 30.03.2015 of the crime stating that he studied up to 10th class at Macharla ZPHS and later at Macharla working under Dr. Kurri Siva Nagi Reddy-A.2 in his Hospital Shiva Sai Multi Specialty Dental Clinic as compounder up to 2006 on salary of Rs.1,000/- per month and as the salary was insufficient he quit the job and at Macharla joined as cashier in Shiva Teja Bar and Restaurant up to 2011 when license of the bar and restaurant was cancelled and later worked as lorry cleaner for one year later during 2012 to 2014 as ration dealer obtained license that was also cancelled in 2014. His further disclosure shows

even she observed Jamath to quit his vices like consumption of alcohol, he could not come out from vices. While so, when his father went for his teeth pain treatment with Dr. Shiva Nagi Reddy-A.2, A.2 sent a word to A.1 of there is some work with him and he went there and met A.2 at the place of his working at Gannavaram Hospital and along with him he went to Vijayawada and they saw flat at the Radhakrishna apartment and on that day both came to Guntur stayed at Garuda Lodge and A.2 promised to provide him job at Indo American Hospital and he was working under A.2 in the meantime since 03.03.2015 and his further disclosure reveals about A.2 utilized his services in hatching a plan to eliminate the mother of the defacto complainant. The extra judicial confession of him is no doubt admissible as made to the VRO, Guntur Town on 30.03.2015 subsequent to the occurrence dated 12.03.2015, under Section 24 of the Indian Evidence Act, leave about the ultimate evidentiary value as ring of truth or any corroboration required to it at least to use the same as peace of corroboration. In fact it is not the extra judicial confession to use against him herein for the reason of the maker of the extra judicial confession i.e., A1 is no more having died before commencement of trial, leave about charges appears not even framed so far. There remained only the said statement of deceased, co-accused if at all to use against the petitioner/A.2 and but for that from the defacto complainant's statement, there is no even specific whisper

against A.2 but against A.1 there is other than the factum including from the medical evidence of deceased met with homicidal death no other material of complicity of A.2 to the crime committed by A.1 if any at his instance or abetment.

3. Once the said extra judicial confession is admissible under Section 30 of the Indian Evidence Act made by co-accused that application arises only if in same trial and once that person died the question of facing by maker co-accused of trial does not arise. Once the maker is no more and when it is not covered by Section 30 of the Indian Evidence Act and not even a statement on oath. It is even taken as admissible a very weak statement that too exculpatory by the maker-A1 and inculpatory against A.2 (third party) to the extra judicial confession.

4. Having regard to the above, when there is no any remote possibility of conviction from the said statement and what among Lws.1 to 29 referred in the charge sheet as to the mode of adducing evidence to prove the complicity of the crime speaks is LW.1-defacto complainant not even suspected the complicity of A.2, so also LW.2-Y.Nageswara Rao, LW.3-J.Markandeyulu, LW.4-J.Sujatha, no whisper against the petitioner/A.2 in their statements to show any little complicity of the crime, but for against late A1 and even among Lws.9 to 15 concerned, Y.Ankamma Chowdary, Dr.Yerram Srinivasa Rao, M.Subbamma, K.Chandrika, J.Parvathi, S. Kumar and A.Aruna. Their statements in

corroboration to LW.1 if any is against A1. LW.8 speaks of video and photos of the scene of offence and at Mortuary on the dead body, LW.7-Dr. K.V.Mahesh Kumar and LW.6-Dr.G.Dinesh speak about shifting of the deceased from the scene of offence to Guntur General Hospital for treatment and nothing beyond. LW.16 speaks only factum of A.2 stated at their hospital to co-relate extra judicial confession of they both stayed at Garuda hotel and LW.17 of Manager of Manju lodge at Guntur speaks of late A1 stayed at their lodge, LW.18-GV Rao of Radha Krishna Residency, Vijayawada, speaks stating A.1 and A.2 at the flat of A.2 so also LW.19-MS Rao, Lws.20 & 21 are the witnesses to the scene observation. LWs.22 to 24 witnesses to the inquest, LWs.25 & 26 are witnesses to the extra judicial confession of A.1 and arrest of A.1 and A.2 and there is no even any extra judicial confession of A.2 as referred supra. There is no any discovery of a fact leading to discovery while under police custody of A.2 to admit under Section 27 of the Indian Evidence Act from any disclosure.

5. Having regard to the above, though from what the learned Public Prosecutor contended of Court cannot entertain the quash petition in the Sessions Case at post cognizance stage and before hearing on charges and framing of charges by pre-judging the matter. Here the power of the Court under Section 482 Cr.P.C. is to sub serve the ends of justice and to prevent the abuse of process and law is fairly

settled that when there is no any little chance of the case ends in conviction the continuation of the proceedings is futile exercise and thereby the power of the Court cannot be equated to the power of the trial Court from the hearing and framing of charges if any.

6. Having regard to the above and when the material is insufficient if not for framing charges if any for proving any guilt of the accused case rested on circumstantial evidence from the material available on record, there is nothing to take ordeal of trial by A.2 that too for the futile exercise in wasting valuable time of the Court and the witnesses and it is thereby just to sub serve the ends of justice to quash the proceedings.

7. Accordingly and in the result, this Criminal Petition is allowed by quashing the proceedings against the petitioner/A.2 in SC.No.446 of 2015 on the file of learned VI Additional District & Sessions Judge, Guntur, accused is acquitted and the bail bonds of the accused if any shall stand cancelled.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.12.2018

Note: L.R. Copy to be marked

(B/o)

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