

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION No. 7605 of 2010

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor.

The petitioner who is A-2 filed the present criminal petition to quash the proceedings initiated against him in S.C.No.165 of 2010 on the file of the Court of the Principal Assistant Sessions Judge, Kothagudem, Khammam District for the offences under Sections 354, 306 r/w 107 IPC.

The facts leading to the prosecution case are that one Ailapaka Sinu, a resident of Nagaram village, Paloncha mandal lodged a complaint on 24.09.2008 before the Station House Officer, Burgampad Police Station stating that he is earning his livelihood by doing agriculture labour. He had two children viz. Nagamani and Pavan. He was giving education to his children, admitting them into Government School. As far as the first child Nagamani is concerned, she was going to ZP.High School at Sarapaka residing with his mother-in-law. The said Nagamani was studying in 10th class and she used to go to the school in a bus. The said Nagamani used to tell her father that she wants to go for higher education. His daughter informed her maternal uncle Vadalakonda Venkateswarlu two or three times about the harassment meted out to her in the school. However, the said Vadalakonda Venkateswarlu was busy with his work and he could not give much

importance to the said complaint. However, on 19.09.2008 the said Nagamani informed her maternal uncle that one G.V. Satyanarayana teacher (A-1), was sexually harassing her and other girl students by putting his hands in the shirt packets and touching the body. The said issue was informed to another teacher V.V.Laxminarayana. However, he also could not do anything. Taking encouragement from the same, the teacher G.V.Satyanarayana continued his sexual harassment because of which she was unable to write her examinations properly and requested him to come to the Head Master and report against the said G.V. Satyanarayana for taking appropriate action. Therefore, the said V.V.Venkateshwarlu went to the school on 20.09.2008 in the afternoon and informed everything to the Head Master and requested him to take appropriate action against G.V. Satyanarayana for sexually harassing the students. However, on 23.09.2008 he was informed that his daughter was serious through Cell No.9391371087 requesting him to start immediately. By the time he reached the Government Hospital, Badrachalam, his daughter died. On enquiry with his brother-in-law, he was informed that she committed suicide by consuming pesticide poison. Therefore, he lodged a complaint for taking appropriate action against the concerned persons. Pursuant to the said complaint, a crime has been registered vide F.I.R.No.138 of 2008. After investigation, a charge sheet has been filed against A-1 and A-2 for the offences under Sections 354, 306 r/w 109 IPC. However, the offences against the Head Master who cited as A-3 in the F.I.R. was not established and his name was deleted from the charge sheet. After filing of the

charge sheet, the case was committed to the Sessions Division and numbered as S.C.No.165 of 2010 on the file of the Court of Principal Assistant Sessions Judge, Kothagudem, Kammam District. Aggrieved by the same, the present criminal petition is filed.

The learned counsel appearing for the petitioner would contend that there are no ingredients satisfying abetment under Section 107 IPC. The petitioner has not participated in the alleged offence and no such incident happened in his presence. The petitioner is not the Head Master of the school and he cannot complain against his colleague to the Head Master and that it cannot be taken as act of abetment. The reading of the contents of the F.I.R., even if taken in its entirety, does not constitute any offence, much less the alleged offences against the petitioner. Even though the Head Master was figured as A-3 in the F.I.R., later his name was deleted from the array of the accused. If the same analogy is applied, the name of the petitioner would have also been deleted from the array of the accused. He also would contend that not responding to the complaint made by the deceased Nagamani, cannot be construed that the petitioner has supported the acts of the accused No.1 as he is no way responsible for any acts committed by his colleagues and he is not the Head Master of the institution. Since the ingredients of Section 107 IPC are not made out, the offence under Section 306 IPC cannot be made out. In these circumstances, the initiation of proceedings against the petitioner is an abuse of process of law and to secure the ends of justice, proceedings are liable to be quashed.

To support the above said contentions the learned counsel relied on the following judgments:

1. MANOJ MAHAVIR PRASAD DHAITAN v. RAM GOPAL PODDAR AND ANOTHER¹,
2. NETAI DUTTA v. STATE OF W.B.²,
3. SANJU ALIAS SANJAY SINGH SENGAR v. STATE OF M.P.³,
4. CENTRAL BUREAU OF INVESTIGATION, HYDERABAD v K NARAYANA RAO⁴,
5. STATE OF KERALA AND OTHERS v. S UNNIKRISHNAN NAIR AND OTHERS⁵, and
6. MADHAVRAO JIWAJIRAO SCINDIA AND OTHERS v SAMBHAJIRAO CHANDRAOJIRAO ANGRE AND OTHERS⁶.

Based on the aforesaid judgments, that where the allegations themselves are so absurd and no reasonable man would accept the same, the High Court should come to the rescue of the petitioners and in exercise of jurisdiction under Section 482 Cr.P.C. and to meet the ends of justice, the criminal proceedings are liable to be quashed. When a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to

¹ (2010) SCC 673

² (2005) 2 SCC 659

³ (2002) 5 SCC 371

⁴ (2012) 9 SCC 512

⁵ (2015) 9 SCC 639

⁶ (1988) 1 SCC 692

whether the uncontroverted allegations as made prima facie establish the offences. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. As the contents of the charge sheet will not disclose any case much less prima facie case for commission of the offence against the petitioner, based on the above said legal propositions, he sought to quash the proceedings.

Per contra, the learned Public Prosecutor appearing for the State would contend that it is not a fit case to quash the proceedings initiated against the petitioner. In spite of bringing to the notice of the petitioner about the acts of accused No.1, which are heinous in nature, the petitioner remained silent. The said aspect cannot be gone into in a petition filed under Section 482 Cr.P.C. The role of the petitioner can be established only during the course of trial. Therefore, he sought dismissal of the criminal petition.

A perusal of the complaint, charge sheet and the other material placed on record, the facts which are not in dispute are that the deceased Nagamani who was studying in 10th Class in Z.P. High School, Sarapaka complained to her maternal uncle two or three times about the sexual harassment meted out to her in the hands of teacher G.V. Satyanarayana (A-1). When the same was brought to the notice of another teacher Sri V.V. Laxminarayana, he could not do anything. However, on 19.09.2008, the deceased Nagamani, once again brought to the notice of her maternal uncle

about the sexual harassment not only against her but also to the other girl students and because of which she was unable to write the examinations properly. Based on the same, on 20.09.2008, the maternal uncle of the deceased Nagamani went to the school, complained to the Head Master about the illegal acts of G.V. Satyanarayana in sexually harassing the girl students and requested him to take action. In the backdrop of these factual aspects, it cannot be ascertained at this stage that the reason for the teacher Si V.V. Laxminarayana in keeping silent and not informing to the head of the institution i.e. the Head Master of the school. At the same time, on 20.09.2008, the said incidents were brought to the notice of the Head Master and what transpired in the said enquiry is also cannot be ascertained now. That apart the allegations made are very serious in nature i.e. sexually harassing the girl students in the school by touching the private part and by rubbing the body. A careful perusal of the above said facts indicate that though it was brought to the notice of V.V. Laxminarayana, there was a long silence on his part. That if any enquiry is made with the teacher G.V. Satyanarayan (A-1) and if he had admonished him, at least it would have been brought to the notice of the Head Master of the concerned school, the incident could have been avoided. The information given by the deceased to her maternal uncle revealed that A-1 said to have been committed the offence as alleged and yet there was no positive response from the petitioner.

At this stage, the extraction of Section 107 IPC is relevant and the same is as under:

“107 IPC. Abetment of a thing.—A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing; or

(Secondly) — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

For the purpose of presuming that a person has committed the offence under Section 107 IPC, one has to instigate any person to do that thing, who intentionally aids, by any act or illegal omission, the doing of that thing. In the case on hand, the petitioner being a responsible teacher of the school in spite of bringing to his notice the illegal activities committed by A-1, he remained as a silent spectator. So this act of silence and not taking any appropriate steps either in the form of admonishing him as a co-teacher or informing to the Head Master of the concerned school cannot be said that the basic ingredient of Section 107 IPC is not made out.

It is relevant that in deciding the criminal cases on facts the Court should bear in mind that each case rests on the facts and circumstances of that particular case and the similarity of facts in one case cannot be used to bear in mind the conclusion of the case in another case. In KALYAN CHANDRA SARKAR v. RAJESH

RANJAN @ PAPPU YADAV AND ANOTHER⁷, the Apex Court while dealing with the above said issue, was pleased to observe as under:

“While deciding the cases on facts, more so in criminal cases the court should bear in mind that each case must rest on its own facts and similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case. (See Pandurang v. State of Hyderabad – (1955) 1 SCR 1083 : 1955 Cri LJ 572). It is also a well established principle that while considering the ratio laid down in one case, the court will have to bear in mind that every judgment must be read as applicable to the particular facts proved or assumed to be true since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides, and not what logically follows from it. See: (1) Quinn v. Leatham – 1901 AC 495 : (1900-03) All ER Rep 1 : 85 LT 289 (HL), (2) State of Orissa v. Sudhansu Sekhar Misra – (1968) 2 SCR 154 : AIR 1968 SC 647, (3) Ambica Quarry Works v. State of Gujarat - (1987) 1 SCC 213 : AIR 1987 SC 1973).”

Therefore, it is trite law that each case must be decided on its own facts and similarity of facts in one case cannot be taken to be the conclusion of fact in another case. Further, the ratio decided in one case is applicable to the particular facts of that particular case.

In the light of the above, this Court is of the opinion that at this stage it cannot be said that no prima facie case is made out against the petitioner in the light of the undisputed facts glaring at him. As such, this Court feels that it is not a fit case to quash the proceedings.

⁷ 2005(2) SCC 42

Accordingly, the criminal petition is dismissed.

Interim stay granted, if any, shall stand vacated.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

P. KESHA VA RAO,J

Date:18.04.2018
Ccm



HONOURABLE SRI JUSTICE P. KESHAVA RAO



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