

THE HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.8914 of 2011

ORDER:

1. The Criminal Petition is filed under section 482 of Cr.P.C., seeking to quash the proceedings in CrI.M.P. No.445 of 2010 in C.C.No.125 of 2010, dated:10.6.2011 on the file of learned Judicial First Class Magistrate, Gadwal, Mahabubnagar District.

2. Brief facts of the case are that: the petitioner worked as Sub-Inspector of Police, Gadwal Town Police Station and investigating officer in Cr.No.48 of 2010 in which respondent No.2 and his wife are accused. On 6.3.2010, at about 7.55 a.m., along with his staff, the petitioner went to the house of respondent No.2 at Srinivas Colony, Gadwal to arrest them. The petitioner served notice on the father of respondent No.2 and took respondent No.2 into custody and asked him to board the police jeep, but respondent No.2 resisted and pushed the police constable and fled away on his scooty. Then the petitioner along with his staff followed him in a jeep and respondent No.2 was caught hold near the Court and the petitioner advised him not to obstruct the police in discharging duties and tried to convince him, but respondent No.2 revolted against the petitioner and other police personnel and abused them in filthy language, torned his clothes and created nuisance in public place and tried to blame

the police. Then the petitioner along with police personnel took respondent No.2 into custody near the Court premises at about 8.45a.m., and took him to police station and effected his arrest and sent him to the Court after medical examination in Government Area Hospital, Gadwal. The medical officer, Gadwal examined the second respondent and issued wound certificate dated 6.3.2010. Thereafter, respondent No.2 was produced before the Court along with remand report and he was remanded to judicial custody. While remanding, respondent No.2 made false allegations against the petitioner and police personnel, on which the learned Magistrate recorded the statement of respondent No.2 and having took the cognizance of the same, initiated proceedings in Criminal M.P. No.445 of 2010.

3. It is the contention of the petitioner that the learned Judicial First Class Magistrate, Gadwal, issued a show cause notice dated:3.5.2010 to the petitioner. The petitioner submitted his explanation to the said show cause notice on 24.5.2010 stating that respondent No.2 revolted against the police personnel and resisted his arrest and therefore the police arrested him by using minimum force, but nothing happened as alleged by respondent No.2. The learned Judicial First Class Magistrate, Gadwal, basing on the statement of respondent No.2, ignored the statements of M.A. Rawoof and K. Krishnaiah, who did not speak against the petitioner and other police personnel except stating that the police personnel

caught hold his collar and tried to take him into custody, and took cognizance of the offence erroneously. The petitioner being police officer and investigating officer in the said case, and as a part of investigation, tried to arrest respondent No.2, and when respondent No.2 resisted him and police personnel and tried to fled away, then they apprehended him (R.2) by using minimum force and took him to the police station. Thereafter, the medical officer examined respondent No.2 and issued medical certificate stating that no external visible injuries are found on the body and patient is physically and mentally fit. It is thus clear that absolutely, there is no prima facie material to show that the petitioner voluntarily caused hurt to the respondent No.2.

4. It is further contended that with the act of the petitioner while discharging his official duties, no Court shall take cognizance of such offence except with the previous sanction of State Government or Central Government as required under section 197 Cr.P.C. Hence, the case against the petitioner is bad in law. Taking cognizance without previous sanction as required under section 197 Cr.P.C., is fatal.

5. On the other hand, respondent No.2 contended that no sanction is required under section 197 Cr.P.C., since act of the petitioner is not within the discharge of his duties. The statement in the witnesses show that the petitioner used

the physical force upon respondent No.2 by caught hold of his shirt collar near the Court premises. The Sub-Inspector of Police assaulted respondent No.2 which would attract the offence punishable under section 323 IPC.

6. POINT: Now the point that arises for consideration is:

“ whether the criminal proceedings initiated against the petitioner are maintainable.”

7. Learned Counsel for the petitioner contended that the petitioner while discharging official duty, arrested the second respondent and asked him to board the police jeep, but the second respondent resisted and pushed the police personnel and fled away. The police caught hold of him and advised him not to obstruct the police in discharging the duty, but the second respondent revolted against the petitioner and other police personnel and abused them in filthy language and torn his cloths and created nuisance at public place.

On the other hand, the learned Counsel for the second respondent contended that the while the petitioner discharging duty, the second respondent obstructed his arrest only and not assaulted the police. He further submitted that no sanction as contemplated under Section 197 Cr.P.C. is required to initiate the proceedings against the second respondent.

8. A perusal of the record goes to suggest that the petitioner was the Inspector of Police, Jedcherla Rural police

station. The second respondent herein is the complainant and that himself and his wife are the accused in Crime No. 48 of 2010 in C.C.No.125 of 2010 on the file of learned Judicial First Class Magistrate, Gadwal. The said case was registered on the report lodged by the mother of the second respondent for the offences punishable under Sections 452, 323, 504, 506 read with 34 IPC.

9. When the police arrested and produced before the learned Magistrate, second respondent stated before the trial Court that while he was proceeding to the Court in between 8 and 8.30 AM on his scooter to check up Court diary and cases, the SI of police, Gadwal Town Police Station, the petitioner herein, followed him in a jeep. When he entered the Court, the SI of police informed that a non-bailable case is registered against him (R.2) and therefore arrest was being effected against him. Then the second respondent replied that he would surrender before the Magistrate. Then the SI, petitioner herein, abused him and fisted him and torn his clothes and created nuisance in public place. On that the second respondent was referred to a Doctor who examined and issued a wound certificate wherein it was mentioned that “*no external visible injuries and no fresh complaints physically and mentally, fit in his duty*”. It is thus clear that the medical certificate dated 6.8.2010 does not support the contention of the second respondent.

10. The learned Judicial First Class Magistrate, Gadwal recorded the statements of the second respondent and issued show cause notice to the petitioner on 03.05.2010. After considering the explanation submitted by the petitioner dated 24.5.2010, and statement of witnesses M.A. Rawoof and Krishaniah, he came to the conclusion that there is prima facie material for the offence under Section 323 IPC and registered the case in CrI.M.P.No.445 of 2010 in CC.No.151 of 2011. The statements of witnesses recorded by the learned Magistrate also do not show that the petitioner/Sub Inspector of police assaulted the second respondent.

11. The second respondent himself stated that the SI of police and four constables forcibly lifted him and dropped in the jeep. The total incident has been seen by Rawoof and Krishnaiah, Court attenders. The trial Court recorded the statements of the said two attenders. Mr. M.A. Raoof in his deposition stated that on 6.3.2010 at about 8.00 AM to 8.30 AM the second respondent came to the Court building on his vehicle scooter. When the second stationed his vehicle, suddenly the police jeep came and stopped near his vehicle and immediately the SI of police Lachiram, Jagan--Home Guard, Raju--driver and two other constables got down from the jeep and apprehended the advocate/second respondent. The SI of police and four constables caught hold of the shirt collar of the second respondent and tried to take him into custody. At that time, the Advocate/second respondent

managed to free himself from the physical custody of the police . But the police again lifted him and dropped into the police jeep and took him away. Similarly another witness, K.Krishnaiah also stated that on 6.3.2010 at around 8.30 AM the Advocate/second respondent came to the Court building and within three minutes thereafter, about five police people and one SI came and apprehended the Advocate/second respondent. The police caught hold of the shirt collar of the Advocate and put him into the police jeep. When the Advocate/second respondent was about to go before the Magistrate, at that time, the witness heard what the Advocate was saying '*Nanni yenduku kodthunnaru*'. Thus from the statement of the two court attenders, it is clear that the petitioner while effecting arrest of the second respondent did not assault him.

12. Section 46 Cr.P.C. lays down how arrests are to be made and the extent of force which may be used if the person to be arrested forcibly resists the endeavour to arrest him. Sub Section (2) of Section 46 thereof authorizes the person making the arrest to 'use all means necessary to effect the arrest'. Accordingly Section 46 Cr.P.C. deals with the mode in which arrests are to be effected. Section 66 deals with the power, on escape, to pursue and retake the prisoner. It provides that 'if a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place

in India. Therefore a clear reading of Section 46(2) goes to suggest that it is a case of authority of police who would use necessary force to effect the arrest of an accused. There is clear material on record showing that non bailable arrest warrant was issued against the second respondent and in effecting the arrest, he (second respondent) resisted; therefore the police caught hold of him, forcibly took and thrown into the jeep to effect the arrest. It is clear from the record that there is no assault by the petitioner while effecting arrest during the course of discharging the official duty.

13. Section 197 Cr.P.C. postulates that when any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction. The petitioner was admittedly the Sub Inspector of Police at the relevant point of time, who went to arrest the second respondent. While effecting arrest, the second respondent obstructed and pushed the police constables; therefore the police caught hold of him and effected the arrest and thrown into the police jeep forcibly because of resistance by the second respondent. That is the act committed by the petitioner while acting or purporting to act in discharge of his official duty. Therefore

the learned Judicial First Class Magistrate without obtaining sanction as required under Section 197 Cr.P.C. simply recorded the statements of second respondent and two witnesses, took the cognizance and initiated proceedings against the petitioner in CrI.M.P.No.445 of 2010 in CC.No.125 of 2010 after service of show cause notice and receiving explanation.

14. Pertinent to see, the provision under Section 197 Cr.P.C. does not extend its protective cover to every act or omission by a public servant in service, but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty. When it is prima facie found that the accused who was charged had reasonable connection with discharge of his duty, then the act must be held as official to which applicability of Section 197 Cr.P.C. cannot be disputed. In other words, the appropriate authority must be satisfied that there is a prima facie case for starting the prosecution and this prima facie satisfaction has been imposed as a safeguard before the actual prosecution commences. The intention is not to put a wall round public servants, but to enable them to perform their duties fearlessly by protecting them from vexatious, mala fide or false prosecutions for acts done in the performance of duties. The legislative mandate engrafted in Sub Section (1) of Section 197 Cr.P.C. debarring a Court from taking cognizance of an offence except with a previous sanction of the concerned

Government in a case where the acts complained of are alleged to have been committed by public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the Court itself. { See: Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan; 1998 CrIj 1242 (SC)} .

15. In the facts and circumstances and settled legal position discussed hereinabove, I find that the petitioner was the Inspector of Police who tried to effect the arrest against the second respondent in view of non bailable offence pending against him (R.2). As the second respondent resisted arrest and tried to escape, the petitioner used the necessary force and in that process, the petitioner caught hold the shirt collar of the second respondent and allowed him to board the jeep. That is the act committed by the petitioner while discharge of his official duty. In view of the legal position discussed hereinabove, it is manifestly clear that the complaint itself is not maintainable for want of sanction as contemplated under Section 197 Cr.P.C. Further it is clear from the statements recorded by the trial Court that the petitioner has not assaulted the second respondent while effecting arrest in discharge of his duty. As contemplated under Section 46 Cr.P.C. it gives authority to the arresting person to use necessary force to arrest the accused who is not willing to

come to the custody or resisted/obstructed the official in discharge of his duty in regard thereto. In view thereof, the proceedings initiated against the petitioner are liable to be set aside.

16. In the result, the Criminal Petition is allowed and the proceedings initiated against the petitioner in CrI.M.P.No. 445 of 2010 in C.C.No. 125 of 2010, dated 10.06.2011 pending adjudication on the file of learned Judicial First Class Magistrate, Gadwal are hereby quashed.

17. Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 2ND February, 2018
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