

HONOURABLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL PETITION No. 6061 of 2011

ORDER:

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

The present criminal petition is filed to quash the proceedings initiated against petitioner No.1/A-7 for the offences punishable under Sections 427, 379 IPC, Section 7 of the Essential Commodities Act, and Section 3 of the Prevention of Damage to the Public Property Act, 1984 and against the petitioners 2 and 3/A-8 & A-9 for the offence under Section 411 IPC in G.C.No.170 of 2010 on the file of the Judicial Magistrate of First Class, Chintalapudi.

The factual matrix of the case is that A-1 is a resident of Proddutur village. On 27.11.2008 evening hours, the de facto complainant Katumala Joseph Jaya Raju, Security Supervisor of HPC-VVSPL had preferred a report stating that he has been working with HPCL at Change No.265 to 333. On 26.11.2008 at about 9.10 a.m. he has been called upon by the line walker V. Radha Krishna and informed that he has noticed the signs of digging and levelling at 267.800 KM. Thereupon he immediately conveyed the same to the higher authorities of HPCL-VVSPL and to the security field officer. Pursuant thereto, on inspecting the place, it was found the leakage of petroleum products from the pipeline. After inspection by the technical crew, it was confirmed that one inch pipe had been connected to the pipeline and petrol was stolen

from the said point by unknown offenders. In fact, similar offence had also been taken place at Gajjaram village falling under Tallapudi Police Station during the month of October, 2008 and requested to take necessary action. Basing on the said report, a case in Crime No.123 of 2008 has been registered. After completion of investigation, charge sheet has been filed. The Court below after taking cognizance of the offences, numbered the case as C.C.No.170 of 2010. Assailing the same, the present criminal petition is filed.

The learned counsel appearing for the petitioners would contend that the petitioners are innocent of the offences alleged against them and they have been falsely implicated in the case. In fact, there is absolutely no allegation that the petitioners committed the offences except the confession of A-1. Since the confession of co-accused is not admissible in evidence, the petitioners herein cannot be charged with the offences. The police with a vindictive attitude implicated the petitioners at a belated stage on the premise that the petitioners have received the stolen property. He also would contend that there are differences between the petitioners and the police, as the petitioners did not heed to the demands of the police and in that connection a case has been filed before the Hon'ble State Human Rights Commission at Hyderabad which has been registered as HRC No.1290/2009 on 27.01.2009. The confession of the co-accused in the case is on 17.06.2009 which clearly goes to show that the police have intentionally implicated the petitioners. To further substantiate his contention, he brought to the notice of this Court the relevant dates

such as 27.11.2008, is a date on which crime was registered, 27.1.2009, a complaint was lodged before the Hon'ble State Human Rights Commission, 03.04.2009 is the report filed before the Hon'ble State Human Rights Commission, 17.06.2009 is the date on which A-1 to A-6 are arrested and the confessional statement of A-1 was recorded and based on which, the petitioners are arrayed as accused. Except the said confessional statement, there is no iota of evidence against the petitioners in the charge sheet. He filed the copy of the report filed by the Superintendent of Police, East Godavari District Kakinada before the Secretary, State Human Rights Commission in Proceedings C.No.9/S.P-Camp/E.G./2009, dated 03.04.2009 and sought to quash the proceedings.

On the other hand, the learned Public Prosecutor, looking into the contents of the charge sheet submitted that a prima facie case is made out with regard to the commission of offence by the petitioners herein and it is not a fit case to quash the proceedings initiated against them. He also brought to the notice of the Court the confessional statement of the arrested accused which discloses the selling of the stolen oil to the petitioners and two others who are part of the gang and are liable to be charged under Section 411 IPC.

From a perusal of the material on record, it is revealed that on 27.11.2008 a report was preferred about the theft of petroleum products and pursuant to which a crime was registered. After investigation, a charge sheet has been filed. From the perusal of the charge sheet it is revealed that on subjecting A-1 to relentless

questioning by distancing A-2 to A-5, it was elicited that he sold the petroleum products to the petitioners having developed close familiarity with the petitioners, he tied up with them to take away oil from HPCL pipeline and took Rs.1,00,000/- in advance. As far as the petitioners are concerned, the only allegation made against them is as under:

“Since the commission was not promptly paid, he developed nexus with Safe Transport owner Skindar and Khaja (A-8 and A-9) and since then, he procured loose oil from Kakinada port, surreptitiously and sells the same to tippers and proclaims Rs.30/- per litre. Having developed close familiarity with A-8 and A-9 he tied up with them to filch away oil from HPCL pipelines and took Rs.1 lakh in advance.”

However, from a perusal of the report filed by the Superintendent of Police, East Godavari District Kakinada before the Secretary, State Human Rights Commission, Hyderabad, it is disclosed that Sri A.V. Ranganath, the then Superintendent of Police (Admn.) has vested interest in Kakinada Port area which clashed with the petitioners and in that process he slapped the petitioners. In that connection, the petitioners moved an application before the Hon'ble State Human Rights Commission at Hyderabad. In that connection, on the directions of the said Hon'ble Commission, a report dated 3.4.2009 was submitted. The relevant portions from the said report are as under:

“It is clearly established that Sri A.v. Ranganath, the then SP (Admin) has vested interests in Kakinada Port area which clashed with the petitioners. He demanded 10,000 litres of diesel from the LW.1 to fill up and level the land the SP(Admin) leased in the name of his close relatives. Similarly he also got the petitioners removed from the partnership of 'Bunkering' contract in the Kakinada Sea Port and inducted his friend Sri T.V. Ramakrishna @ Banku Ramakrishna.

While other transporters working in port area provided diesel and other help to the SP (Admin) the petitioners did not provide any assistance to him. Similarly, he was demanded to provide huge quantity of diesel free of cost to the Police Sports Meet unwarrantedly. This proves sufficient motive on the part of SP (Admin) to take a recourse to harass the petitioners.

It is clearly proved beyond reasonable doubt that the petitioners were picked up from their house at Pallamraju Nagar, Kakinada, during the early morning of 22.12.2008 by the Police on civil dress lead by Sri L. Subbarayudu, DSP (Trainee) and DSC Krishna, SI, Pazole and were taken to Rajanagaram Police Station and were interrogated. Meanwhile on arrival of the friends and advocate of the petitioners, they were shifted to MR Office (Office of DSP, AR is called MR Office) and the SP (Admin) also arrived there and the petitioners were beaten and tortured inhumanly by the above officers. The motive appears to be extraction of certain confessions to implicate other police officers including the SP, of the district to settle personal scores. The petitioners were threatened at gun point by the SP (Admin) to make the petitioners recite the names as the interrogators told and they were threatened that they would be encountered branding them as Muslim Terrorists. The interrogators recorded the voice of the petitioners in voice recorder, but these recordings were not part of the case file in Cr.No.175/08 of Jaggampeta PS. They were shifted to APSP Guest House of 3rd Battalion on 23.12.2008 evening where they were kept till 25.12.2008 where they were interrogated repeatedly by the same officers and arrested in Cr.No.175/08 of Jaggampeta PS during the early hours of 26.12.2008 and were produced in the press meet and the SP.

As seen from the Case Diary Part-I of the Cr.No.175/08 of Jaggampeta PS written by the DSP (Trainee), that they had acted under the instructions of the DIG, Eluru Range, which was also reiterated by the DSP (Trainee) in his report submitted to the SP, East Godavari on 9.2.2008. They did not bother to follow any procedure during arrest and interrogation of the petitioners as if they were licensed to torture the petitioners. The SP (Admin) who was not even part of the team formed by the DIG, imposed himself in the investigation to meet his ulterior motive of implicating the petitioners and also and to settle personal scores with the police officers who are not in good terms with him in the district. It is pertinent to note that there were certain

allegations of corruption and misusing of power against the SP (Admin) in the district by that time including collection of monthly mambools from the police stations, illegal involvement in civil cases and he was warned by the SP orally and also in Wireless Conference as there was no concrete proof to send report to superior officers apparently due to fear of him. This is evident from the report in H.R.C. Case No.2804/09 where in the SP (Admin) tortured, detained and extracted Rs.25 lakhs from the victims in the guise of interrogation of suspects and could not even complain to the SP or other superior officers.

The acts of these officers is nothing but violation of basic human rights. They are also liable for criminal action for abduction, illegal detention, grievous hurt and criminal intimidation. The petitioners were illegally detained for 4 days from 22.12.2008 to 25.12.2008, mercilessly tortured and abused physically and mentally, threatened at Gun point to death if they did not comply with the demands and conditions of the investigation officers and SP (Admin) and were implicated in a concocted case. Their basic human rights were gravely violated in the name of investigation only to settle personal vendetta.”

Basing on the confessional statements of co-accused, the other accused cannot be roped in, unless the said statement is corroborated by other evidence establishing the commission of the offence. The said confessional statement alone cannot be based to prosecute a person. In the case on hand, the perusal of the report filed by the Superintendent of Police, East Godavari District before the Hon'ble State Human Rights Commission clinchingly established the manner in which the petitioners herein were harassed and how the investigation has been conducted for the purpose of implicating the petitioners in a concocted case. In fact, it is specifically mentioned that the basic human rights were gravely violated in the name of investigation only to settle personal vendetta. This speaks volumes about the manner and method in

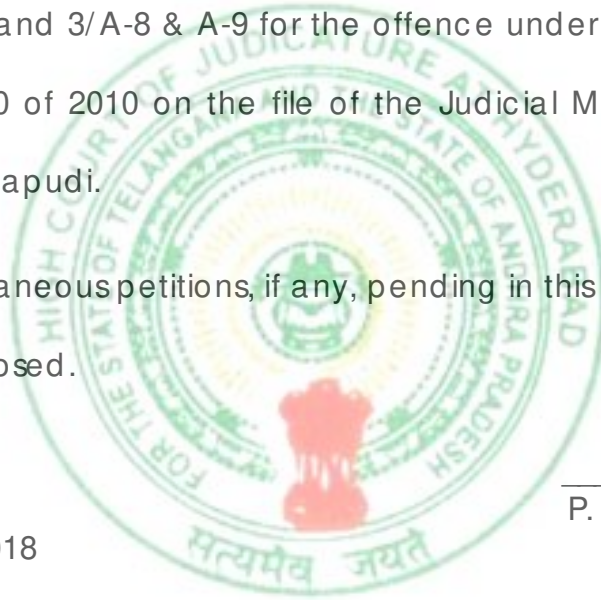
which the investigation has been conducted and the petitioners herein have been implicated in the case. Therefore, this Court feels that continuation of proceedings would amounts to abuse of process of the Court and the same are liable to be quashed.

Accordingly, the criminal petition is allowed thereby quashing the proceedings initiated against petitioner No.1/A-7 for the offences punishable under Sections 427, 379 IPC, Section 7 of the Essential Commodities Act, and Section 3 of the Prevention of Damage to the Public Property Act, 1984 and against the petitioners 2 and 3/A-8 & A-9 for the offence under Section 411 IPC in C.C.No.170 of 2010 on the file of the Judicial Magistrate of First Class, Chintalapudi.

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

Date:18.04.2018
Ccm

P. KESHAVA RAO,J



HONOURABLE SRI JUSTICE P. KESHAVA RAO



CRIMINAL PETITION No.6061 of 2011

Date:18.04.2018

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