

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.975 of 2016

ORDER:

This criminal revision case arises out of the order dated 24.02.2016 passed in Crl.M.P.No. 844 of 2015 in S.C.No.50 of 2015 by the Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-VI Additional Sessions Judge, Kurnool.

2. The revision petitioner is the de facto complainant basing on whose complaint the criminal law was set in motion by registering the case in crime No. 122 of 2014 under section 302 IPC against the 2nd respondent/A-4 and A-1 to A3.

3. The grievance of the revision petitioner is that the police registered a case against the accused No. 1 to 4 and filed a charge sheet against them alleging that they have committed the offences under section 302 read with 34 IPC and Section 3 (2) (v) of Scheduled Caste and Scheduled Tribes (POA) Act 1989.

4. The accused No.4 has filed a petition under Section 227 of Cr.P.C. seeking discharge vide Crl.M.P.No.844 of 2015 in S.C.No.50 of 2015. The learned Special Judge allowed the petition discharging the accused No.4 from the offence under Sections 302 read with 34 IPC and 3 (2)(v) of SCs & STs (POA) Act.

5. The de facto complainant aggrieved by the impugned order of discharge of accused No. 4 has preferred the present revision petition.

6. Heard the arguments of learned counsel for petitioner and learned Public Prosecutor.

7. The point for determination in this revision case is that :

Whether the order passed by the Special Judge in CrI.M.P.No. 844 of 2015 discharging the accused/A-4 under Section 227 of Cr.P.C., for the offences under section 302 read with 34 IPC and for the offence under section 3(2)(v) of SCs & STs (POA) Act is in accordance with law?

8. The revision petitioner is the de facto complainant. He challenges the order of discharge passed by the learned Special Judge discharging the 2nd respondent, who is the accused No. 4 in the above case.

9. It is appropriate to refer to the brief facts of the case as per the version of prosecution. On 24.11.2014 the respondents No.2 and 3 i.e., A-1 & A-2 along with one Mohammad Ali got down from the auto informing the petitioner to bring an auto to Vagarur on the next day. The revision petitioner and A-1 to A-3 and Ranga Swamy reached V.Thimmapuram village and got down from the auto and went to his house. The petitioner and accused No. 1 to 3 proceeded towards the house of A1 to A-3 through Laxmamma temple

rastha. When the auto reached near the Neem tree, all of them found the deceased Manohar in the company of Boya Ramanjaneyulu. On seeing the deceased, A-3 insisted A-1 and A-2 in the presence of the revision petitioner/A-4 to shift the deceased to elsewhere to take revenge, and then, A-1 to A-3 invited the deceased and when he boarded the auto in order to consume liquor along with them the auto reached near, Ramappa temple cross roads. A-1 to A3 and the deceased got down from the auto and went into the fields. Thereafter, A4 had left the place and went away in his auto. A-1 to A-3 took the deceased into the fields of Harijana Anjaiah and consumed liquor and ultimately killed the deceased.

10. The learned counsel for 2nd respondent submitted that basing on the above allegations no case is made out against the A-4 who is the 2nd respondent herein. It is further argued that the revision petitioner happened to be a Muslim the offence under section 3(2)(v) of the SCs and STs (POA) Act is not made out against him as such he is entitled for discharge from the said offence.

11. The learned counsel for revision petitioner submits that the conversation took place between the accused/A-1 to A3 that they would take revenge against the deceased, and they called an auto to take the deceased to the fields. The auto was brought by the accused No.4. It is submitted that

A-4 had knowledge about the commission of the murder of the deceased, as the accused/A-4 heard the conversation of the accused/A-1 to A-3 about this taking revenge against the deceased, and in pursuance of their talk taking the deceased in an auto to a land, and after getting deceased sending away the auto driven by A-4.

12. Before considering the rival contentions, a perusal at the impugned order of the trial Court, in Para-11, reveals that, as per the version of LW.12 Mangali Ramaswamy, the revision petitioner along with A-1 to A-3 came to Mugathi turning in an auto and all of them consumed liquor and ate Biryani. They have purchased two quarter bottles in a wine shop on the turning and all of them proceeded in an auto towards Thimmapuram which was driven by the petitioner/A-4. From there, they went to Vagarur, where one person Mohammad got down from the auto, and the auto reached Timmapuram , LW.12 also got down from the auto and went towards Lakshamma Temple. The trial Court comes to the conclusion that except to prove that the petitioner also travelled with A-1 to A-3 in an auto being the driver of the auto, there is no evidence to show that he shared any common intention to commit the murder of deceased or abetted the other accused to commit the murder. The trial Court on consideration of the evidence of LW.11 and LW.12 comes to a conclusion that there is no evidence to show that

the petitioner played any part in the commission of murder of the deceased Manohar. It is further stated that even in the confessions of A-1 to A-3, the revision petitioner along with the auto went away from Ramappa temple after A-1 to A-3 and the deceased got down from the auto. The trial Court has considered not only the 161 Cr.P.C statements of LW.11 and LW.12 but also the confessional statement of A-1 to A-3, and comes to a conclusion that no case is made out against accused No. 4 and discharged him.

13. On consideration of the material on record, it can be safely concluded that the role of the revision petitioner/A-4 was only to drop A-1 to A-3 and the deceased near the lands and after leaving them, he left that place in an auto. He did not even wait until they come back. It clearly reveals that the driver of the auto had no knowledge about the commission of this offence by the accused A-1 to A-3. He might have heard the conversation of A1 to A3. There is no intention established in his conduct. There is no role attributed in the commission of the offence.

14. There is no material on record to show that the accused A-1 to A-3 have engaged the auto of the A-4, as there is no evidence to show that they have paid any fares for the said auto. Therefore, accused/A-4 came along with the other accused/ A-1 to A3 only to help him to commit the offence of murder has not proved by any evidence. It cannot

be inferred that A-4 being a driver of the auto had conspired with the A-1 to A-3 for committing the murder of the deceased and to facilitate them to commit the murder, he took them to the fields. The contention of the learned counsel for petitioner is in no way of advance his case to incriminate the petitioner/A-4.

15. Learned counsel for the petitioner has placed reliance on the judgments referred in **2015(2) ALD (crl.) 170, AIR 2000 Supreme Court 665(1) and State of Tamilnadu v. N.Suresh Rajan¹** .

16. In view of the ratio laid down in the above judgments no case is made out in this case in the light of the facts of the case.

17. Having regard to the facts and circumstances of this case and in view of the foregoing reasons, the order passed by the learned Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-VI Additional Sessions Judge, Kurnool, does not require any interference as it is not suffering with any illegality or infirmity.

18. Finding no merit in the instant petition, the same is dismissed accordingly. Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date: 26-12-2018.

¹ (2014) 11 SCC 709

