

HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.3621 of 2011

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings against the petitioner/accused A.20 in S.C.No.40 of 2011 on the file of X Additional Sessions Judge, Krishna, at Machilipatnam, arising out of P.R.C.No.12 of 2007, on the file of Judicial Magistrate of First Class, Jaggaiahpet.

2. Brief facts of the case as per the complaint lodged by the defacto-complainant are that the accused are sympathisers of Congress Party. The deceased Marella Seetharami Reddy was sympathiser of the Telugu Desam Party. Marella Seetharami Reddy, A1, A2, A3 and A20 are own brothers. There were long standing disputes between the deceased and his brothers. On 14.08.2006, LW.11, Mallela Gandhi, who is the sympathiser of Telugu Desam Party hosted a function at Penuganchiprolu. The deceased attended the function along with other TDP sympathisers. After having lunch, the deceased intended to go to their village Chityala along with their villagers on their vehicles. On 14.08.2006 at 4.PM, the deceased along with LWs.1 and 7 was returning from Penuganchiprolu on a bike to Chityala, and when they reached about 3 KM away from

Penuganchiprolu, the followers of A20 followed them on two vehicles and chased them to some distance, while one Tata Sumo dashed against their motorcycle from behind. The deceased and LWs.1 and 7 fell down and they got up and were running, the accused A1 to A3 who are the brothers of the deceased, and A4 to A10 and others attacked the deceased Marella Seetharami Reddy, with hunting sickles. A1 hacked on the neck of the deceased with a knife, A4 hacked on the right hand with knife, A3 hacked on the left hand upper arm with a hunting sickle, A5 hacked on the neck with hunting sickle, A7 hacked with axe on the Jaw, A2 hacked on the neck with hunting sickle, A9 hacked with axe on the chin of the deceased causing injuries on the neck and person and the deceased met his death instantaneously. Basing on the report of LW1 S.H.O, LW.27 registered the Crime No.134 of 2006 for the offence punishable under Sections 148, 302, 506, r/w 149 and 109 IPC, and investigated into. After completion of the investigation, LW.29 filed the charge sheet. According to the prosecution, the accused are liable for the offences punishable under Sections 148, 302, 506 r/w 149 and 109 IPC. A20 is liable for punishment for hatching a plan with other accused and abetment for commission of offence. Hence, A20 is liable for punishment for the offence under Section 109 IPC.

The charge sheet was taken on file by the learned Judicial Magistrate of First Class, Jaggaiahpet, and the same was numbered as P.R.C.No.12 of 2007. As the case involved an offence punishable under Section 302 IPC, which is exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions. The Court of Sessions has taken the PRC No.12 of 2007 on file and numbered it as Sessions Case No.40 of 2011 and made over the case to the Court of X Additional Sessions Judge, Krishna, at Machilipatnam, for disposal in accordance with law.

3. Assailing the committal orders passed by the learned Magistrate in PRC No.12 of 2007, and the consequential summons issued to him in S.C.No.40 of 2011 by the learned Sessions Judge, the petitioner filed this criminal petition mainly on the ground that the learned Magistrate might have committed the case against the petitioner/accused No.20 either by mistake or oversight in a mechanical fashion, and the learned Sessions Judge has issued summons to the accused basing solely on the committal orders passed by the learned Magistrate and, therefore, the committal orders passed by the learned Magistrate show non-application of mind insofar as the petitioner/accused No.20 is concerned, inasmuch as the further investigation

report submitted by the investigation officer reveals that involvement of the petitioner/accused No.20 (Marella Pulla Reddy) in the murder of Marella Seetha Reddy is doubtful and there is no prima facie evidence connecting the petitioner/accused No.20 with the crime.

4. Heard Sri T. Bali Reddy, learned Senior Counsel appearing for Sri K. Suresh Reddy, learned counsel on record for the petitioner/A20; Sri P. Vengala Reddy, learned counsel for respondent No.2; and the learned AGP (Home) representing the State (AP).

5. Learned Senior Counsel Sri T. Bali Reddy submits that after filing of charge sheet in Crime No.134 of 2006 and its numbering as PRC No.12 of 2007 by the learned Magistrate, the 2nd respondent-complainant made a representation before the Superintendent of Police, Krishna, stating that he came to know that certain facts which were not known to him are mentioned in the complaint and, according to him, accused No.20 has been purposefully implicated in the case due to political rivalry, and that there is no involvement of accused No.20 in the murder of the deceased Marella Seetha Reddy. On receiving the representation from the defacto complainant, the police have filed a petition before the learned Magistrate in CrI.MP.No.3418 of 2008 seeking permission to conduct further investigation into the case.

The petition was dismissed vide order dated 21.11.2008. Aggrieved by the dismissal order dated 21.11.2008, accused No.20 filed a criminal revision case before this Court in CrI.R.C.No.1874 of 2008. This Court allowed the criminal revision case by order dated 17.02.2009 and directed the investigating agency to conduct further investigation. Accordingly, the police have conducted further investigation and filed a report before the learned Magistrate. The learned Magistrate, vide docket order dated 26.10.2009, has accepted the further investigation report and also observed that there is no protest by the defacto complainant against the further investigation report.

6. Learned Senior Counsel submits that the further investigation report submitted by the investigation officer clearly revealed that the involvement of accused No.20 in the murder of the deceased is doubtful and there is no prima facie evidence against accused No.20 connecting him with the crime. It is the further contention of the learned senior counsel that there is no protest petition filed by the defacto complainant against the further investigation report and that the learned Magistrate has accepted the further investigation report vide Docket order dated 26.10.2009, which reads as under:

“LW1 complainant present. Explained the contents of report filed by SHO, Penuganchiprolu with regard to further investigation. LW1 reported he has no protest petition to file. Hence report filed by SHO Penuganchiprolu is accepted.”

7. Learned senior counsel contends that the learned Magistrate has not applied his mind with regard to the operative portion of the further investigation report while committing the case to the Court of Sessions, wherein it was stated that there is no prima facie case against the petitioner/accused No.20 or nexus connecting him with the crime of murder of the deceased Marella Seetha Reddy. He further contends that the committal of case against the petitioner/accused No.20 by the learned Magistrate might have been either by mistake or oversight, and obviously without considering the further investigation report, and the factum of non-consideration of further investigation report by the learned Magistrate is conspicuous in the manner the committal order was passed against the petitioner in spite of the operative portion of the further investigation report which reads as under:

“My further investigation in the manner mentioned above reveals that the involvement of Marella Pulla Reddy in the murder case of Marella Sita Reddy is doubtful and there is no prima facie evidence or nexus to be connected Marella Pulla Reddy.”

8. Learned senior counsel submits that the learned Sessions Judge has issued summons to the petitioner/accused No.20 basing solely on the committal orders passed by the learned Magistrate in PRC No.12 of 2007, without considering the further investigation report, which is clear abuse of process of Court. And, therefore, the Committal Orders insofar as the petitioner/accused No.20, are liable to be set aside, as there is no prima facie evidence against the petitioner in the further investigation report.

9. Sri P. Vengala Reddy, learned counsel for respondent No.2-complainant, submits that they have no grievance to the defacto complainant against the further investigation report filed by the investigating agency.

10. Learned AGP (Home) submits that as per the further investigation report filed by the SHO, Penuganchiprolu, there is no prima facie evidence or nexus connecting accused No.20 with the murder of Marella Sita Reddy.

11. This is a case where further investigation was ordered by this Court, basing on the judgment of the Hon'ble Supreme Court in **Ram Lal Narang v. State (Delhi Admn)**¹, as the defacto complainant himself has made a representation before the Superintendent of Police that he

¹ AIR 1979 Supreme Court 1791

came to know that some facts which are not known to him are mentioned in the report and that, according to him, the name of accused No.20 is purposefully implicated in the case due to political rivalry. As per the further investigation report dated 19.05.2009 submitted by the S.H.O, Penuganchiprolu, the S.H.O verified the statements of LWs.1 to 20, and also examined LW.30-Katti Swamy (present Sarpanch), and LW.31-Dasari Bapiraju, an advocate by profession and a resident of Dange Nagar, Jaggaiahpet. It is stated in the further investigation report that LWs.2 to 6 are family members of the deceased Marella Seetha Reddy and they are not eyewitnesses to the incident and their evidence is based on presumptions and surmises that in view of the political rivalry, Marella Pulla Reddy must have been responsible for the attack and murder of Marella Seetha Reddy; that LWs.8, 9, 12, 15, 16, 17, 18 and 20 are also not eyewitnesses to the incident and their statements also do not reveal the involvement of Marella Pulla Reddy or about his abetment to murder Marella Seetha Reddy or about achieving a common objective and, therefore, there is no prima facie evidence against Marella Pulla Reddy from the statements of these witnesses. The investigating officer further examined LW.1-defacto complainant who stated that he attended the party arranged by Mallela Gandhi in the Garden at Penuganchiprolu on 14.08.2006, and after

lunch, started off from there on his scooter, and that some persons who came on Tata Sumo and Maruthi Van vehicles were attacking Marella Seetha Reddy with deadly weapons and he went away to his house in panic and, thereafter, 3 to 4 hours later, one Budati China Venkata Reddy, Budati Jagan Mohana Reddy, Budati Srinivasa Reddy, Budati Lakshma Reddy and some of their associates came to the house of LW.1 and called him outside and asked about what had happened and when LW.1 revealed the above facts, they took him in a jeep and drafted a report and made him to sign on the report under threat without disclosing the contents of the said report. The investigating officer examined LW.30-Katti Swamy, Sarpanch of Chityala Village, who stated that Marella Pulla Reddy is no way concerned with the murder of his brother Marella Seetha Reddy. Therefore, after examining several witnesses in the further investigation, the investigating officer submitted a report stating that his investigation revealed that involvement of Marella Pulla Reddy in the murder case of Marella Seetha Reddy is doubtful and there is no prima facie evidence or nexus connecting Marella Pulla Reddy with the crime.

12. The Senior Assistant Public Prosecutor (Administration), Vijayawada, has also opined in his letter

dated 19.05.2009 addressed to the SHO, Penuganchiprolu P.S., that the further investigation conducted by the investigating officer did not establish the involvement of Marella Pulla Reddy in the murder case of Marella Seetha Reddy, and therefore it is a fit case to delete the name of Marella Pulla Reddy from the list of accused in the charge sheet.

13. In **State of A.P. v. Golconda Linga Swamy**², it was held by the Hon'ble Supreme Court that this Court can exercise inherent jurisdiction under Section 482 of Criminal Procedure Code in a given case, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice; and while exercising powers under the Section, the Court does not function as a Court of Appeal or Revision.

14. In **State of A.P. v. Gourishetty Mahesh**³ While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all

² (2004) 6 SCC 522

³ JT 2010 (6) SC 588

relevant facts and circumstances into consideration before issuing process, other wise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. A perusal of the Committal Order would show that the learned Magistrate has, apparently, by seeing that the crime involved an offence punishable under Section 302 IPC, committed the case against all the accused, including the petitioner/accused No.20, though the further investigation report clearly states that there is no prima facie case against accused No.20. And, therefore, it is obvious that the learned Magistrate has not considered the further investigation report insofar as the petitioner/accused No.20 is concerned.

15. In the instant case, the prosecution has to adduce evidence to prove the case against the accused. When the investigating officer has examined further witnesses and filed further investigation report stating that there is no prima facie evidence against the accused No.20 to connect him with the crime, and when the Special Public Prosecutor has opined that it is a fit case for deleting the name of the petitioner/accused No.20 in view of the recitals in the further investigation report wherein it was stated that there is no prima facie case against the petitioner/accused No.20, there is no reason for the learned Magistrate to commit the

case against accused No.20 and make him face trial when there is no prima facie evidence produced by prosecution. On one hand, as per further investigation report, there is no prima facie case against the petitioner/accused No.20. On the other hand, the learned Magistrate commits the case against the petitioner. This clearly shows that the learned Magistrate has not considered the further investigation report against the petitioner/accused No.20.

16. In view of the further investigation report, and the stand of prosecution in the case, it is clear that the impugned Committal Order was passed against the petitioner/accused No.20 without considering the further investigation report wherein it was stated that there is no prima facie evidence against the petitioner/accused No.20, or nexus connecting the petitioner with the crime. Hence, the Committal Order, insofar as the petitioner/accused No.20 is concerned, is liable to be set aside.

17. **IN THE RESULT**, the criminal petition is allowed, and the Committal Order dated 30.07.2007 against the petitioner/accused No.20 in PRC No.12 of 2007 on the file of Judicial Magistrate of First Class, Jaggaiahpet, is set aside, and the summons against the petitioner/accused No.20 in S.C.No.40 of 2011 on the file of the X Additional Sessions Judge, Krishna, at Machilipatnam, are quashed;

and consequently the learned Magistrate is directed to consider the entire material on record, including the Section 161 Cr.P.C Statements of witnesses recorded during further investigation, and pass appropriate Committal Orders against the petitioner/accused No.20, in accordance with law, by following the provisions under Section 209 Cr.P.C., without being influenced by the any of the observations made in this order by this Court. The interim stay granted on 28.04.2011 in CrI.MP.No.3870 of 2011 shall stand vacated. Miscellaneous petitions, if any pending in this criminal petition, shall stand closed.

GUDISEVA SHYAM PRASAD, J

27th April, 2018

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