

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.7759 of 2011

ORDER:

This petition is filed seeking for quash of the proceedings against the petitioners, who are A1 and A2, in CC No.422 of 2007 on the file of Judicial Magistrate of First Class at Gajwel in FIR No.142 of 2007 on the file of Toopran Police Station, Medak District. The offences alleged against the petitioners are under Section 420 IPC.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing for the 1st respondent.

3. The counsel for the petitioners submits that the complainant in this case is no more. He filed copy of the Memo filed by the Superintendent of Police, Toopran Police Station, before the Court of Judicial Magistrate of First Class, Gajwel intimating the death of the complainant on 13.07.2007.

4. The learned Public Prosecutor also does not refute the said fact. The certificate of the Panchayat Secretary, dated 22.02.2010, certifying that the death of the complainant occurred on 13.12.2007 is also filed along with the memo.

5. The counsel for the petitioners relies on the judgment of the Karnataka High Court reported in *Subbanna Hegde and others v. Dyavappa Gowda Complainant*¹, wherein it was held that the Magistrate must acquit the accused in case of

¹ 1980 Cri.L.J.1405

absence of the complainant on the given date of adjournment due to his death. The Hon'ble High Court of Karnataka dealt with Section 256 Cr.P.C. and held as under:

"7. [Section 256, Cr.P.C.](#), deals with the absence of the complainant and the consequences thereof. It reads as follows: -

"256. (1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day :

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death."

It is clear from the reading of the said provisions that when summons has been issued on the complaint for the appearance of the accused or any day subsequent thereto, to which the hearing of the case is adjourned and the complainant does not appear, notwithstanding anything contained in [the Code](#) of Criminal Procedure, the Magistrate shall acquit the accused, unless he thinks proper, for reasons to be recorded, to adjourn the hearing of the case to any other date.

Though the provisions do not empower the Magistrate automatically to make an order of acquittal on the absence of the complainant, but the adjournment of the case to any future date contemplated is where it is possible for the complainant to appear on the adjourned date. Where the complainant has

died there being no such question he appearing on a future date, adjournment of the case for any future date does not arise. The provisions also make it clear that the Magistrate has to either adjourn the case or acquit the accused on the very date on which the complainant is absent. It is not open to him to adjourn the case to any date and then to make an order for acquittal for the reasons of the absence of the complainant when the summons has been issued for the appearance of the accused.

8. In *Bontu Appala Naidu v. Emperor*, (AIR 1928 Mad 167) : (29 Cri LJ 257), a similar question arose for consideration under the corresponding provisions of [Section 247, Cr.P.C.](#), 1898. That was also a summons case as the case on hand. Pending enquiry when the complainant died and his son appeared and wanted to prosecute the case, the Magistrate adjourned the case in order to enable the complainant's son to come on record and thereafter allowing the complainant's son to prosecute the case, proceeded with the enquiry and trial and convicted the accused. It was held : the complainant having died during the course of the enquiry, the Magistrate should have acquitted the accused and should not have proceeded with the enquiry and that appears to be correct procedure to be followed in such cases, because on the death of the complainant none else will be deemed to be complainant, however, interested he may be in the case. The complainant referred to in [Section 256, Cr.P.C.](#), has to be understood as the one whose sworn statement was recorded under [section 200, Cr.P.C.](#)

6. The counsel for the petitioners also relies on the judgment of the Apex Court reported in *S.Rama Krishna v. S.Rami Reddy* ² wherein it was held that when the heirs of the deceased/complainant does not press the application for substitution and when they remain absent continuously for 15 dates of hearing, the accused has to be acquitted.

² 2008 Cri.L.J. 2625

7. In view of the afore-stated settled legal propositions, this Court opines that continuation of further proceedings against the petitioners would only result in abuse of process of law.

8. Accordingly, the Criminal Petition is allowed and the further proceedings against the petitioners, who are A1 and A2, in CC No.422 of 2007 on the file of Judicial Magistrate of First Class at Gajwel in FIR No.142 of 2007 on the file of Toopran Police Station, Medak District, are hereby quashed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

August 21, 2018
LMV



T. RAJANI, J