

THE HONOURABLE SMT. JUSTICE T. MADHAVI DEVI

CRIMINAL PETITION NO.4830 OF 2023

ORDER

In this Criminal Petition, the petitioner is seeking quash of the proceedings in S.C.No.241 of 2018 on the file of the Principal District and Sessions Judge, Mahaboobnagar, Mahaboobnagar District, Telangana, registered for the offences under Sections 120B, 302, 379, 404 and 201 read with Section 34 of Indian Penal Code (IPC) in FIR No.10 of 2010 on the file of the Station House Officer, Addakal Police Station, Addakal, Mahaboobnagar District. The petitioner is arrayed as accused No.9 in the said FIR.

2. The petitioner claims to be an International peace maker and humanitarian and Deo World's most popular Evangelist and that he is extending Social and Medical Services to 43 lakhs of orphans, widows worldwide and needy people by establishing (i) Gospel to the Unreached Millions and (ii) the Ancient Pattern Pentecostal Church which are the societies registered under the Societies Registration Act.

3. The learned Senior Counsel representing the learned counsel for the petitioner submitted that the petitioner is the brother of one Mr. K.David Raj who used to look after the affairs of those societies and other organizations in the name of the petitioner and as per the wishes of the petitioner. It is submitted that one Smt. Esther Rani is the wife of K.David Raj and they have 3 sons, namely (1) Kilari Solman Raj, (2) Mathew Samuel and (3) Stephen Paul and an adopted daughter by name Queen Angel. It is submitted that the petitioner's brother K.David Raj was found dead in Innova car bearing No.AP 28 AY 9899 on 30/31.01.2020 which was parked within the limits of Kommireddipalli by the side of National Highway-7. The said dead body was thereafter shifted to the hospital for post-mortem and a case was registered as suspicious death, i.e., whether the deceased died due to ill-health or some unknown person might have murdered for an unknown reason. Therefore, the FIR was registered under Section 174 of the Code of Criminal Procedure (Cr.P.C.).

4. It is submitted that the police have recorded the statements of the complainant as L.W.1 and one of the sons of the deceased K.David Raj, Mr.Kilari Mathew Samuel as L.W.2 on 15.02.2010 and thereafter,

recorded the statements of L.Ws.3 to 18 and collected the mobile particulars of Mobile No.9505878979 which was recovered from the spot as belonging to one Tayabuddin and secured the presence of Mr. Tayabuddin and Lakshmikanth Reddy on 14.02.2010 and recorded their confession statements in the presence of mediators, effected seizure of various articles and arrested them and they are said to have confessed that they along with others committed murder of the deceased with the instigation of accused Nos.7 and 8 and accordingly altered FIR for the offence under Section 302 IPC was filed.

5. It is submitted that one Mr.B.Koteswara Rao was arrested by the Andhra police in connection with another crime and on the ground that he has confessed that he has committed the murder of David Raj at the instigation of the petitioner herein, Mr. B.Koteswara Rao has been arrayed as accused No.1 and the petitioner has been arrayed as accused No.9. It is submitted that it was the criminal conspiracy of the police of Ongole which resulted in registering of FIR No.229 of 2012 on 20.05.2012 against the petitioner for an offence under Section 307 read with Section 120B IPC. The police got the statement of Koteswara Rao, accused No.1, recorded under Section 164 of Cr.P.C. before the Hon'ble

principal Junior Civil Judge, Ongole on 24.05.2012, wherein accused No.1 stated that the Circle Inspector of Police, Ongole informed him that the petitioner herein requested the Circle Inspector to encounter him, which statement he did not believe and therefore, the Circle Inspector of Police has shown the video that was recorded by the Circle Inspector by recording the voice of the petitioner, i.e., K.A.Paul and that he had prior acquaintance with Mr. Paul and that Mr.K.A.Paul expressed that he is unable to come down to Andhra Pradesh due to severe interference of his brother K.David Raj and it would be convenient for him to serve many more orphans only if Mr.K.David Raj dies and thus asked Mr. Koteswara Rao to get Mr.David Raj killed by the boys under his control and accordingly committed the murder of Mr.K.David Raj with the help of other accused in the said FIR. It is submitted that without making the said statement of accused No.1 recorded under Section 164 of Cr.P.C. dt.24.05.2012 as part of record in FIR No.10 of 2010, the petitioner was arrayed as accused No.9 in the month of June, 2012 and shown his arrest on PT warrant and the petitioner was accordingly arrested and remanded in connection with FIR No.229 of 2012 on the file of Ongole Taluq Police Station, Prakasam District and was enlarged on bail in FIR No.229 of 2012 and also in FIR No.10 of

2010. The petitioner is therefore seeking quash of FIR No.10 of 2010 in this Criminal Petition.

6. The learned Senior Counsel representing the learned counsel for the petitioner submitted that FIR No.10 of 2010 was registered against him after lapse of more than 2½ years and that the petitioner was falsely implicated on the basis of the statement of accused No.1 under Section 164 of Cr.P.C. without there being any material to show his involvement. It is further submitted that after conducting investigation in FIR No.229 of 2012, a report was submitted to the III Additional Munsif Magistrate, Ongole requesting the Hon'ble Court to refer the case as action drop case as there was no material against the accused and pursuant to the said report, the Hon'ble Court issued notices to the complainant and other witnesses and the complainant had requested the Court to close the case. It is stated that Mr. B.Kotswara Rao, accused No.1 in FIR No.10 of 2010, was examined as P.W.3 and he had stated that he had no objection to close the case and that he had given statement under Section 164 of Cr.P.C. only on the instructions of the Circle Inspector of Police and that the petitioner herein was not responsible for the murder of his brother. It is thus stated that accused

No.1 had retracted his statement and therefore it cannot be relied upon. It is further submitted that though the complainant and the witnesses requested the trial Court to accept the report of the police and close FIR No.229 of 2012, the Court below has taken cognizance of the offence and issued process.

7. It is submitted that aggrieved by the same, the petitioner has filed Crl.R.C.No.1816 of 2017 before the High Court and this Court was pleased to grant stay of all further proceedings *vide* orders dt.05.07.2017 in Crl.R.C.M.P.No.2947 of 2017 in Crl.R.C.No.1816 of 2017 and the said R.C. is pending for consideration. It is submitted that earlier, the petitioner had filed Crl.P.No.7216 of 2014 which was subsequently closed as infructuous on 11.02.2020 due to change of PRC No.59 of 2013 which was renumbered as PRC No.7 of 2015 on the file of the Judicial Magistrate of First Class, Mahaboobnagar. In view of the later developments in FIR No.229 of 2019, the petitioner filed Crl.P.No.9305 of 2017 with the available grounds to quash the PRC No.7 of 2015 and the same is pending but however, it has become infructuous since PRC No.7 of 2015 turned into and was registered as S.C.No.241 of 2018. It is submitted that the case of the petitioner/accused No.9 was separated

since NBW is pending against him and was assigned S.C.No.369 of 2018 on the file of the Special Sessions Judge-cum-VII Addl. District Judge, Mahaboobnagar and later it is merged with S.C.No.241 of 2018 on the file of the Principal District and Sessions Judge, Mahaboobnagar. It is further submitted that there was no case against the petitioner herein initially and neither the wife nor the children of David Raj have spoken against the petitioner in their statements, but have only implicated him in the crime after he was implicated by the statement of B.Koteswara Rao. Therefore, according to him, the case against him is a preplanned attempt to involve him in the murder case and it has to be quashed.

8. The learned Senior Counsel appearing for the learned counsel for the petitioner has drawn the attention of this Court to various statements including the statement of the father of the deceased David Raj, wherein he had expressed suspicion against the wife and children of David Raj and also the statements of the wife and children of the deceased where there is no reference to the petitioner herein. He also referred to the statement of Mr. B.Koteswara Rao under Section 164 of Cr.P.C. and the subsequent statement where he has retracted the statement against the petitioner herein and hence prayed for quash of the

proceedings against him. The learned Senior Counsel has relied upon the following decisions in support of his above contentions.

(1) State of Haryana and others Vs. Bhajan Lal and others¹ for

the proposition that where the allegations made in the first information report or the complaint, even if they are taken at face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused and where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the FIR has to be quashed under Section 482 of Cr.P.C.

(2) State of West Bengal and others Vs. Sanchaita Investments

and others², wherein it has been held that whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case and the Court has mainly to take into consideration the complaint or the FIR and the Court may in appropriate cases take into consideration the relevant facts

¹ 1992 Supp (1) SCC 335

² (1982) 1 SCC 561

and circumstances of the case and the Court has to come to the conclusion whether an offence is disclosed or not.

(3) **Krishnan and another Vs. Krishnaveni and another**³, wherein it has been held as under:

“However, inherent power of the High Court is still available under S. 482 but such inherent power must be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings.”

(4) **Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another**⁴ in support of his contention that a confession made to a police officer is clearly inadmissible.

Therefore, according to the learned Senior Counsel, the initial statement of Mr. B.Koteswara Rao which has been subsequently retracted cannot be taken into consideration and the case registered against the petitioner is not sustainable.

9. Learned Public Prosecutor, Sri M.Rajender Reddy, vehemently opposed the above contentions and submitted that the statement of Mr. B.Koteswara Rao in FIR No.229 of 2012 was recorded under Section 164 of Cr.P.C. and therefore, it has sanctity of an admission before the

³ (1997) 4 SCC 241

⁴ (2019) 16 SCC 547

Court. It is submitted that the judgment relied upon by the learned Senior Counsel appearing for the petitioner in the case of **Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another** (4 supra) is in respect of the confession recorded before a police officer which is clearly not admissible and therefore, the said judgment is not applicable to the facts of the case before this Court. He also referred to the judgment of the Hon'ble Supreme Court in the case of **State of Haryana and others Vs. Bhajan Lal and others** (1 supra) to submit that inherent power of High Court under Section 482 of Cr.P.C. should be used sparingly and where there is *prima facie* case registered against the petitioner, then the natural corollary of investigation and trial must follow. He therefore sought dismissal of the quash petition.

10. Having regard to the rival contentions and the material on record, including the judicial precedents relied upon by the learned Senior Counsel appearing for the petitioner, this Court finds that though initially at the time of registering a case of suspicious death of Mr. David Raj, the petitioner has not been arrayed as an accused, subsequently after the arrest and interrogation of Mr. B.Koteswara Rao in FIR No.229 of 2012 by the Police of Ongole Taluq Police Station,

Prakasam District, he was arrayed as accused No.9. It is noticed that the statement given by Mr. Koteswara Rao is not before police, but it was before the Magistrate under Section 164 of Cr.P.C. For the sake of ready reference, Section 164 of Cr.P.C. is reproduced hereunder:

“164. Recording of confessions and statements.—(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:

Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B. Magistrate.”

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the

Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.”

From a literal reading of the above provision, it is clear that all due precautions have to be taken by the Magistrate before recording a confession that there is no coercion or undue pressure on the person making such a statement. Therefore, a statement recorded before a Judicial Magistrate cannot be placed on the same footing as a statement recorded by and/or before the police. Having given the statement before the Judicial Magistrate, accused No.1, i.e., B.Koteswara Rao could not have retracted the statement subsequently and the same would have to be tested during the course of trial.

11. In view of the same, this Court is not inclined to grant any relief to the petitioner at this stage. The petitioner is therefore directed to participate in the trial before the trial Court and cooperate with the Court for early disposal of the case. However, his appearance shall be dispensed with before the trial Court unless his appearance is necessary for any specific purpose subject to the condition that his counsel appears on his behalf on every date of hearing.

12. The Criminal Petition is accordingly dismissed.

13. Pending miscellaneous petitions, if any, in this Criminal Petition shall also stand dismissed.

JUSTICE T. MADHAVI DEVI

Date: 09.01.2024

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