(2011) 11 AP CK 0001

Andhra Pradesh High Court

Case No: Criminal Revision Case No. 1494 of 2007

Jalla Basawa Boi and Others		APPELLANT
	Vs	
The State of A.P. and Malepu Narayan Reddy		RESPONDENT

Date of Decision: Nov. 4, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200
- Penal Code, 1860 (IPC) - Section 109, 120B, 149, 302

Hon'ble Judges: B.N. Rao Nalla, J

Bench: Single Bench

Advocate: K. Suresh Reddy, for the Appellant; M. Krishna Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.N. Rao Nalla

1. This Criminal Revision Case is filed by the petitioners -accused seeking to set aside the proceedings in P.R.C. No. 49 of 2007 on the file of the Court of Judicial Magistrate of First Class, Banswada, Nizamabad District, whereunder and whereby the said Court took cognizance against the petitioners -accused for the offences punishable under Sections 302, 120-B r/w.149 of IPC basing on a private complaint, inter alia on the ground that the Court of Judicial Magistrate of First Class, Banswada has failed to take note of the earlier police report, in which the names of the petitioners herein were omitted and also failed to take note that the names of petitioner Nos. 4 and 7, who are A-4 and A-7 in the private complaint, were not shown as accused in the earlier police report, and that the Court below erred in taking cognizance against the petitioners-accused in the above proceedings.

2. Before going into the merits of the case, it is necessary to look into the brief facts of the case. Initially, on a police report made by the brother of the deceased -D. Sai Reddy against 16 accused, the Sub Inspector of Police, Banswada P.S., Nizamabad District registered a case in Crime No. 130/2006 for the offence u/s 302 r/w.109 of IPC. After completion of investigation, on 26.02.2007 the police laid charge sheet into the Court of Judicial Magistrate of First Class, Banswada, against first accused only for the offence u/s 302 of IPC after deleting the names of other accused. Being aggrieved by such deletion of names of other accused, the brother of the deceased filed a private complaint before the same Court u/s 200 of Cr.P.C. with a prayer that the accused whose names were deleted from the charge sheet should be arrayed as accused. The Court of Judicial Magistrate of First Class, Banswada, has taken cognizance of the private complaint considering that there was a prima facie case against the petitioners accused for the offences under Sections 302, 120-B r/w. 149 of IPC, by passing docket order dated 31.08.2007, which is re-produced hereunder for the sake of better understanding:

Complainant called present. I perused the case records, sworn statement of the complainant (Narayana Reddy) and Narasapuram Vittal Baikadi Bala Boi, Baikadi Saya Boi, from the material available prima facie case is made out to take cognizance of offence under Sec.302 and 120-B r/w. 149 IPC. Hence cognizance is taken under Sec. 302 and 120-B r/w. 149 of IPC against the all accused as per sworn statements i.e.

(1) Jalla Basawa Boi, S/o. Narasa Boi, aged 45 years;

(2) Sridhar Reddy, S/o. Gal Reddy, occ:Agrl.;

(3) Banswada Bala Boi, S/o. Saya Boi, aged 32 years,Occ:Agrl.;

(4) Banswada Kistaiah, S/o. Bala Boi, aged 25 yrs. Occ: Agrl.;

(5) Jalla Veera Boi, S/o. Kasha Boi, age 25 years, Occ:Agrl.;

(6) Ambaiah, S/o. Ram Boi, age 45, Occ:Agrl.;

(7) Lingala Sailu, S/o. Ramulu, age 40, Occ:Tailor;

(8) Chippa Vijay, S/o. Ramulu, age 25, Occ:Tailor;

(9) Srinivas Goud, S/o. Saya Goud, age 25 yrs Occ:Private employee;

(10) Palki Pedda Sailu, S/o. Ram Boi, age 45 years;

(11) K. Baga Reddy, S/o. Venkat Reddy, age 40 years,Occ: Agrl.

(12) K. Baga Reddy, S/o. K. Venk Reddi, age 40 years, Occ: Agrl.

All are residents of Ibrahimpet village, Banswada Mandalam, Nizambad District.

Register as P.R.C. No. 49/07 and issue warrants against above all accused U/s.204(b) Cr.P.C on payment of process. Call on 28/9

3. The learned senior counsel appearing for the petitioners -accused submits that the Court of Judicial Magistrate of First Class, Banswada relying the sworn statements of the complainant, and three other persons, who were produced by the brother of the deceased in the Court, took cognizance of the case against all the accused and registered a case in P.R.C. No. 49 of 2007. The learned senior counsel submits that the Court below has taken cognizance of the matter mechanically without referring to the statement of LWs.1 to 24 recorded by the police u/s 161 of Cr.P.C. The learned senior counsel submits that had the Court below referred to the said statements, it would have come to know that one Medari Sailoo and his wife Medari Anjavva were examined as eye witnesses and their statements were recorded by the police, who had stated only against A-1, A-6 and A-10 before the police. However, they were not produced before the Court below and their sworn statements were not recorded in the private complaint. The learned senior counsel also submits that in the original police report preferred by the brother of the deceased, it is clearly stated that A-1 alone had hacked the deceased with an axe and that A-2 to A-15 abetted him, while the local MLA instigated them. It is also mentioned in the said report that Medari Sailoo and his wife Medari Anjavva were the eye witnesses to the incident and that the brother of the deceased has attributed overt acts to A-1 only.

4. The learned senior counsel further submits that the Crime No. 130 of 2006 was registered basing on the police report of the brother of the deceased, and basing on the charge sheet dated 26.02.2007 the Court below had forwarded the committal proceedings in P.R.C. No. 12 of 2007 to the Sessions'' Division and the same was made over to the Court of Additional Sessions Judge (Fast Track Court), Bodhan which was numbered as S.C. No. 234 of 2007, however, during the pendency of the trial in the said Sessions Case, A-1 died and consequently the Sessions Case against A-1 was abated.

5. The learned senior counsel pointed out that the brother of the deceased in the police report had mentioned the names of A-1 to A-15 and also mentioned the name of the sitting MLA at the relevant point of time as instigator, however, while preferring private complaint u/s 200 of Cr.P.C before the Court of Judicial Magistrate of First Class, Banswada, he has conveniently omitted the names of A-2, A-7, A-9, A-10 and A-12 from the array of the accused. Moreover, he has added names of A-4 and A-7, though their names did not find place in the police report, which he had preferred initially. The learned senior counsel also submits that none of the witnesses whose statements were recorded by the police were shown as witnesses. The brother of the deceased did not state anything as to the accused conspiring together to do away with the life of the deceased, therefore, the learned counsel contends that the charge under Sec.120-B of IPC cannot be sustained and that the

Court below ought to have taken note of the same and ought to have restrained itself from taking cognizance of the offences under the provisions of IPC.

6. The learned senior counsel, relying on the decision in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, contends that the Court below failed to apply its mind while taking cognizance of the case against A-1 to A-11, and therefore, the order of taking such cognizance could not be sustained.

7. On the other hand, the learned counsel for respondent No. 2 submits that the Court of Judicial Magistrate of First Class, Banswada after recording the sworn statements of the de facto complainant who is none other than the brother of the deceased and three other eye witnesses to the incident, was satisfied as to the existence of a prima facie case, and as such, took cognizance of the offences under Sections 302 and 120-B read with 149 of IPC against A-1 to A11 by its order dated 31-8-2007 and ordered the Office to register the case as P.R.C. No. 49 of 2007 and issue warrant against A-1 to A-11 on payment of process and that the private complaint is filed by respondent No. 2 -de facto complainant aggrieved by the deletion of the names of the accused made in police report from the charge sheet that was laid into the Court.

8. It is submitted that the Court below after considering the sworn statements of the de facto complainant and the eye witnesses as well as other material on record, was satisfied that a prima facie case was made out against A-1 to A-11, and as such, the Court below rightly ordered issuance of warrant against them. To this effect, he relied on the decisions in Chandra Deo Singh Vs. Prokash Chandra Bose and Another, and Jagdish Ram Vs. State of Rajasthan and Another,

9. Heard both sides and perused the material placed on record.

10. It is to be seen that respondent No. 2, who is brother of the deceased - D. Sai Reddy preferred report before Police on 29.8.2006 against A-1 to A-16 and the Police registered a case in Crime No. 130 of 2006 u/s 302 read with 109 of IPC and investigated into the matter and laid charge sheet on 26.02.2007 before the Court of Judicial Magistrate of First Class, Banswada. However, the charge sheet was filed only against A-1 -Jalla Kuber for the offence u/s 302 IPC. Aggrieved by the same, respondent No. 2 preferred private complaint on 08.03.2007 u/s 200 of Cr.P.C. before the same Court against A-1 to A-11. The said Court after making enquiry with reference to the intrinsic quality of the statements on oath made by respondent No. 2 -de facto complainant, three others i.e. Narsapuram Vittal, Baikadi Bala Boi, and Baikadi Saya Boi, who are also shown as eye witnesses in the charge sheet, and other material on record, was satisfied that there is prima facie case against A-1 to A-11 and took cognizance of the offences under Sections 302 and 120-B r/w. 149 of IPC and registered a case as P.R.C. No. 49 of 2007 and issued process. Further, a perusal of the record shows that only a few of the accused shown in the police report were omitted and two more names were added in the private complaint.

Such a modification will not come in the way of taking cognizance of the offences against the accused.

11. In the circumstances, this Court is of the view that the impugned order dated 31.8.2007 passed by the Court of Judicial Magistrate of First Class, Banswada, in P.R.C. No. 49 of 2007 does not suffer from any illegality or irregularity and as such, the Criminal Revision Case is liable to be dismissed.

12. In the result, the Criminal Revision Case is dismissed confirming the order under revision.