

(2000) 04 AP CK 0006

Andhra Pradesh High Court

Case No: Criminal P. No. 966 of 1999 and Tr. Criminal M.P. No. 203 of 1999

Kondalagutla Chinni
Krishnaiah

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: April 19, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2
- Criminal Procedure Code, 1973 (CrPC) - Section 197, 198, 482

Citation: (2000) 1 ALD(Cri) 904 : (2000) 1 ALT(Cri) 507 : (2001) CriLJ 1891

Hon'ble Judges: Ghulam Mohammed, J; B. Subhashan Reddy, J

Bench: Division Bench

Advocate: C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Subhashan Reddy, J.

Two petitions have been filed - one to quash the proceedings in C.C. No. 438 of 1995 on the file of II Metropolitan Magistrate, Visakhapatnam and another to transfer the same to some competent court in Prakasam district. The transfer application is not pressed and as such, it is dismissed.

2. Sri C. Padmanabha Reddy, learned senior counsel appearing for the petitioner, who is accused No.3 in the above criminal case, submits that the third accused being a public servant within the meaning of Section 21 of Indian Penal Code and is accused of issuing a false report basing upon which the Mandal Revenue Officer (A2) has issued a certificate that A-1 belonged to Yerukala caste (Scheduled Tribe) was discharging his duties connected with his office as Revenue Inspector and as such, any accusation against him should be preceded by valid sanction u/s 197 Criminal Procedure Code and admittedly, in the instant case, such a sanction is lacking and as such, the prosecution is liable to be quashed.

3. Mr. M.A. Rasheed, learned Additional Public Prosecutor submits that the criminal petition is not maintainable for the reason that already another criminal petition to quash the prosecution was filed in Crl.P. No. 3281 of 1996 and the same was dismissed by the Division Bench of this Court by order dated 27-11-1996.

4. Admittedly, the petitioner-A3 had been working as Revenue Inspector and caste certificates are issued by the Revenue Officers and before issuing the Caste Certificates, reports are called for and one such report was called for in the instant case on the application of A-1 that he belonged to Yerukala caste (Scheduled Tribe) and on receipt of the said application by A-2 (Mandal Revenue Officer), the same was sent to the petitioner for enquiry and report and in discharge of such official duties, he had sent up a report. On the ground that the said report is false one and it is an offence punishable under Sections 197 and 198 of Indian Penal Code, the prosecution has been launched in the above case. Two contentions have been raised by Mr. C. Padmanabha Reddy, learned senior counsel for petitioner-A3 namely: (1) the offence did not fall either u/s 197 I.P.C. or u/s 198 IPC for the reason that u/s 197 I.P.C., it is only the officer who issues the certificate, who is liable to be punished and as the petitioner did not issue the caste certificate, Section 197 of IPC is not applicable and that Section 198 I.P.C. is not attracted for the reason that it is only the person who uses the false certificate who is liable to be prosecuted and as admittedly, the petitioner did not use such certificate, but it was only A-1. Concisely speaking, according to the petitioner, if at all any prosecution is liable to be launched, it is only against the officer who has issued the certificate i.e. A-2 and the person who has used the certificate i.e. A-1, but the petitioner is no way concerned with the said acts and as such, he is not liable to be proceeded against and further steps of prosecution is an abuse of the process of the court and is liable to be quashed u/s 482 of Criminal Procedure Code as apparently without even enquiry on admitted facts, the prosecution is not maintainable; and (2) the other contention is that even assuming that the prosecution is maintainable against the petitioner-A3, as the petitioner sent the report to A-2 while discharging his official duties as Revenue Inspector and as he is a public servant u/s 21 of Indian Penal Code, Section 197 Cr.P.C. is applicable and as the sanction for prosecution has not been obtained against the petitioner, the prosecution should fall to ground and as such, it should be quashed.

5. Insofar as the merits relating to prosecution is concerned, the Division Bench already held that it is not the stage at which the case should be adjudicated. But, the question arises as to whether the second petition to quash the criminal proceedings is maintainable. Learned senior counsel brought to our notice the judgment rendered by the Supreme Court in Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh (1) in which it is held that the principles of res judicata are not applicable to criminal proceedings and particularly quash proceedings and even if quash petition has earlier been dismissed, it does not bar the second application u/s 482 Cr.P.C. But, we need not go into this aspect for the

reason that the first quash proceeding in CrI.P.No.3281 of 1996 was dismissed and what was contended was the unsustainability of the prosecution in the context of Sections 197 and 198 of Indian Penal Code and that is on merits, but not on the question of jurisdiction i.e. launching of prosecution without there being sanction u/s 197 Cr.P.C.. This ground was not the one which was taken in the earlier quash petition and it is needless to mention that the principles underlying Order-2 Rule-2 of CPC that when two grounds are available and one ground was taken and the other ground was not taken, there will be a bar to re-initiate the proceedings on the ground not taken earlier, are not applicable to criminal proceedings. Thus, the analogy of Order-2 Rule-2 of C.P.C. is not applicable to criminal proceedings and also having regard to the judgment of the Supreme Court mentioned supra and as admittedly no sanction has been obtained u/s 197 Cr.P.C., the criminal prosecution against the petitioner-A3 has to be quashed. Our view is fortified by the judgment of Supreme Court in N.K. OGLE Vs. SANWALDAS (2).

6. In the circumstances, the criminal prosecution against the petitioner-A3 in C.C. No. 438 of 1995 on the file of II Metropolitan Magistrate, Visakhapatnam, is quashed and set aside. We make it clear that this order shall not preclude the consideration for sanction if such proceedings are initiated in accordance with law. The criminal petition is allowed and transfer petition is dismissed.