# Avulapalli Girijamma Vs Dr. J. Ramachandra and State of A.P.

**Court:** Andhra Pradesh High Court

**Date of Decision:** Sept. 29, 2004

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€" Section 156(3), 202(2)
Penal Code, 1860 (IPC) â€" Section 323, 506, 509
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€" Section 3(1)

**Citation:** (2005) 2 ALD(Cri) 30 : (2004) 2 ALT(Cri) 647

**Hon'ble Judges:** C.Y. Somayajulu, J

**Bench:** Single Bench

**Advocate:** M. Venkata Ramana Reddy, for the Appellant; D. Gnaneswara Naidu and Public Prosecutor, for the Respondent

**Final Decision:** Allowed

## Judgement

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.
Private complaint filed by the first respondent alleging that he, a member of a scheduled caste community, while

working as Medical Officer at Primary Health Centre, Gurramkonda, was sent on deputation to Kandukuru Primary Health Centre, and when he

went to Gurramkonda Primary Health Centre to claim his salary, he was informed that his salary was not drawn and so while was returning home,

petitioners met him on the way and abused him in a filthy language, by invoking the name of his caste and had assaulted him and, hence, are liable

for punishment u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act), and Section 323 I.P.C.

was referred to police for investigation u/s 156(3) Cr.P.C. by the learned Magistrate. The Sub-Divisional Police Officer, after investigation,

submitted a final report that the case of first respondent is false. On a protest petition, the learned Magistrate, after recording the sworn statement

of the 1st respondent, took cognizance of the case u/s 3(1)(x) of the Act and Section 323 I.P.C. and registered it as P.R.C.No.9 of 2001. This

petition is to quash the proceedings in the said P.R.C.No.9 of 2001.

2. The contention of the learned counsel for petitioners is that since 1st respondent has been harassing the petitioners, who are his subordinates in

the office, they made complaints against him to the superior officers and since some of the petitioners launched prosecution against him also,

disciplinary proceedings were initiated against him, and therefore, he, with a view to see that petitioners would come to terms with him, lodged a

false complaint against them and so the proceedings against the petitioners are liable to be quashed. The contention of the learned counsel for the

first respondent is that since the allegations in the complaint prima facie disclose commission of the offences alleged and since non-examination of

all the witnesses cited, per se, is not a ground for quashing the proceedings and since the incident alleged in the complaint took place or not, has to

be decided on the basis of the evidence adduced during trial, there are no grounds to quash the proceedings. Placing strong reliance on ROSY v.

STATE OF KERALA , S.MADHAVA REDDY v. STATE OF A.P., ROSAMMA THOMAS v. C.I. OF POLICE, and J.SHIVA SHANKAR

v. DEPUTY SUPERINTENDENT OF POLICE he contended that since the learned Magistrate did not commit any error in taking cognizance of

the case after recording the sworn statement of first respondent, there are no grounds to quash the proceedings.

3. After the complaint of the first respondent was referred to him for investigation u/s 156(3) Cr.P.C., the Sub-Divisional Police Officer submitted

a report after investigation. It shows that first respondent, while working as Medical Officer, Gurramkonda, was harassing, teasing and humiliating

the staff members, including petitioners 1 to 7, by not granting casual leaves, increments, F.T.A. and other financial benefits and was also calling

women staff to come to him to fulfill his lust and when they refused, he used to carry tales against them to their husbands and relatives, and being

unable to bear the harassment and torture, petitioners 1 to 7 and other members of the staff approached the District Medical & Health Officer and

the Collector and made a representation, and thereafter first respondent was deputed to work at Primary Health Centre, Kandukur, but he without

going to that place continued his harassment of the members of the staff, and so they made fresh representations to the superior officers,

whereupon an Enquiry Officer was appointed by the Collector, to make an enquiry, and as per the advice of the Enquiry Officer, petitioners 1 to 7

gave a police report which was registered as Crime No.74 of 2000 under Sections 506 and 509 I.P.C. against the first respondent, and that

police, after investigation, filed a charge sheet in C.C.No.02 of 2001 on the file of the Court of Judicial First Class Magistrate, Voyalpadu, against

the first respondent and so first respondent was suspended from service, and so, he, with a view to bring petitioners 1 to 7 to terms, lodged a false

complaint against them. That report also shows that the witnesses cited by the first respondent are his supporters.

4. Except the sworn statement of the first respondent, there is no other material on record to show that the incident as alleged in fact took place.

For reasons best known to him first respondent did not examine any of the witnesses cited by him, though the case is triable by a Sessions Judge,

after committal. In view of the ratio in GANGULA ASHOK v. STATE OF A.P. it is clear that a special Court constituted under the Act cannot

take cognizance of any offence under the Act without the case being committed to it.

5. In my considered opinion the decisions relied on by the learned counsel for first respondent are of no help in deciding this case. In Rosy case (1

supra) it is held that non-compliance with the proviso to Section 202(2) Cr.P.C. does not vitiate trial, unless prejudice to accused is established.

As per the proviso to Section 202(2) Cr.P.C. if the offence complained of is triable exclusively by a Sessions Court, the Magistrate should call

upon the complainant to examine "all" "his" witnesses on oath. The complainant may or may not examine "all" "his" witnesses because he has a

choice to give up some or all the witnesses cited by him. That is the view taken by a Full Bench of this Court in G.SUBBA NAIDU v.

MAHALAKSHMAMMA. It should be kept in view that if the complainant does not examine or gives up his witnesses before the Magistrate, it

may not be open to him to examine those witnesses before the Sessions Court for the first time. For deciding this case, we need not go into that

question.

6. In view of the ratio in Gangula Ashok case (5 supra) the view taken by a learned single Judge of this Court in S.Madhava Reddy case (2 supra)

that special Court constituted under the Act can take cognizance of the case filed before it, even without examining all the witnesses cited, should

be deemed to have been impliedly over ruled and hence is of no help in deciding this case.

7. In Rosamma Thomas case (3 supra) it is held that that the list of Scheduled Castes and Scheduled Tribes in Kerala is published not on the basis

of the religion they profess but on the basis of the community and the regions where they inhabit, and when a prima facie case is made out for an

offence under the Act, the FIR cannot be quashed.

8. In J.Shiva Shankar case (4 supra) a writ petition was filed to quash the FIR on the ground that the report of the Revenue Divisional Officer, who

conducted an enquiry, gave a favourable report, was dismissed on the ground that there is prima facie case. The said decision is of no help to

decide this case because the police after registering the FIR did investigate into the case and gave a final report that the first respondent falsely

implicated the petitioners. So, first respondent has to establish a strong prima facie case to enable the Magistrate taking cognizance of the case.

9. In his complaint first respondent alleged that he went to the office to claim his salary at 6.00 p.m. on 02-03-2001. When he was sent on

deputation to Kandukur, why he should go to the office at Gurramkonda that too at 6.00 p.m. is not explained. All the petitioners simultaneously

abusing and attacking the first respondent by saying the same words is difficult to be believed or accepted.

10. In STATE OF HARYANA v. BHAJAN LAL it is held that if the allegations in the complaint are so absurd that no ordinary prudent man

would believe them to be true, or if the complaint is an abuse of process of law the complaint can be quashed. First respondent who was

suspended on 10-02-2001 (as per the report of the Sub-Divisional Police Officer) would not have gone to the hospital at 6.00 p.m. to claim his

salary. On a complaint given by petitioners, police, after investigation filed a charge sheet against the first respondent under Sections 506 and 509

I.P.C. Therefore, it is easy to see that first respondent filed this complaint as a counter blast to the said C.C.No.02 of 2001 and so the same is not

only mala fide, but also is an abuse of process of Court and so P.R.C.No.9 of 2001 is liable to be and hence is quashed.

11. The criminal petition is accordingly allowed.