
(2012) 08 AP CK 0022

Andhra Pradesh High Court

Case No: Criminal P. No. 1833 of 2008

N. Chandrababu Naidu

APPELLANT

Vs

G. Janardhan Reddy
and Another

RESPONDENT

Date of Decision: Aug. 6, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 499, 500, 501

Citation: (2013) 2 ALT(Cri) 222

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

R. Kantha Rao, J.

This criminal petition is filed u/s 482 of the Code of Criminal Procedure to quash the entire proceedings against the petitioner in C.C. No. 153 of 2007 on the file of the Judicial First Class Magistrate, Rayadurg, Anantapur District for the offences under Sections 500 and 501 IPC. I have heard Sri. C. Padmanabha Reddy, learned senior counsel appearing for the petitioner and Sri. S. Sai Ram, learned counsel appearing for the first respondent and the Additional Public Prosecutor representing the State/second respondent.

2. The brief facts of the case as per the prosecution are that the first respondent/complainant was the member of the Legislative Council in Karnataka State and the Managing Director of M/s. Obulapuram Mining Company and he was also Managing Director of M/s. Brahmani Industries Limited and other debt free companies. The complainant was also in the business of running star hotels in the State of Karnataka. The complainant is the founder, Editor and publisher of Kannada daily and a Telugu daily newspaper. The first respondent belongs to Bharatiya Janatha Party, his elder brother

was an elected Member of Parliament, Lok Sabha from Bellary constituency from B.J.P. and his second brother was the Mayor of the Municipal Corporation of Bellary, who also belongs to B.J.P. The complainant was also said to be the District B.J.P. President, Ballary District. He submitted in the complaint that he hails from a respectable family having a good political background besides having a commendable respect and reputation in the society. The complainant is a respected person in the society both as a business tycoon/industrialist as well as an honest politician.

3. The complainant filed the complaint alleging commission of the offences under Sections 500 and 501 IPC stating that the petitioner made certain defamatory allegations against him which harmed his reputation and that of his company and the said defamatory allegations have been published by the accused No. 2 and 3 in their respective newspapers and it has also been telecast in the news channels. It is alleged in the complaint that the first accused, who is the leader of the opposition in A.P. State Assembly raised libel and slander accusations on 21-07-2007 and the same were published by the second and third accused in Eenadu and Andhra Jyothi Telugu Dailies on 22-07-2007. The publications made in the said daily newspapers have been annexed to the complaint. It is submitted that while the complainant was in China, he gave written invitation on 19-07-2007 to the accused No. 1 and others stating that he would come and visit mines along with his party leaders and that he would clear doubts, if any. Subsequently, it seems that on 21-07-2007, various Members of Parliament belonging to his party and some other political leaders attempted to make a visit to the premises of Obulapuram mining company where the mining operations were going on. They were lathi-charged by the police. Then the complainant allegedly made statements "is it democracy" (prajaswamyama or rowdy rajyama) and also allegedly stated that bad days for the State (Rashtraniki peeda rojulu). It is also alleged in the complaint that the petitioner made a comment that "shall I accept the criminals" invitation". It is also alleged that the petitioner without any bona fides addressed the complainant as a criminal under MMDR Act.

4. The comments made by the petitioner/A1 have been published in Eenadu and Andhra Jyothi Telugu daily newspapers for which A2 and A3 are the Chief Editors. The complainant alleged in the complaint that on account of the aforesaid comments made by the petitioner, he was seriously hurt and greatly defamed in all his circles, people are looking at him with a suspected eye. The comments were made without any investigation or without finding of any facts justifying those comments. According to the complainant, the petitioner intentionally and with full mens rea made those comments and therefore, liable for prosecution under Sections 500 and 501 IPC.

5. With these allegations the complainant filed a complaint before the Judicial First Class Magistrate, Raidurg, his sworn statement was recorded and the learned Magistrate took cognizance of the aforesaid offences and issued summons to the petitioner, A2 and A3.

6. Sri. C. Padmanabha Reddy, learned senior counsel appearing for the petitioner/A1 would contend that on the date when the comments have been allegedly made by the petitioner, there was stay granted by the Supreme Court restraining the complainant from carrying out any mining operations in the Obulapuram Mining Company, some Telugu Desam party leaders and the leaders of other political parties wanted to visit the premises of the mining company as a fact finding body to make an enquiry as to whether the mining operations were being conducted in the area in which the company was prohibited to carry on mining activities. The MLAs and MPs were stopped in the mid-way by the police, they were lathi charged by the police and were not allowed to visit the mining company premises.

7. The learned counsel would further contend that accepting the sworn statement of the complainant, who was in China at relevant time, no witnesses being cited in the complaint petition showing that anybody witnessed or heard the utterances made by the petitioner the cognizance of the offences was taken. The learned counsel would further submit that the reporters, who are said to be responsible for the publication have also not been cited. According to the learned counsel, the comments allegedly made even if true, do not attract the ingredients of Section 499 IPC and further there is no basis in the complaint indicating as to how any criminal offence is attracted. Contending thus, the learned counsel sought to quash the proceedings on the ground that they are nothing but politically motivated and if allowed to continue will result in abuse of process of law.

8. On the other hand, the learned counsel appearing for the first respondent/complainant would contend that on the date of making defamatory remarks by the petitioner, the complainant was not having any criminal case pending, hence calling him as criminal under MMDR Act is nothing but defamatory. The learned counsel would further submit that the petitioner does not disown his statement and that he only stated in the petition filed to quash the proceedings that the two newspapers gave inconsistent statements. The principal contention of the learned counsel for the complainant is that till the guilt of the complainant is proved in the Court of law, he shall not be branded as a criminal and the other comments made by the petitioner aforesaid are certainly defamatory attracting provisions of Section 499 IPC and there are no grounds to quash the proceedings.

9. Learned counsel appearing for the first respondent/complainant relied on the following decisions:

(1 [Hamida Vs. Rashid @ Rasheed and Others](#), wherein it was held that:

Section 482 Cr. P.C. gives no new powers. It only provides that those powers which the Court already inherently possesses shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent power had survived the passing of the Act.

It is well established principle that inherent power conferred on the High Courts under Section 482 Cr. P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power u/s 482 Cr. P.C. were examined in considerable detail in [Madhu Limaye Vs. The State of Maharashtra](#), and it was held as under:

The following principles may be stated in relation to the exercise of the inherent power of the High Court - (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

(2) [Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and Others](#), wherein the Supreme Court held as follows:

In a proceeding u/s 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of two courts below. Inherent powers u/s 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/s 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However such inherent powers are to be exercised sparingly, carefully and with caution.

It is well settled that the inherent powers u/s 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code. (vide [Kavita Vs. State and Others](#), and [B.S. Joshi and Others Vs. State of Haryana and Another](#), . If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specifically when the applicant may not have availed of that remedy.

10. According to the learned counsel appearing for the first respondent/complainant, this is a case wherein the allegations constitute an offence punishable u/s 499 IPC. Merely because the alleged comments were made five years ago, the learned counsel states that the proceedings cannot be quashed on the ground of pending of the case for five long years. Thus, he submits that since the allegations indicate commission of offence u/s 499 IPC, the proceedings are not liable to be quashed.

11. Considering the averments made in the complaint and the submissions made by both the learned counsel, I think that the alleged comments made by the petitioner have to be examined in the context in which they were made. When 50 MLAs and 10 MPs belonging to the party of the petitioner attempted to visit the premises of the mining company to find out carrying of mining activities, they were stopped by the police and were lathi charged. On noting the said fact, the petitioner might have made a statement that whether we are in democracy or in rowdy rajyam. In his statement, the petitioner was referring to the police action at the instance of the then party in power. The statement cannot be understood to have been made against the first respondent/complainant. Insofar as referring the complainant as a criminal under MMDR Act, it has to be understood that he is accused in the complaint as violator of the mining license granted to him. As already stated, the context in which such words were used has to be kept in mind, but not the actual words. Even though no material has been placed on record by the petitioner showing that stay was granted against the complainant regarding carrying out mining operations, the newspaper items filed by the complainant disclose that there was stay granted by the Supreme Court on the relevant date regarding the mining operations. As rightly contended by the learned senior counsel appearing for the petitioner that except relying on the press reports, no witnesses have been referred to in the complaint nor any reporters were cited as witnesses in the complaint petition.

12. Learned senior counsel also urged that this Court can take into consideration the subsequent events viz. CBI making the complainant accused in Obulapuram mining case and the fact that he was not granted bail by the courts since about one year. From this what all can be understood is that the petitioner, who is the leader of the opposition and his group of MLAs and MPs have been agitating against the complainant alleging that he was conducting mining operations illegally violating the conditions of the mining lease. Therefore, it cannot be said that there was no basis for the petitioner for making such comments.

13. In [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), the Supreme Court considered in detail the provisions of Section 482 Cr. P.C. and the power of the High Courts to quash criminal proceedings or FIR. One of the criteria for quashing the proceedings is where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreak vengeance on the accused and with a view to spite him due to private and personal grudge.

14. Further, it is the duty of the Court to see that it's process shall not be misused by the litigants. When the Court arrived at the opinion that the criminal proceedings have been initiated with a view to wreak vengeance or due to some political reasons, a duty is cast upon the Court to find out whether any useful purpose can be served in keeping the criminal case pending before the Court for years together. The main object of Section 482 Cr. P.C. is to prevent the (sic) of process of law or abuse of process of Court. Due to political rivalry, if the parties make the Court as plat-form to settle their scores or grievances, the Courts shall not encourage such course.

15. As far as this case is concerned, I am thoroughly convinced that the complaint was filed by the first respondent against the petitioner, who is the leader of the opposition in the State Legislative Assembly of Andhra Pradesh as the team authorized by the petitioner proceeded to visit the premises of Obulapuram Mining Company to find out the real facts as to the mining activities conducted in the said area. In response thereto on the ground that the petitioner made some comments the complainant resorted to lodge the complaint against him to drag him to the Court of law. If the criminal proceedings against the petitioner/AI are allowed to continue, they cause undue hardship and lot of inconvenience to the petitioner. The criminal proceedings against the petitioner initiated by the complainant are therefore, abuse of process of law and are liable to be quashed. Accordingly, the entire proceedings against the petitioner in C.C. No. 153 of 2007 on the file of the Judicial First Class Magistrate, Rayadurg, Anantapur District are hereby quashed and the criminal petition is allowed.