
R.Y. Sarma and Others Vs State of A.P. and Another

Criminal Petition No. 2856 of 1995

Court: Andhra Pradesh High Court

Date of Decision: Sept. 10, 1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 107, 111, 116, 116(6), 482

Citation: (1996) 4 ALT 1091 : (1997) 1 ALT(Cri) 132

Hon'ble Judges: T. Ranga Rao, J

Bench: Single Bench

Advocate: V.V.L.N. Sarma, for the Appellant; Public Prosecutor for 1st Respondent and Mirza Munnawar Ali Baigh, for 2nd Respondent, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Ranga Rao, J.

This petition is filed u/s 482 Cr.P.Code to quash the proceedings in M.C.No. B/635/91 on the file of the Special

Executive Magistrate, Hyderabad.

2. The facts in giving rise to the filing of this petition are, briefly, as follows:- The Inspector of Police submitted a report before the Special

Executive Magistrate on 11-10-1991 alleging that there were disputes in between "A" Group and "B" Group in respect, of the house bearing No. I-

I-379/228(SRT-379) situated in Jawahar Nagar and narrated the incidents occurred in between them and also about the pendency of civil suit

between the parties in O.S. No- 2678/90 on the file of the IV Asst. Judge, City Civil Court, Hyderabad and both the groups indulged in unlawful

acts against each other and requested to initiate the proceedings u/s 107 Cr.P.Code.

3. The learned Special Magistrate passed orders u/s 111 Cr.P.Code calling upon both the parties to show cause why they should not be bound

over u/s 107 Cr.P.C for a period of two years by executing a bond for Rs. 2,000/- each and cash security for a like sum.

4. It appears that V. Jagannadha Rao, the first party in "A" group filed Criminal Petition No. 674/92 u/s 482 Cr.P.Code to quash the said

proceedings and the High Court passed orders on 31-3-95 as follows:

..The petition is dismissed as withdrawn. However, the petitioner herein may move the Special Executive Magistrate, Hyderabad for dropping the

proceedings which were initiated in the year 1991...

But the first party filed Crl. M.P.No. 366 of 1995 u/s 116(6) Cr.P.C. for extending the time for enquiry and the said Special Executive Magistrate

passed orders on 30-6-95 stating that the dropping of the case without concluding the enquiry would not solve the problem and extended the

enquiry for a period of six months. The second party filed this petition to quash the proceedings.

5. The learned counsel for the petitioners submitted that the Inspector of Police submitted the report on 11-10-91 and the orders u/s 111 were

issued and the matter was posted to 28-10-91 and again adjourned to 6-11-91 and both the parties were present on 16-11-1991 and it was

posted for counters and the learned Magistrate erred in taking into consideration the date of filing the Counters by both the parties and the

proceedings deemed to have been commenced from 16-11-91 and the proceedings cannot continue beyond the period of six months and he relied

on a decision Sitaram Singh and Others, etc. Vs. State of Bihar and Another, etc., , (opposite Parties), wherein the Full Bench of Patna High

Court held as under:-

...The commencement of inquiry in a proceeding u/s 107 has necessarily to be interpreted in terms of commencement of a summons trial provided

for in Chapter XX of the Code. Section 251 in Chapter XX makes it absolutely clear that a summons trial commences when the accused appears

or is brought before the trial Court and the particulars of the offence are stated or read out to him. The point of commencement of a proceeding u/s

107 of the Code must, therefore, be determined in the same terms. Section 112 provides for the reading over or explaining the substance of the

accusation and the satisfaction of the Magistrate. Section 112 thus is akin in content to that of Section 251. As a summons trial commences with

the reading out the particulars of the offence to the accused, a proceeding u/s 107 also must necessarily be deemed to have commenced with the

reading over the substance of the information received. The test of application of judicial mind for the purpose of proceeding with an inquiry u/s

117 is much too ethereal and is likely to cause confusion in the minds of Subordinate Courts. When after a party has appeared in Court, the

Magistrate adjourns the proceedings, he does so for the purpose of proceeding with the enquiry. Thus the forming of conclusion to proceed to

enquire into the allegations takes place on the very day the party noticed appears in Court.....

He also relied on a decision Dwarkanath Ramchander Angachekar and Ors. v. The State of Maharashtra and another 1977 Cri. L.J. 120. He

further submitted that after the expiry of six months period, the proceedings stand terminated and the said proceedings cannot be revived and he

relied on a decision J.C. Mehta Vs. The State and Another, .

6. The learned Magistrate in his order observed as under:-

.....The present case is instituted as long back as on 12-10-1991. Both parties filed counters, on 16-12-1991, and 22-2-1992. Taking into

consideration counter filed by the II Party respondent on 22-2-1992 the time lapsed for enquiry is calculated as under:-

High Court granted stay in MP No. 975/92 on 17-4-1992

Date of filing counter by II party Respondent on 22-2-1992

Time lapsed is 3 months 25 days.

Disposal of petition No. 674/92 by Hon"ble

High Court on 29-4-1994

Filing the petition u/s 116(6) Cr.P.C. 24-6-1995

1 month 26 days.

Adding the same, the time lapsed comes to 5 months 21 days..

Thus it is clear that the learned Magistrate took starting point of limitation from the date of filing of counter by the second party i.e. on 22-2-1992.

But it is borne out from the docket proceedings that both the parties appeared on 16-11-1991 and the matter was adjourned for counters, thus the

starting point of limitation is 16-11-1991 and if 16-11-1991 is taken into consideration and it is mentioned that the High Court order is received on

17-4-1992, then the period works out as 5 months. It is further mentioned in the order that the disposal by the High Court is on 29-4-1994 and

the petition u/s 116(6) Cr.P.C. was filed on 24-6-95 and the period is one month 26 days and thus the total period is 6 months 26 days and

beyond six months. Thus the proceedings shall stand terminated and the conclusion that the starting point of limitation is on the day on which the

second party filed counter is incorrect in view of the decision referred supra.

7. The earlier petition filed by A- I party to quash the proceedings was withdrawn and the petitioner was permitted to move the Special Magistrate

to drop the proceedings which was initiated in the year 1991, but contrary to the said indication "A" party filed petition to continue the

proceedings. The proceedings were initiated in the year 1991 and the show cause notice u/s 111 Cr.P.C. was issued to the parties directing them

to execute a bond for Rs. 2000 /- for a period of two years and cash security for a like sum and the said order was passed in October, 1991

about nearly 4 years 10 months back. It is also relevant to mention that the Civil Suit is pending between the parties with regard to the said

property and injunction was granted by the High Court. An earlier proceeding In MC. No. B/907/90 was also initiated against both the parties and

the "B" party filed petition to quash the proceedings and the High Court passed orders on 25-9-91 stating that the Civil Suits are pending prior to

the institution of the proceedings, it is wrong on the part of the Officer to initiate the proceedings and directed the parties to place the material

before the Officer and directed the matter to be disposed of within one month, and the said proceedings were closed on 2-11-1991.

8. The learned Magistrate passed orders on the petition filed by V. Jagannadh Rao seeking extension of enquiry stating that dropping the case

without concluding the enquiry would not solve the problem. It is also significant to mention that the proceedings u/s 107 Cr.P.C. were initiated at

the instance of the Inspector of Police and it is clear that if there is still threat of breach of peace, the police would have moved the Court for

extension of time u/s 116 Cr.P.C. But it is very much doubtful whether one party can file petition seeking extension of enquiry. There is no material

placed before the Magistrate by the police seeking extension of time and the Magistrate is expected to record special reasons for extending the

enquiry beyond six months, and the learned Magistrate failed to state any special reasons except stating that dropping of the case would not solve

the problem. I do not think there is justification for the Magistrate to continue the proceedings initiated about more than four years ten months

back. If there is any threat of breach of peace, the police are at liberty to take appropriate action as open to them under law. Therefore, in the light

of foregoing discussion, I am inclined to hold that in any view of the matter, the proceedings cannot be continued and are liable to be quashed.

9. In the result, the petition is allowed and the proceedings are quashed.