
(2006) 2 ALT(Cri) 391 : (2006) 2 APLJ 342 : (2006) CriLJ 2848

Andhra Pradesh High Court

Case No: Criminal Petition No. 691 of 2001

P. Anil Babu

APPELLANT

Vs

Assistant Sessions
Judge

RESPONDENT

Date of Decision: April 3, 2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 172, 173, 174, 175, 176#Penal Code, 1860 (IPC) â€” Section 187

Citation: (2006) 2 ALT(Cri) 391 : (2006) 2 APLJ 342 : (2006) CriLJ 2848

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: G. Pedda Babu, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

Paleti Anil Babu, the then Sub-Inspector of Police, Ponnur Rural P. S. filed the present Criminal Petition u/s 482 of the

Code of Criminal Procedure, 1973 (hereinafter, in short, referred to as "Code" for the purpose of convenience) to quash the proceedings in

S.T.C. No. 6/ 2000 on the file of II Addl. Munsif Magistrate, Bapatla and also to pass such other suitable orders.

2. The case of the petitioner is that a case was registered against the petitioner u/s 187 of the Indian Penal Code (hereinafter, in short, referred to

as "IPC") for not assisting the Assisting Sessions Judge, Bapatla, in the service of summons to witnesses and administration of Justice in connection

with the cases in S.C. No. 178/99 on the file of Assistant Sessions Judge, Bapatla. The same was registered as S.T.C. No. 6/2000 on the file of II

Addl. Munsif Magistrate, Bapatla and inasmuch as the matter was posted for appearance of petitioner the then S.I. of Police, Ponnur Rural Police

Station, the present Criminal Petition is filed to quash the proceedings.

3. Sri G. Pedababu, the learned Counsel representing the petitioner would maintain that without obtaining sanction u/s 197 of the Code, the

prosecution cannot be further proceeded with. The learned Counsel also placed strong reliance on the decision of this Court in Pisupati Venkata

Ramanaiah v. Shaik Khasim Peera, Sub-Inspector of Police 1999 (1) ALT (Cri) 247 (AP).

4. Heard the counsel.

5. As can be seen from the allegations made in the charge-sheet, it appears that the prosecution had been initiated at the instance of the Assistant

Sessions Judge, Bapatla. In Pisupati Venkata Ramanaiah s case (referred supra) it was no doubt held as hereunder:

The State of Andhra Pradesh has through G.O. Ms. No. 406, Home (Courts-B), dated 30-4-1974 has extended the application of Section 197

to all the Police Officers including Sub-Inspectors, Head Constables and Constables by virtue of the powers conferred by Sub-section (3) of

Section 197 of Code of Criminal Procedure. Thus in view of this G.O. applicability of Section 197 of the Code of Criminal Procedure is beyond

the theme of controversy, of course subject to the condition that the acts complained of is satisfied, required or otherwise.

Apart from this aspect of the matter, Section 195(1) of the Code specifies as hereunder:

No Court shall take cognizance -

(a) (i) of any offence punishable under Sections 172 - 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following Sections of the Indian Penal Code (45 of 1860), namely. Sections 193 - 196 (both

inclusive), 199, 200, 205 - 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any

proceedings in any Court, or

(ii) of any offence described in Section 463, or punishable u/s 471, Section 475 or Section 476, of the said code, when such offence is alleged to

have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in Sub-clause (i) or Sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

Section 187, IPC dealing with Omission to assist public servant when bound by law to give assistance reads as hereunder:

Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give

such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two

hundred rupees or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process

lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person

charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may

extend to six months, or with fine which may extend to five hundred rupees, or with both.

Sub-section (1) of the Code begins with the words ""No Court shall take cognizance"". Further, the words ""except on the complaint in writing of the

public servant concerned or of some other public servant to whom he is administratively subordinate"" would assume some importance in the

present context. It is not in controversy that no such complaint in writing of the public servant concerned or of some other public servant to whom

he is administratively subordinate, is there in the present case. The provisions of Section 195 of the Code are mandatory in nature and the Court

has no jurisdiction to take cognizance any of the offences mentioned therein unless there is a complaint in writing as required by the said Section as

referred to supra. In the light of the language employed in Section 195(1) of the Code referred to supra, the prosecution initiated at the instance of

the Assistant Sessions Judge, Bapatla, definitely cannot be sustained for the reason that the Sub-Inspector of Police is not subordinate to the said

Officer. Unless a complaint is made by the competent officer as specified u/s 195(1) of the Code, the prosecution cannot be further proceeded

with. Apart from this aspect of the matter, inasmuch as the service of summons, being in discharge of the official duties of the Sub-Inspector,

Sanction u/s 197 of the Code is required.

6. Viewed from any angle, the proceedings cannot be further proceeded with and the same are liable to be quashed. However, before parting with

the matter, this Court is inclined to make an observation that the Police Officers are duty bound and they are expected to be diligent in serving the

summons on the witnesses so as to enable the Criminal Courts to effectively discharge their duties. It is highly essential for the proper and effective

functioning of the concerned Criminal Courts. The important role to be played by the police wing and investigating agency in the administration of

criminal justice delivery system needs no emphasis at the hands of this Court. This Court is constrained to express the displeasure over several of

the administrative lapses on the part of the police wing in discharge of their duties in this context. Service of summons on witnesses and prompt

attendance thereof is an essential fact of criminal justice delivery system. Criminal justice delivery system to function efficiently needs effective

coordinative and co-operative gesture of the investigating agencies inclusive of the police wing. Several of the aspects like service of summons on

witnesses, prompt attendance of the ordinary witnesses, official witnesses, police officers, experts, judicial magistrates and the like, the execution of

warrants in all promptness are a few which may be mentioned in this context. The said list is only illustrative, but not exhaustive. Giving less priority

to these duties by the concerned executive wing to be deprecated since it will tell upon the functioning of the very system itself. The separation of

judiciary from the executive not to operate as an obstacle for the effective functioning of the system. Better co-ordination is essential for better

governance and the better judicial administration as well. This Court is inclined to make these observations in the light of the fact that this being a

novel case where the ineffective discharge of the duties on the part of a police officer had been complained of by a Judicial Officer. Priority to

other duties which are shown by these concerned ignoring the judicial wing and the duties concerned therewith may have to be viewed with all

seriousness.

7. Except making the aforesaid observations, nothing else can be done by this Court. Accordingly, the Criminal Petition is allowed subject to the

observations made above.