Patangay Pramod Kumar Vs State of Telangana

Court: ANDHRA PRADESH HIGH COURT

Date of Decision: April 27, 2017

Acts Referred: Code of Criminal Procedure, 1973, Section 302, Section 190 - Permission to conduct prosecution - Cognizance of offences by Magistrates
Prevention of Corruption Act, 1947

Hon'ble Judges: A.Ramalingeswara Rao

Bench: SINGLE BENCH

Advocate: K.Sai Babu

Final Decision: Dismissed

Judgement

1. Heard learned counsel for the petitioner, learned Government Pleader for respondents 1 to 3, the fourth respondent in person. The mother of

the fourth respondent filed W.P.M.P.No.11927 of 2017 seeking to implead herself as fifth respondent as she was also arrayed as accused in the

crime and the petition was ordered. The counsel for the fifth respondent is also heard.

2. The case of the petitioner is that his marriage was performed on 26.05.2010 and the fourth respondent was practising as an advocate at the time

of marriage. At the time of marriage, the fourth respondent and her mother represented that the date of birth of the fourth respondent is

08.08.1981 by showing their family ration card, but the date of birth of the petitioner is 08.05.1980. In view of date of birth shown to the

petitioner, he married the fourth respondent. The fourth respondent applied for a passport showing the date of birth as 08.08.1981 before

marriage and the same was issued to her. On the basis of the evidence of the passport, the fourth respondent obtained learner"s licence in

November, 2010 and also applied for permanent two wheeler licence in December, 2010. In all the above documents, her date of birth was

shown as 08.08.1981. But thereafter he came to know that the actual date of birth of the fourth respondent is 26.02.1969. In those circumstances,

he filed O.P.No.1279 of 2011 before the Family Court, City Civil Courts, Hyderabad, under Section 12(1)(c) and 13(i)(i-a) of the Hindu

Marriage Act for annulment of his marriage with the fourth respondent on the ground of fraud or alternatively, for dissolution of marriage on the

ground of cruelty. The fourth respondent filed her counter on 24.09.2013 in the said petition admitting her date of birth as 26.02.1969 and stated

that she gave necessary papers to her father to obtain passport and she received the passport with an incorrect date of birth. The petitioner''s

father gave a written complaint to the third respondent for taking action against the fourth respondent and her mother and when no action was

taken, a private complaint was filed before the XI Metropolitan Magistrate under Section 200 CrPC and the same was referred to the third

respondent for investigation. On receipt of the said complaint, the third respondent registered it as F.I.R.No.527 of 2014 dated 07.11.2014

against the fourth respondent and her mother, the fifth respondent for an offence under Sections 211, 417, 419 and 420 IPC. The fourth

respondent and her mother filed criminal petition Nos.2478 and 2480 of 2015 to quash the F.I.R., registered against them. They are pending. In

view of the failure of the third respondent to conduct investigation, the petitioner filed W.P.No.15920 of 2015 seeking a direction to the third

respondent to complete the investigation in a time bound manner and the said writ petition was disposed of 17.07.2015 directing the third

respondent to complete the investigation and file a report within three months from the date of receipt of copy of the order. The investigation

revealed that the fourth respondent obtained the passport by filing a false affidavit before the Passport Authority stating that she was illiterate and

her date of birth as 08.08.1981 on the basis of the family ration card containing the said date. She obtained the passport in 2010. She was not

illiterate as she obtained B.Com., L.L.B., and L.L.M.degrees. The fourth respondent and her mother gave false dates of birth even in the biodata

given to Community Matrimonial Souvenirs of 2004 and 2005 stating her date of birth as 08.08.1977. After investigation, the third respondent

filed a charge sheet against the fourth respondent and her mother on 15.10.2015 for the offences under Sections 198, 199, 406, 420 IPC and

Section 12(1)(b) of the Passports Act and the said charge sheet was taken cognizance vide C.C.No.1203 of 2015 dated 31.10.2015 by the

Court. Summons were issued to the fourth respondent and her mother. Though a charge sheet was filed under Section 12(1)(b) of the Passport

Act, no sanction from the competent authority was filed. The petitioner states that as a de facto complainant, he filed a petition before the learned

Magistrate under Section 302 of Code of Criminal Procedure (CrPC) to permit him to conduct prosecution in the said case and he was permitted.

Challenging the said order, the fourth respondent filed a revision before the learned II Additional District Judge, Ranga Reddy District, and the

matter is pending. He sent a letter through his counsel to the third respondent on 15.11.2016 requesting the third respondent to obtain proper

sanction from the concerned authority and to file it in the pending C.C.No.1203 of 2015, but the third respondent informed him that they need not

obtain permission from the learned Magistrate for further investigation as the cognizance of the charge sheet was already taken by the learned

Magistrate.

3. The petitioner states that the power to sanction was delegated by the Central Government to the State Government under the Passports Act by

Government Order vide Notification issued in G.S.R.662 (E), Ministry of External Affairs, Government of India, dated 01.02.1979, and thus, the

first respondent is the competent authority to issue necessary orders under Section 12 of the Passports Act.

4. The fourth respondent filed a separate counter affidavit indicating the conduct of the petitioner in filing the petition and with regard to the

controversy in the case. She stated that her actual date of birth is 08.08.1981 only, but the date mentioned in the academic qualification is another.

So far as application for passport is concerned, it was the petitioner who immediately after engagement applied for the passport through an agent

under the guise of taking the fourth respondent to abroad for honeymoon. The application and other forms were never filled up by her, but

everything was filled up and arranged by the petitioner himself, with an intention to involve her in criminal case in future. On coming to know of the

wrong date of birth and fraud played by the petitioner, the passport was revoked. She further stated that it is the responsibility of the petitioner to

obtain sanction, but he managed the third respondent to file charge sheet by including the provisions of law, which were not alleged by the

petitioner himself in his complaint. In fact, the complaint was a counter blast to her complaint in Crime No.498 of 2014 before the same police

station. There is a collusion between the petitioner and the third respondent. The other allegations against her were denied, but she made several

allegations against the petitioner. Since this Court is not concerned with all the allegations, they are not reproduced here. She only stated that

against the order in Crl.M.P.No.1474 of 2015 permitting him to prosecute the case on his own, the learned II Additional District Judge, Ranga

Reddy District granted stay in Criminal Revision Petition No.159 of 2016. She stated that the Civil Supplies (Ration) Card contains the date of

birth of all her family members and the same would be indicating that she was born on 08.08.1981 only.

5. Learned counsel for the petitioner relied on Union of India v Prakash P.Hinduja and Pooja Pal v Union of India and submitted that this Court

alone can direct the third respondent to obtain sanction and file it before the competent Court and the present writ petition is maintainable.

6. Learned counsel for the respondents 4 and 5 submits that the present writ petition is not maintainable as no direction can be issued to the third

respondent to obtain sanction. The learned Government Pleader, on the other hand, submits that the petitioner has to approach the concerned

Criminal Court and obtain necessary orders from the same Court, but not by filing the present writ petition.

7. The points that arise for consideration in the present case is whether this Court can direct the third respondent to obtain an order of sanction in

the pending prosecution against the fourth respondent under Section 12(1)(b) of the Passports Act in C.C.No.1203 of 2015. In view of the fact of

taking cognizance of the case by the competent Court, whether a writ of Mandamus can be issued to the third respondent for obtaining sanction.

8. Section 12 of the Passports Act deals with the offences and penalties and Section 15 of the said Act states that no prosecution shall be instituted

against any person in respect of any offence under the Act without the previous sanction of the Central Government or such officer or authority as

may be authorised by the Government by Order in writing in this behalf. Now it is stated by the learned counsel for the petitioner that the Central

Government authorised the State Government to issue sanction under Section 15 of the Passports Act. Admittedly, no sanction was obtained and

a charge sheet was filed before the learned XI Metropolitan Magistrate, Ranga Reddy District, where C.C.No.1203 of 2015 is pending.

9. Admittedly Section 15 of the Passports Act bars institution of the case for violation of the provisions of the Passports Act before the competent

Court without obtaining proper sanction. Chapter XIV of the CrPC deals with the conditions for initiation of proceedings. The cognizance of

offence by the Magistrates is provided under Section 190 thereof. In the instant case, the investigating officer completed the investigation and

submitted a report. The case was taken cognizance by the learned Magistrate.

10. In Prakash P.Hinduja, the Central Bureau of Investigation (CBI) registered a case and proceeded to investigate the matter. Thereafter, it

submitted a charge sheet No.1 under the provisions of IPC and Prevention of Corruption Act in the Court of the Special Judge, New Delhi. It was

stated therein that the investigation concerning the role of the Prakash Hinduja and others is continuing. The cognizance of the offence was taken by

the learned Special Judge and case was registered in his Court. Thereafter, a supplementary charge sheet was submitted against the said Prakash

Hinduja and others. Thereafter, Hinduja, one of the accused, moved an application before the Special Judge praying that the charge sheet

submitted by the CBI be dismissed and the cognizance taken and process issued against the accused be revoked on the ground that the case was

never reported to Central Vigilance Commission (CVC) and as such, there was no compliance of the directions issued by the Supreme Court in

the case of Vineet Narain v Union of India . The application was rejected by the Special Judge. Against the said order, a petition was filed before

the High Court of Delhi under Section 482 CrPC by the accused. The High Court held that in view of the mandate of the Supreme Court, the

Special Judge ought not to have entertained the charge sheet filed in violation of the directives and accordingly allowed the petition. The cognizance

taken by the learned Special Judge and all consequential proceedings were quashed. Against the said order, the Union of India through CBI and

CVC preferred the appeals to the Supreme Court. While dealing with the power of the High Court under Section 482 CrPC, the Supreme Court

observed that there are some statutes which create a bar on the power of the Court in taking cognizance in absence of sanction by the competent

authority like Section 6 of the Prevention of Corruption Act, 1947 or Section 19 of the Prevention of Corruption Act, 1948. Since the order of the

High Court does not refer to such a bar or an observation that the F.I.R., did not disclose cognizable offence and since it was based on the only

ground that the opinion of CVC was not obtained, the Supreme Court considered the issue whether the Court can go into the validity or otherwise

of the investigation done by the authorities charged with duty of investigation under the relevant statutes and whether any error or illegality

committed during the course of investigation would vitiate the charge sheet so as to render the cognizance taken thereon invalid. The Supreme

Court held on a reading of the provisions contained in Chapter XII of CrPC indicates that there is no power vested in the Magistrate to interfere

with the investigation. Then it considered whether the High Court can exercise its inherent powers. The Supreme Court noticed that once

investigation is completed and the investigating officer submits report requesting the Court to take cognizance of the offence under Section 190 of

CrPC, its duty comes to an end. On the cognizance of the offence being taken by the Court, the police function of the investigation comes to an

end and the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons

charged with the crime by the police in its report to the Court and to award adequate punishment according to law for the offence proved to the

satisfaction of the Court commences. The Supreme Court also observed that there is no similarity between mere executive order requiring prior

permission or sanction for investigation of the offence and the sanction needed under the statute for prosecution. The requirement of sanction for

prosecution, when provided in the very statute which enacts the offence, the sanction for prosecution is a pre-requisite for the Court to take

cognizance of the offence. On the facts of that case, the Court came to the conclusion that absence of sanction from CVC before filing charge

sheet did not vitiate the investigation.

11. In the instant case, sanction is required under the statute for prosecution and the Court has taken cognizance without submitting the proper

sanction.

12. The other decision relied on by the learned counsel for the petitioner in Pooja Pal does not deal with the issue of taking cognizance without

obtaining proper sanction and hence, has no relevance to the facts of the case. There is no quarrel with the proposition laid down in State of West

Bengal v S.N.Basak relied on by the learned counsel, wherein it was held that the police has the statutory right to investigate into the circumstances

of any cognizable offence without order from a Magistrate, but on the ground that the police have a right to investigate, which right includes the

filing of the charge sheet along with the requisite sanction, this Court cannot direct the police to obtain sanction and it is for the concerned

Magistrate to return the charge sheet for lack of sanction. The decision in Sri Bhagwan Samardha Sreepada v State of A.P., only states that the

police have right to make further investigation by obtaining prior permission from the Court. This case is not for further investigation but absence of

sanction. There is no direct authority for the issue raised in the instant case.

13. The decision relied on by the learned counsel for the respondent in Suresh Nanda v CBI is a case which dealt with the powers of the passport

authority vis--vis the general provisions of CrPC, wherein it was held that the special law prevails over general law. There cannot be any quarrel

with the said proposition but the said decision does not throw any light on the question that is being considered by this Court. The decision in

Chonary Ahmed Kutty v Special Police Establishment deals with the point of limitation. Similarly the decision in Aboo Chettaiyanthodi v Regional

Passport Officer and Yogesh Indukumar Patel v Union of India are the cases relate to the facts involved in the present case, but they do not throw

a light on the point raised in the present writ petition. The other decisions are also inapplicable to the facts of this case.

14. In view of the above legal position, no writ of mandamus can be issued on the facts of the case to the investigating officer to obtain sanction

after the trial Court had taken cognizance of the offence, which cognizance is invalid on the face of it. The only course left open to the learned

Magistrate is to return the charge sheet for not obtaining proper sanction for proceeding with the case and for presentation of charge sheet along

with requisite sanction. It is for the investigating officer to obtain necessary sanction and what the investigating officer is going to do after the charge

sheet is returned by the concerned Magistrate cannot be predicted at this stage and it is open to the petitioner to take appropriate proceedings as

and when the cause of action arises.

15. The writ petition is accordingly dismissed. Miscellaneous petitions, if any pending, in the writ petition, shall stand closed.