

APHC010072792023



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3365]

**TUESDAY, THE SIXTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

CRIMINAL REVISION CASE NO: 117/2023

Between:

Mallisetti Pushpalatha

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.PARDHA SARADHI A V

Counsel for the Respondent(S):

1.PUBLIC PROSECUTOR (AP)

2.A T PRABHAKARA RAO

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**CRIMINAL REVISION CASE No.117 of 2023****ORDER:**

This Criminal Revision Case filed under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.) impugns the order dated 02.02.2023 of learned Assistant Sessions Judge, Kothapeta whereunder the learned trial Court dismissed Crl.M.P.No.4 of 2022 and refused to discharge the revision petitioner from S.C.No.70 of 2020 pending before it.

2. Respondent No.1 is the State. Respondent No.2 is the *de facto* complainant. Sri A.V.Pardha Saradhi, the learned counsel for revision petitioner and the learned Assistant Public Prosecutor for respondent No.1 and Sri A.T.Prabhakara Rao, the learned counsel for respondent No.2 submitted their arguments.

3. The following facts are to be noticed:

Crime No.35 of 2019 of P.Gannavaram Police Station was investigated into and resulted in filing of a charge sheet and after due enquiry, the learned Magistrate committed the case to learned Sessions Court where it became S.C.No.70 of 2020. A.1

to A.5 are the accused involved in the said case. The offences alleged are under Sections 120-B, 341, 324 and 307 read with 34 I.P.C. Learned Assistant Sessions Judge, Kothapeta had to take up the trial. Before the charge hearing A.1 filed Crl.M.P.No.4 of 2022 seeking her discharge. After due enquiry, the learned Assistant Sessions Judge dismissed the petition. Against that order the present revision is filed.

4. Two layers of facts are to be seen in this case. Respondent No.2 is the *de facto* complainant. While he was in hospital taking treatment, police recorded his statement and obtained his thumb impression and registered the same as Crime No.35 of 2019. As per this statement, he is Telugu Desam party worker. To attend party programme at 4:30 A.M. in the morning on 03.02.2019 in Bellampudi Village he went to a place near RWS water tank. He saw three unknown persons aged about 25-30 years coming and attacking him with iron rods and sticks and caused bleeding injuries to him. He also saw another person of similar age holding a stick standing at a nearby place and according to him, he also belonged to the group of assailants. On the cries of the victim, people around there gathered and on

seeing them the three assailants and bystander joined together and escaped from the spot on two of their bicycles. In his information he stated that while leaving the place those individuals were abusing the Telugu Desam party.

5. The said incident was investigated into and statements of witnesses were recorded. The investigative outcome was that A.2 to A.5 were those persons who participated in the above referred incident.

6. Then the second layer of the case has to be seen. Initially the statement of the victim was recorded under Section 161 Cr.P.C. on 04.02.2019. A few days thereafter the investigating officer changed. The new investigating officer stated to have recorded his statement afresh on 19.02.2019. The substance of this statement includes all those facts that are mentioned in the first layer of the incident and in addition to that further facts were stated to have been disclosed. It is stated that A.1-Smt. M.Pushpalatha is related to him and she had married Sri Sarath Kumar and between the spouses there were disputes and out of them certain cases were pending before various Courts and in that regard at the request of

Smt. M.Pushpalatha/revision petitioner herein he was helping her in handling the Court affairs. It is also stated that to meet the litigation expenses she used to borrow money from him. While so, her claim for maintenance was pending before learned Judicial First Class Magistrate and the case was about to be completed. It was in such context, on 02.02.2019 she told him that certain unknown people were knocking on the doors of the house during night time and she was afraid of it and sought his help. To protect her and give strength to her, he went and stayed there with her and nothing happened on that day. In the morning he came out and was attending party work and there he was attacked by the other accused. After obtaining treatment, he told that, he analysed the facts and in his opinion his relative Smt. M.Pushpalatha/revision petitioner/A.1 engaged A.2 to A.5 and organized the attack. The motive attributed to her is that as the maintenance case was coming to a conclusion and she was likely to get maintenance amount from her husband, she was suspecting that the victim would demand back the money he lent to her and to avoid that she got all this crime done. Investigation continued and finally Smt. M.Pushpalatha was arraigned as A.1

and the other assailants were arraigned as A.2 to A.5 and the charge sheet was filed.

7. In the trial Court as well as here the following submissions are made on behalf of the revision petitioner/A.1 seeking her discharge:

- That the material on record does not indicate a *prima facie* case to charge the accused.
- There is no admissible evidence brought on record and the entire investigation indicates that the prosecution intended to rely upon confessional statements of co-accused, which is impermissible under law.
- That the *de facto* complainant never thought of accusing the revision petitioner and by manipulation the investigating agency created a story and if the *de facto* complainant is called the truth would come out.

8. Learned Assistant Public Prosecutor submits that the due investigation resulted in filing of charge sheet and the learned trial Court properly assessed the material on record and refused to discharge and in this revision no interference is warranted.

9. Respondent No.2-*de facto* complainant being represented by his learned counsel submits that a counter affidavit is filed. In this counter affidavit it is mentioned that he has no grievance against the revision petitioner and he never made any statements against her either to the police or to anyone. The revision petitioner was falsely implicated in this case by the investigating agency only to sidetrack the main case as against A.2 to A.5.

10. On 04.07.2024 respondent No.2 was physically present before this Court and verified this affidavit and approved its voluntariness and correctness and stated that being fully aware of the truth and the facts mentioned in the counter affidavit he subscribed his signature on it. He orally submitted to the Court that the revision petition be allowed. All this occurred in the open Court and in the presence of learned counsel on both sides.

11. The following points fall for consideration:

1. Is there sufficient ground for proceeding against the revision petitioner/accused No.1?

2. Whether the impugned order cannot be maintained?

POINT Nos.1 and 2:

12. The charge sheet filed by the State is available on record. It enlisted LW.1 to LW.14. Respondent No.2/*de facto* complainant is LW.1. LW.2 to LW.6 were examined by police and their statements were reduced into writing under Section 161 Cr.P.C. A perusal of them shows that they have been speaking about witnessing the incident at the water tank where four persons participated in the alleged attack on LW.1. Their statements do not indicate any other facts and there is no whisper about revision petitioner/A.1. LW.7 and LW.8 are the sons of LW.1/respondent No.2 herein. They were not witnesses to any of the facts. Their statements indicate that their knowledge of all the incident was only from what their father disclosed to them. LW.9 and LW.10 are post incident witnesses who acted as mediators in whose presence scene observation report was made and certain material objects were collected by the investigating officer. LW.12, LW.13 and LW.14 are the police officers who investigated this case. Serial number of LW.11 is missing in the list mentioned in the charge sheet.

13. Learned trial Court considered the revised statement of LW.1 and that of his two sons and stated that there is material to charge A.1. As one could notice from the statements of LW.1 and his two sons, it was only the suspicion of the victim against A.1 and nothing else. It was for the investigating agency to collect material indicating any connection between A.1 on one hand and A.2 to A.5 on the other hand. It had not even collected any material concerning the maintenance case said to have been pending between the revision petitioner and her husband. From the record it is seen that the revision petitioner is daughter of co-brother of the victim/respondent No.2. Till the revised statement of respondent No.2 was recorded, the victim and the revision petitioner have been in good terms one supporting the other. Details of the alleged maintenance case are not disclosed and what was the money that she was expected to receive and when the case was about to be completed are all facts not known from the case diary. Thus, nothing relevant in this regard was ever collected by the investigating agency. Therefore, the suspicion of respondent No.2 remained a suspicion out of a belief and is not supported by any evidence. In law suspicion is an opinion. The facts allowing a person to entertain a suspicion are

the relevant facts that shall be brought on record by the investigating agency. Only facts should convince a Court and not an opinion without facts. No such facts are brought on record by the State.

14. From the confessional statements of A.2 to A.5 it is seen that they were engaged by A.1 and she had paid Rs.1,00,000/- as advance and after they attacked the victim, she paid them Rs.2,00,000/-. It is this material which the prosecution intended to rely upon which the learned trial Court felt good enough to charge A.1. In the opinion of this Court, the approach of the learned trial Court is against facts and record. Investigation has not been done to see whether the revision petitioner/A.1 who was in distress and was seeking monthly maintenance from her husband was having Rs.3,00,000/- at any given point of time. There was no evidence collected to show that she had given that money to A.2 to A.5. None of the listed witnesses whispered about any connection between A.1 and the other accused. Thus, there is no tangible evidence at all to see the transaction alleged. The learned trial Court closed its eyes to such important aspects.

15. Coming to confessions of co-accused, the learned counsel for petitioner urges that such confessions cannot be used for charging an accused and cited ***Dipakbhai Jagdishchandra Patel v. State of Gujarat***¹. Their Lordships stated the principle of law in the following manner:

“22. Undoubtedly, this Court has in ***Suresh Budharmal Kalani Alias Pappu Kalani v. State of Maharashtra*** ((1998) 7 SCC 337), taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in ***Kashmira Singh v. State of Madhya Pradesh*** (AIR 1952 SC 159). We notice the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in ***Suresh Budharmal Kalani Alias Pappu Kalani*** (supra), the Court has proceeded to take the view that only on the basis of statement of the co-accused, no case is made out, even for framing a charge.”

16. In the light of these principles of law and facts on record, it is crystal clear that there was no material that could be used legally for the trial Court to see whether there was sufficient

¹(2019) 16 SCC 547

ground to charge A.1 or not. In the opinion of this Court, it is very clear that there was no legally available material on record to frame a charge against the revision petitioner/A.1.

17. The victim-cum-*de facto* complainant himself has filed a sworn affidavit and made oral submissions and his learned counsel also submitted that the case was diverted from its proper course and without there being a truth the revision petitioner was roped in for oblique purposes.

18. In the light of the above referred facts, both the points are answered in favour of the revision petitioner.

19. In the result, this Criminal Revision Case is allowed. The impugned order dated 02.02.2023 of learned Assistant Sessions Judge, Kothapeta in Crl.M.P.No.4 of 2022 in S.C.No.70 of 2020 is set aside. Consequently, Crl.M.P.No.4 of 2022 in S.C.No.70 of 2020 is allowed discharging the petitioner/A.1 from S.C.No.70 of 2020. Her bail bonds shall stand discharged. The learned trial Court shall proceed with as against the other accused in S.C.No.70 of 2020 in accordance with law.

As a sequel, miscellaneous applications pending, if any,
shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 16.07.2024
lvd

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL REVISION CASE No.117 of 2023

Date: 16.07.2024

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