

HIGH COURT OF ANDHRA PRADESH**Bench: Dr. Justice K. Manmadha Rao****Date of Decision: 28th March 2024**

Writ Petition No: 38410 of 2016

SPECIAL ORIGINAL JURISDICTION

Medapati Venkata Reddy @ Bulli Reddy, and Others ...PETITIONER(S)**VERSUS****The State Of Andhra Pradesh and Others ...RESPONDENT(S)****Legislation and Rules:**

Article 226 of the Constitution of India

Sections 365, 342, 84, 506, 109, 34 of the Indian Penal Code (IPC)

Section 156(3) of the Criminal Procedure Code (Cr.P.C.)

Subject: The petitioners seek to quash FIR No. 72 of 2016, alleging duplication of investigation regarding the same set of facts addressed in an earlier FIR (No. 378 of 2015), claiming violation of Articles 21 and 22 of the Constitution.

Headnotes:

Jurisdiction and Authority of Police to Reinvestigate – Criminal Jurisdiction – Writ of Certiorari to quash FIR – Andhra Pradesh High Court rules on the legality of police reinvestigation in FIR No. 72 of 2016 under Sections 365, 342, 84, 506, 109 read with 34 of IPC, following a previous investigation

into similar allegations in FIR No. 378 of 2015 – Held, police lack authority to reinvestigate the matter after a significant lapse of time and without new evidence against the petitioners – High Court quashes FIR No. 72 of 2016, deeming it illegal, arbitrary, and violative of Articles 21 and 22 of the Constitution, citing lack of jurisdiction and improper exercise of police powers in reinvestigation. [Paras 1-12]

Double Jeopardy and Civil Disputes – Analysis – Held, reinvestigation of the same factual scenario previously adjudicated in a criminal case constitutes double jeopardy; issues between parties are civil in nature and do not warrant criminal proceedings – High Court emphasizes improper police action in persisting with criminal charges absent new evidence, resulting in quashing of FIR. [Paras 10-11]

Decision – Quashing of Criminal Proceedings – High Court orders quashing of FIR No. 72 of 2016 and all associated criminal proceedings against the petitioners, highlighting the absence of a valid cause of action for continuing investigation and the violation of constitutional rights of the petitioners. [Para 12]

Referred Cases:

- T.T.Antony v. State of Kerala (2001) 6 SCC 181

Representing Advocates:

For the Petitioners: A.K. Kishore Reddy

For the Respondents: GP for Home (AP), K Siddharth Rao

ORDER:-

This Writ Petition is filed under Article 226 of the Constitution of India, seeking the following relief:

“.....to issue a Writ, Order or direction more particularly one in the nature of Writ of Certiorari calling for the records pertaining to FIR No. 72 of

2016 pending on the file sections 365, 342, of Respondent No.2 registered for the offences under 84, 506, 109 r/w 34 of IPC and declare that the Respondent No.2 shall not investigate into the crime as the investigation is completed on the very same allegations made by the Respondent No.3 in FIR No.378 of 2015 against the petitioners herein pending on the file of II Town Police Station, Nalgonda, Nalgonda District and declare that investigation in FIR No.72 of 2016 by the Respondent No.2 as illegal, arbitrary, erroneous and violative of Article 21 and 22 of Constitution of India and consequently quash the FIR.No. 72 of 2016 pending on the file of Respondent No.2 and pass such other orders ”

1. The precise case of the petitioners is that the father of the 3rd respondent father had committed suicide on 18.12.2015 at Nalgonda Town in a hotel and registered a case in Crime No.378 of 2015. After conducting preliminary enquiry, the case was altered and the same was intimated to the wife and to the 3rd respondent and no complaint was made against the petitioners till 30.01.2016. The 3rd respondent and his mother had made allegations against the petitioners. As per remand report shows that there are civil disputes pending between the petitioners and the father of the 3rd respondent and the 3rd respondent. Therefore, the petitioners have filed Criminal Petition No.2056 of 2016 before this Court, wherein this Court directed the Station House Officer, Nalgonda proceed with the investigation without arresting the petitioner in connection with crime No.378 of 2015. The 3rd respondent filed a complaint before the IV Additional Judicial Magistrate of I Class, Kakinada, East Godavari against the petitioners and others by suppressing the material facts. Further investigation in the said crime was completed and no charge sheet was filed. The intention of the 3rd respondent is only to avoid payment of money to the petitioners and others, except this, no allegations were made against the petitioners. The 3rd respondent has given complaint after elapse of 8 months i.e after death of his father. Though all these facts were brought to the notice of the 2nd respondent and he cannot investigate into the crime as already investigation is completed on the allegations made by the 3rd respondent, the 2nd respondent is proceeding with the investigation, which is highly

illegal and arbitrary. Hence the present writ petition came to be filed.

2. Heard Mr. A.K.Kishore Reddy, learned counsel for the petitioners and learned Assistant Government Pleader for Home for respondents 1 and 2./ police.

3. During hearing learned counsel for the petitioners would contend that once investigation conducted by the Nalgonda Police, question of reinvestigating the matter against the petitioners after long elapse of 3 months does not arise. Further there are no allegations against the petitioners during investigation. The 3rd respondent with a malafide intention to harass the petitioners and to avoid payment of due to the petitioners and others, a false complaint was lodged against them. The 2nd respondent is proceeding with investigation, at the instigation of 3rd respondent, without following due procedure as contemplated under law. The petitioners have got nothing to do with the said crime and that the impugned FIR No. 72 of 2016, pending on the file of 2nd respondent is liable to be quashed.

4. *Per contra*, the 2nd respondent filed counter-affidavit, denying all material averments made in the affidavit and mainly contended that on 18.12.2015 the father of the 3rd respondent has committed suicide and a case in Crime No. 378 of 2015 was registered. After detailed investigation, the police filed Charge Sheet before the Judicial Magistrate of I Class vide PRC No. 60 of 2019. The petitioner also involved in Crime No. 72 of 2016 under Section 365, 342, 506, 109 read with 34 of IPC, 156(3) of Cr.P.C, dated 12.06.2016 and entire investigation was completed, except arrest of the accused. Earlier this Court has granted interim stay in this matter on 08.11.2016 and further this Court by its order dated 27.07.2022 stated that *“till then, no coercive steps shall be taken against the petitioners. However, the investigation shall go on and if the charge sheet is filed, the trial shall*

go on". During the course of investigation it came to light that the case is related to financial issues pending between the complainant and the accused i.e petitioners and same is pending before the civil courts and the case is under investigation for examination to record the statements of witnesses and awaited crucial documents from the complainant and petitioners. The petitioners without co-operating the investigating agency, they filed this writ petition only to avoid legal proceedings in the said crime. Hence, requested to dismiss the same.

5. Perused the record.

6. During hearing, learned counsel for the petitioners placed on record the decision of the Hon'ble Apex Court in "**T.T.Antony v. State of Kerala and Others**"¹, wherein the Hon'ble Division Bench, held as follows:

¹ (2001) 6 SCC 181

"23. The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under CrPC. In Emperor v. Khwaja Nazir Ahmad the Privy Council spelt out the power of the investigation of the police, as follows: (AIR p.22)

"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court".

24. This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is subject to certain well- recognized limitations. One of them, is pointed out by the Privy Council, thus: (AIR p.22)

"If no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation "

7. Therefore, it is contended by the learned counsel for the petitioners that the respondents/ police have no authority to investigate the case again, as the issue already decided in criminal case in Crime No. 378 of 2015 earlier. Therefore, the decision cited supra is squarely applicable to the facts of this case and requested to quash the F.I.R.No.72 of 2016 pending on the file of 2nd respondent.

8. A perusal of the material available on record would show that the father of the 3rd respondent was died by committing suicide on 17.12.2015 and a case in Crime No. 378 of 2015 was registered by the II Town Police Station, Nalgonda. After elapse of several months, the 3rd respondent filed a complaint before the Court of IV Additional Judicial Magistrate of I Class, Kakinada against the petitioners and others, which is numbered as Crime No. 72 of 2016, which is subject matter of this writ petition. During course of enquiry, the respondents/ police came to know that there are civil disputes between the petitioner and the 3rd respondent due to financial issues and same is pending before civil courts.

9. However, the respondents/ police clearly stated that there are civil disputes pending before the petitioners and 3rd respondent due to financial issues and without iota of evidence against the petitioners that they involved in the Crime No. 72 of 2016, the respondents/ police have no authority to investigate the crime based on the complaint given by the 3rd respondent. Further the allegations made out against the petitioners are no way attracted after long elapse of several months, it is presumed that the said allegations attributed against the petitioners only to avoid payment of money to the petitioners by the 3rd respondent as contended by the learned counsel for the petitioners. Under these circumstances, the case in Crime No. 72 of 2016 registered against the petitioners is not at maintainable, in the light of instructions given by the respondent/ police.

10. Once the issue is in civil in nature, the respondents/ police have no authority to investigate the subject crime. The cause of action is ended in earlier criminal case; therefore the same cause of action is not at all applicable after elapse of several months. The respondents/ police simply submitted that the petitioners have committed an offence and that they registered the crime against them, without establishment of the involvement of the petitioners in the Crime No. 72 of 2016. Therefore, the petitioners are entitled to claim the relief as prayed for.

11. Following the decision cited supra and in view of foregoing discussion, this Writ Petition is allowed. The criminal proceedings against the petitioners/Accused in Crime No. 72 of 2016 of 2nd respondent are hereby quashed. There shall be no order as to costs.

The miscellaneous applications pending, if any, shall also stand closed.

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