

P. Kumar Vs. the Public Prosecutor, High Court of Andhra Pradesh, Hyderabad

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Court : Andhra Pradesh

Decided On : Mar-08-2002

Reported in : 2002(1)ALD(Cri)661; 2002(2)ALT(Cri)193

Judge : C.Y. Somayajulu, J.

Acts : Water Prevention and Control of Pollution Act, 1974 - Sections 24, 25, 26 43, 44 and 49; Code of Criminal Procedure (CrPC) - Sections 173(2), 190, 190(1) and 200 to 203; Indian Penal Code (IPC) - Sections 354, 448 and 506

Appeal No. : Criminal Petition No. 867 of 2002

Appellant : P. Kumar

Respondent : The Public Prosecutor, High Court of Andhra Pradesh, Hyderabad

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Govind, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. This petition is filed to quash the proceedings in S.C.No.252 of 2001 on the file of the Court of VI Additional Metropolitan Sessions Judge, Secunderabad.

2. One Smt. J.Vinodhini gave a report to the police alleging that the petitioner had on 08.07.2000 at about 8.30 p.m., accompanied by four unknown persons, criminally trespassed into her house when she was alone and abused her in filthy language and caught hold of her hand and dragged her towards him with an intention to outrage her modesty and on hearing her cries the devotees in the Church came to her rescue and on their arrival petitioner and others left her house. The said complaint was registered as Cr.No.218 of 2000 under Secs. 354, 448 and 506 I.P.C. by Chilkalaguda police station. After investigation, charge sheet was filed against the petitioner under Secs. 448, 354 and 506 I.P.C. The learned Magistrate, having taken the same on file, after appearance of the petitioner, committed him to take trial before a Court of Sessions.

3. The contention of the learned counsel for petitioner is that the learned Magistrate was in error in taking cognizance of the case without applying his mind and committing the case to Sessions without going through the record. It is his contention that there are several discrepancies in the charge sheet, remand report and the statements of the witnesses recorded under Sec. 161 Cr.P.C., and so the learned Magistrate ought not to have taken cognizance of the case mechanically and should not have committed the case to a Court of Sessions. It is his contention that a reading of F.I.R. itself shows that there are differences between the petitioner and the de-facto complainant, and since there is a great delay in giving report to the police, it is clear that the petitioner is falsely implicated in the case and so if not the entire charge sheet Sec. 354 I.P.C. mentioned in the charge sheet has to be quashed. The contention of the learned Additional Public Prosecutor is that the statements of witnesses recorded under Sec. 161 Cr.P.C. and the averments in the F.I.R. clearly show that an offence under Sec. 354 I.P.C. was committed and so there are no grounds to quash Sec. 354 I.P.C. from the charge sheet or the F.I.R.

4. Since this is a proceeding under Sec. 482 Cr.P.C., it is well known that the averments in the F.I.R. and the charge sheet, prima facie, have to be taken, to be

true and this Court has to examine whether the averments in the F.I.R. and charge sheet prima facie disclose offence[s] under any provision of Law or not. The learned counsel for the petitioner, placing strong reliance on *Medwin Hospital v. State of A.P.*¹, contended that since the Magistrate erred in mechanically taking cognizance of the case and committing the case to Sessions, it is liable to be quashed. I am unable to agree with the said contention. The said case has no application to the facts of this case. In that case the A.P. Pollution Board filed a complaint under Sec. 49 of Water Prevention and Control of Pollution Act, 1974 for offences under Secs. 43 and 44 for violation of Secs. 24, 25 and 26 of the Water Prevention and Control of Pollution Act. Since, it is a case filed other than on a police report, Chapter XV containing Sections 200 - 203 Cr.P.C applied there to. Sec. 190 Cr.P.C. lays down that a Magistrate of First Class, or any Magistrate of Second Class specially empowered in this behalf under sub-section (2), may take cognizance of any offence[a] upon receiving a complaint of facts which constitute such offence,[b] upon a police report of such facts, and[c] upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. It is thus clear that a Magistrate is empowered to take cognizance of an offence under three circumstances. In cases of private complaints only Sections 200 - 203 Cr.P.C. have to be followed by the Magistrate. In cases investigated by police, upon receipt of police report under Section 173(2) Cr.P.C., the Magistrate is entitled to take cognizance of the offence under section 190[1][b] Cr.P.C., even if the police report is to the effect that no case is made out against the accused, even without following the procedure laid down in Sections 200 and 202 Cr.P.C., as held in *M/s. India Carat Private Limited v. State of Karnataka* ². In this case, since the case is instituted on a police report and since the learned Magistrate has taken the case on file, he need not specifically record reasons for his taking cognizance of the case and issuing process to the petitioner.

5. The contention that because of the delay in issuing the F.I.R. the case is to be taken as false, cannot be accepted, because it is well known that mere delay is not a ground for quashing the complaint, or the F.I.R. It is also well known that in cases where offences are against women, the victim woman would be slow in making a report to police, because her reputation would be at stake, and therefore

would, in many cases, take considerable time to decide whether to give a police report about the incident or not. If the petitioner feels that the record produced by the police does not make out an offence triable by the Court of Session, the petitioner is at liberty to address the arguments before the Sessions Judge and seek for discharge under Sec. 227 Cr.P.C., If petitioner able to show to the Sessions Judge that there is no evidence against him for an offence under Sec. 354 I.P.C. the learned Sessions Judge would follow the procedure prescribed under Section 228 Cr.P.C., but petitioner, in the circumstances of the case, cannot seek quashing of the charge-sheet or Section 354 IPC from the Charge-sheet.

6. Therefore, I find no merits in this petition and hence the petition is dismissed.

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