

M.A. Raoof Vs. A.P. High Court, Through Its Registrar General

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Court : Andhra Pradesh

Decided On : Apr-09-2002

Reported in : 2002(1)ALD(Cri)653; 2002(3)ALT324

Judge : AR. Lakshmanan, C.J. and ;Gopalakrishna Tamada, J.

Acts : Explosives Substance Act - Sections 7 and 8; Indian Penal Code (IPC) - Sections 120B, 153A and 307; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 9(3), 9(4), 9(6), 11(1) and 268; [Constitution of India](#) - Article 226

Appeal No. : W.P. No. 5785 of 2002

Appellant : M.A. Raoof

Respondent : A.P. High Court, Through Its Registrar General

Advocate for Def. : S. Chandra Rao, S.C.

Advocate for Pet/Ap. : Mohd. Osman Shaheed, Adv.

Disposition : Petition dismissed

Judgement :

AR. Lakshmanan, C.J.

1. The writ petition was filed by one Sri M.A. Raoof represented by Sri Mohd. Osman Shaheed, Advocate for a mandamus declaring the impugned order passed

by the High Court of Andhra Pradesh vide Roc. No. 3239/E1/2000 dated 7-3-2002 as contrary to law and consequently to set aside the same.

2. It is averred in the writ petition that the police of P.S., Moghalpura, Hyderabad has registered a case against the petitioner and others Under Section 307 of Indian Penal Code read with Sections 7 and 8 of the Explosives Substance Act vide Crime No. 1 of 2000 and has laid charge-sheet against the petitioner and other accused and the case was registered S.C. No. 382 of 2000. The said case is pending on the file of Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast Cases-cum Additional Family Court, Hyderabad. It is submitted that the prosecution has already examined almost all the witnesses and the trial is about to be concluded soon. Likewise, a case was registered by the Police of Crime Investigation Department, Hyderabad Under Section 153-A read with 120-B of Indian Penal Code vide Crime No. 39 of 2000, which was subsequently registered as C.C. No. 1 of 2001 after the charge-sheet was laid. The said case is-now pending on the file of the above said Court, even though, according to the petitioner, it is triable by the Court of Magistrate of First Class. While so, the petitioner's advocate received a copy of the impugned order passed by the Registrar Vigilance of this court, which runs thus:

'In the circumstances stated by the Addl. Director General of Police, CID, A.P., Hyderabad in his letter 2nd read above, the High Court of Andhra Pradesh in exercise of the powers conferred under Sub-section (4) of Section 9 of the Code of Criminal Procedure, 1973 hereby direct the Presiding Officer of the Court of Addl. Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast case-cum-Addl. Family Court, Hyderabad, to hold court in the premises of Central Prison Cherlapally, Rangareddy District for trial of the below mentioned cases.'

3. The said order dated 7-3-2002 is challenged on the following grounds:

(a) According to the learned counsel for the petitioner, the petitioner was not given any right of audience before the impugned order is issued. His Advocate was also not consulted and no prior notice was given, even though Sub-section (6) of Section 9 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') contemplates issuance of such prior notice'.

(b) The impugned order is alleged to have been passed under Sub-section (4) of Section 9 of the Code, which reads thus:

'The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.'

(c) According to the learned counsel for the petitioner, the provision of Sub-section (4) of Section 9 of the Code is not attracted and under the said provision the impugned order cannot be passed since by virtue of the impugned order this court is fully empowered to appoint one Sessions Judge of one division as Additional Sessions Judge of another division and in such case the Additional Sessions Judge so appointed may sit for disposal of the case at such place or other place in other division as High Court directs. The impugned order is quite contrary to Sub-section (4) of Section 9 of the Code and hence the same is assailed in this writ petition on the ground that it is contrary to law and was passed in contravention of provision of Sub-section (6) of Section 9 of the Code wherein the consent of the prosecution and the accused is essentially required to be obtained.

4. Concluding his arguments, the learned counsel for the petitioner submitted that it is a fundamental right of every citizen to have access to lawfully established judicial organisation for justice and when no other remedy exists in the eye of law, he has to approach this court only invoking the jurisdiction under Article 226 of the [Constitution of India](#).

5. A counter-affidavit was filed by the respondent denying the allegations contained in the affidavit.

6. Sri S. Chandra Rao, Standing Counsel for High Court invited our attention to various averments made in the counter-affidavit and also drew our attention to the proceedings issued by the Government of Andhra Pradesh, Law (LA & J. Courts.C) Department in letter No. 20868/Cts. C2/ 2000-2, dated 5-6-2000, the proceedings issued by the Director General and inspector General of Police, Andhra Pradesh in C. NO.1214/C.12/CID/2000, dated 29-5-2000, the notification

published in the Andhra Pradesh Gazette Part-II (Extraordinary) dated 18-12-2000, the letter of the Addl. Director General of Police, Hyderabad addressed to the Principal Secretary to Government, Home Department, Hyderabad dated 13-12-2001, another letter addressed to the Registrar General, High Court of Andhra Pradesh dated 25-2-2002 and the order in Roc. No. 3239/E1/2000, dated 7-3-2002 issued by the High Court of Andhra Pradesh.

7. We have perused the entire pleadings and the documents relied on by the counsel appearing on either side.

8. A perusal of the letter dated 5-6-2000 issued by the Government of Andhra Pradesh, Law Department, addressed to the Registrar Vigilance of this Court, enclosing a copy of reference letter dated 29-5-2000, seeking considered views of the High Court in the matter so that the Government would be able to take further action in the matter. We have gone through the letter dated 29-5-2000 sent by Director General and Inspector General of Police addressed to the Secretary to Government, Legislative Affairs and Justice, A.P., Hyderabad. By the said letter, a proposal for trial of ISI cases by the Court of Addl. Metropolitan Sessions Judge, Hyderabad was sent. Paragraph-3 of the said letter needs to be reproduced for better appreciation of the case and it reads:

'In pursuance of the said ideology the accused convened secret meetings at various places from Nov. 9 and have held deliberations and conspired to commit various offences and by acquiring huge quantities of arms and ammunitions which were funded by foreign missionary by being in regular contact through e-mail and telephones. In some cases they have also resorted to commit murders to augment financial resources through their activities and during investigation of

(1) Cr.No. 172/2000 of P.S. Afzalgunj it came to light that this group is responsible for commission of the following crimes:

(2) Cr. No. 259/99 of I Town PS, Vijayawada.

(3) Cr. No. 2/2000 of Navipet PS, Nizamabad.

(4) Cr. No. 220/99 of Bodhan Town PS, Nizamabad.

(5) Cr. No. 70/2000 of Jagityal Town PS, Karimnagar.

(6) Cr. No. 21/2000 of Metapalli PS, Karimnagar.

(7) Cr. No. 195/99 of Saidabad PS (Murder of Devender).

(8) Cr. No. 31/2000 of Begumpet PS, Hyderabad City.

(9) Cr. No. 1/2000 of Moghalpura PS, Hyderabad City.

Several accused have been arrested by A.P. Police and some were also arrested by Nanded Police and lodged in various jails.'

It is further mentioned in the said letter as under:

'All the accused in the above cases are dangerous desperado militants of I.M.M.M., and the trial of these cases by a regular court is likely to take a long time and there is also every possibility of the accused being enlarged on bail in view of the delay in trial of cases.

In view of the magnitude of the crimes perpetrated by the accused and the sensation created in this State and in the country, it is absolutely necessary to ensure that these cases are disposed off on priority basis by additional court exclusively for conducting day-to-day trial so that it will have far reaching consequences on the maintenance of law and order and public safety by successful prosecution of the offender's experiments, instead of overburdening the regular courts.

In view of the peculiar facts and circumstances of the case and magnitude of the crimes perpetrated by the accused which has far reaching consequences on the public safety and also the sovereignty and integrity of the country, these cases have to be tried and disposed off expeditiously by Additional Metropolitan Sessions Court exclusively and separately to dispose off the above cases.'

9. In view of the above facts and circumstances, the Director General of Police requested the State Government to designate any one of the Additional Metropolitan Sessions Courts created for trial of Bomb Blast case or communal

offences for trial of these cases and any other case committed by the group. It was also suggested that IX Metropolitan Magistrate may be vested with the powers of jurisdiction for conducting committal proceedings in the above cases.

10. The High Court, on a consideration of the proposal sent by the Director General of Police, in exercise of powers conferred by Sub-section (3) of Section 9 of the Code authorised the court of Additional Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast case-cum-Additional Family Court, Hyderabad to exercise the jurisdiction of a Court of Sessions in the Sessions Division of Guntur, Karimnagar, Nalgonda, Nizamabad, Medak, Ranga Reddy, Krishna. Prakasam, Vijayanagaram, and West Godavari Districts and also the Metropolitan Sessions Divisions of Hyderabad and Vijayawada to try and dispose of nine ISI cases and twenty-one Deendar Anjuman Cases, as mentioned in the annexure attached thereto, arising from the above said Sessions Divisions. The said notification was published in A.P. Gazette dated 18-12-2000.

11. By the letter dated 13-12-2001 the Addl. Director General of Police, C.I.D., sent a proposal for conducting the trial of Deendar Anjuman conspiracy cases in the court hall at Central Prison, Cherlapally. It is mentioned in the said letter that the accused involved in the above cases were also involved in various offences in Karnataka, Maharashtra, Goa besides number of offences in Andhra Pradesh and in view of the security risk involved in transit while escorting the accused for production before various Courts, the Government was addressed to invoke its power Under Sections 268 of the Code of Criminal Procedure and orders were issued not to shift the accused to any other place, except in Hyderabad. It is also mentioned that since large contingent of police personnel were required for escorting in addition to vehicles for production of accused in day-to-day trial exclusively before the designated court i.e., Bomb Blast Court (Additional Metropolitan Sessions Court for trial of bomb blast case) and the trial is likely to be taken up on day-to-day basis and in view of the security risk involved in production of the accused besides providing a large contingent of police personnel and vehicles for escort duties, it is desirable in public interest and security to conduct the proceedings in the premises of the Central Prison where all facilities of a Court Hall etc., are available.

12. The Addl. Director General of Police, again by a communication dated 25-2-2002, addressed a letter to the Registrar of this court to consider the proposal and issue necessary orders for conducting the trial of the above sensational cases in the court hall in the premises of Central Prison, Cherlapally under intimation to the Addl. Director General of Police, C.I.D., Hyderabad and Director General of Prisons, Hyderabad.

13. The High Court of Andhra Pradesh by its order dated 7-3-2002, in the circumstances stated by the Addl. Director General of Police, C.I.D., A.P., Hyderabad in his letter dated 25-2-2002 in exercise of powers conferred under Sub-section (4) of Section 9 of the Code directed the Presiding Officer of the Court of Addl. Metropolitan Sessions Judge for trial of Jubilee Hills Bomb Blast Case-cum-Addl. Family Court, Hyderabad to hold court in the premises of Central Prison, Cherlapally, Rangareddy District for trial of the below mentioned cases:

'ISI-Azam Gori Cases:

- (1) Cr. No. 259/99 of I Town P.S., Vijayawada City.
- (2) Cr. No. 59/99 Navipet P.S., Nizamabad Dist.
- (3) Cr. No. 220/99 of Bodhan Town P.S., Nizamabad.
- (4) Cr. No. 21/2000 of Metpalli P.S. of Karimnagar Dist.
- (5) Cr. No. 195/99 of Saidabad P.S. (Murder of Devendar) Hyd. City.
- (6) Cr. No. 31/2000 of Begumpet P.S., Hyderabad.
- (7) Cr. No. 1/2000 of Moghalpura P.S., Hyderabad City.
- (8) Cr. No. 39/2000 of C1D P.S., Hyderabad City (Conspiracy).
- (9) Cr. No. 172/2000 of Afzalgunj P.S., Hyderabad City.

Bomb Blast Cases (Deendar Anjuman):

- (1) Cr, No. 35/2000 of CID P.S., Hyderabad City (Conspiracy case).

- (2) Cr. No. 94/2000 of Chilakapudi P.S. of Krishna District.
- (3) Cr. No. 169/2000 of Krishna Lanka P.S. of Vijayawada.
- (4) Cr. No. 207/2000 of Vikarabad P.S. Rangareddy Dist.
- (5) Cr. No. 38/2000 of Medak P.S. of Medak Dist.
- (6) Cr. No. 80/2000 of Ongole Town-II P.S., of Prakasam Dist.
- (7) Cr. No. 127/2000 of Tadepalli-gudem Town P.S. W.G. Dist.
- (8) Cr. No. 190/2000 of Kothapeta P.S. of Guntur District.
- (9) Cr. No. 78/2000 of Ananthapalii P.S. of W.G. Dist.
- (10) Cr. No. 98/2000 of Nuzvid Rural P.S. of Krishna District.
- (11) Cr. No. 176/2000 of Ibrahimpatnam P.S. of Krishna Dist.
- (12) Cr. No. 58/2000 of Kuchipudi P.S. of Krishna Dist.
- (13) Cr. No. 8/2000 of Tiruvuru P.S. of Krishna District.
- (14) Cr. No. 141/95 of L & O P.S., Machavaram of Vijayawada City.
- (15) Cr. No. 172/95 of L & O P.S., S.N. Puram, Vijayawada City.
- (16) Cr. No. 140/2000 of Abids P.S, of Hyderabad.
- (17) Cr. No. 64/2000 of Bogapuram P.S. of Vizianagaram Dist.
- (18) Cr. No. 37/95 of Tadleklapudi P.S. of W.G. Dist.
- (19) Cr. No. 158/2000 of Humayunnagar P.S. of Hyderabad City.
- (20) Cr. No. 17/2000 of Huzurnagar P.S. of Nalgonda District.
- (21) Cr. No. 80/2000 of Humanyun Nagar P.S. of Hyderabad City.'

14. As already noticed, a Gazette Notification was also published in the A.P. Gazette on 18-12-2000. We have already extracted in the paragraphs above the averments made by the learned counsel for the petitioner. In our opinion, the contention raised by the learned counsel for the petitioner has no merits for the reasons stated infra.

15. We have already referred to various communications sent by the Director General of Police and the Addl. Director General of Police, C.I.D., to the Government and also to this Court and the consequent issuance of the Gazette notification by the High Court of Andhra Pradesh. The High Court for the above purpose issued a notification under Sub-section (3) of Section 9 of the Code authorising the Court of Additional Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court, Hyderabad to exercise the jurisdiction of a Court of Sessions in the Sessions Division of Guntur, Karimnagar, Nalgonda, Nizamabad, Medak, Ranga Reddy, Krishna, Prakasm, Vijayanagaram and West Godavari and also the Metropolitan Sessions Divisions of Hyderabad and Vijayawada to try and dispose of the nine I.S.I, cases and twenty-one Deendar Anjuman cases as mentioned in the annexure attached thereto arising from the above said Sessions Divisions. The Government also issued a separate notification under proviso to Sub-section (1) of Section 11 read with Clause (j) of Section 2 of the Code designating the Court of IX Metropolitan Magistrate, Hyderabad as a Court of Special Judicial Magistrate of First Class to commit all the said nine ISI and twenty-one Deendar Anjuman cases as mentioned in the annexure arising from the Sessions Divisions of Guntur, Karimnagar, Nalgonda, Nizamabad, Medak, Rangareddy, Krishna, Prakasm and West Godavari and also the Metropolitan Sessions Divisions of Hyderabad and Vijayawada to the Court of Addl. Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast Case-cum-Addl. Family Court, Hyderabad and the aforementioned Sessions Divisions are specified as the local areas for the said Court for the purpose of exercising its powers under the Code.

16. We have already referred to the communication dated 13-12-2001 by which the Addl. Director General of Police, C.I.D., A.P., Hyderabad requested the Government for transfer of those cases for the reasons mentioned in the said

communication in view of the security risk involved in transit while escorting the accused for production before various Courts. Considering the desirability to conduct the proceedings in the premises of Central Prison, Cherlapally in view of security risk and in public interest, the High Court after examining the entire proceedings and after satisfying itself issued order dated 7-3-2002, exercising the powers conferred under Sub-section (4) of Section 9 of the Code, directing the Presiding Officer of the Court of Addl. Metropolitan Sessions Judge for trial Jubilee Hills Car Bomb Blast Case-cum-Addl. Family Court, Hyderabad to hold the Court in the premises of Central Prison, Cherlapally for the trial of the said nine ISI cases and twenty-one Deendar Anjuman cases.

17. We have already extracted Subsection (4) of Section 9 of the Code in paragraph supra. Reading of the said provision would clearly reveal that this Court is empowered to appoint the Sessions Judge of one Sessions Division to be Sessions Judge of another Division and in such case the Sessions Judge so appointed may sit for disposal of the cases at such place or places in other Sessions Division as the High Court may direct. Crime No. 1 of 2000 of P.S., Moghalpura registered against the petitioner and others Under Section 307 of Indian Penal Code read with Sections 7 and 8 of Explosives Substances Act is also to be tried by a Court of Sessions and not by a Court of Judicial First Class Magistrate as averred by the petitioner.

18. Learned counsel for the petitioner submitted that the proceeding, which is impugned in the writ petition, is bad in law since no prior notice was issued to the affected party. We have perused subsections (3) and (4) of Section 9 of the Code. It is nowhere contemplated either in subsection (3) or Sub-section (4) of Section 9 for issuance of notice to the accused or their counsel for obtaining their consent before issuance of the notification. However, subsection (6) of Section 9 of the Code contemplates obtaining of consent of the parties only where the Court of Sessions intends to hold its sittings at any place other than the place or places notified by the High Court. In the instant case, there is no such proposal to hold sittings in any other place or places other than the one notified by the High Court. Therefore, the contention of the learned counsel for the petitioner that consent of the parties has to be obtained has no merit.

19. The notification issued by this court under Sub-sections (3) and (4) of Section 9 of the Code, in our opinion, is in accordance with law and not in contravention of subsection (6) of Section 9 of the Code. The impugned notification is also issued in the interest of justice and in view of the circumstances explained by the Addl. Director General of Police, C.I.D., and also in view of the orders issued by the Government of Andhra Pradesh Under Sections 268 of the Code. In our opinion, the High Court has rightly given its consent for the request made by the Director General of Police and the Addl. Director General of Police in their communications dated 29-5-2000, 13-12-2001 and 25-2-2002 in view of the peculiar facts and circumstances of the case and the magnitude of crimes perpetrated by the accused, which have far-reaching consequences on the public safety and also sovereignty and integrity of the country. Therefore, we are of the opinion that these cases have to be tried and disposed of expeditiously by the Officer named in the Gazette notification. In view of the magnitude of the crimes perpetrated by the accused and the sensation created in the State and the country, it is also absolutely necessary to ensure that these cases are disposed of on priority basis by the Court exclusively by conducting day-today trial so that it will have far-reaching consequences on the maintenance of law and order and public safety. We make it clear that it is always open to the accused to engage any Advocate of their choice. If no Advocate is coming forward to appear on their behalf, it is always open to them to approach the Legal Services Authority of the State of Andhra Pradesh for any legal assistance.

20. The writ petition is liable to be dismissed on the ground that no litigant can claim fundamental right to have his case to be tried by a particular court. It is for the State and the High Court to consider all aspects of the matter and take policy, decision in public interest. Since, in the instant case, a policy decision is taken by the Government and accepted by the High Court in view of the magnitude of the crimes, we are of the opinion that the petitioner has no locus standi to file the writ petition. The writ petition fails and is dismissed. Ten days time is given to the petitioner and the persons similarly placed to engage lawyers of their choice. The Court of Sessions may commence trial after ten days i.e., from 22-4-2002 onwards. No costs.

