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Court : Andhra Pradesh

Decided On : Jul-23-2012

Judge : Samudrala Govindarajulu

Appeal No. : Crl.P.No. 5293 of 2012

Appellant : Akula Bhoomaiah and Another

Respondent : The State of A.P., Rep. by Public Prosecutor, High Court of A.P. and Others

Judgement :

(Prayers: Petition Under Section 482 of Cr.P.C of the Crl.P.C praying that in the circumstances stated in the Memorandum of grounds filed therewith, the High Court may be pleased to quash the proceedings of Crime No. 47 of 2012 of P.S., Khanapur, Warangal District, against the petitioners in the interest of justice.

The Petition coming on for hearing, upon perusing the Memorandum of grounds filed in support thereof and upon hearing the arguments of Sir Balla Ravindranath and Savitri Devi, Advocates for the petitioners and of the Additional Public Prosecutor on behalf of the Respondents.)

The petitioners 1 and 2/A.9 and A.10 are accused of offences punishable under Sections 16, 17, 18, 18-B, 19, 20, 38, 39 and 40 of the Unlawful Activities

(Prevention) Act, 1967 (in short, the Act) and Section 120B IPC along with 8 others. It is alleged that when Inspector of Police, Gudur Circle on 09.06.2012 at about 5:30 hours was conducting vehicle checking along with other Police Officers and personnel near Petrol Bunk at Khanapur outskirts in view of Parkal Bye-elections, he received phone call from Inspector of Police, Narsampet Circle informing about a maroon colour Qualis Vehicle bearing No.AP12C 4374 coming towards Gudur without stopping at Narsampet inspite of a signal from the police to stop the vehicle and that he alerted the staff to stop the said vehicle in front of Indian Oil Petrol Bunk and that after it was stopped, the vehicle was checked and that A.1 to A.7 were occupying the vehicle and that when they were interrogated in the presence of two mediators and Tahsildar of Khanapur, they revealed their identities and gave their separate statements. It is alleged that A.1 to A.7 are from Maoist party which was banned under Section 35(1) of the Act. It is further alleged that A.6, in her statement in the presence of mediators, stated that she has contacts with and assistance of A.8 to A.10 in attracting youth and recruiting them into Maoist party. A.8 is described as Ex State Committee Member of Maoist party and President of 'Amarula Bandhumithrula Committee' and A.9 and A.10 are described as from Telangana Praja Front, which is a Maoist frontal organization. After taking A.1 to A.7 into custody, K.Rajasekhara Raju, Inspector of Police, Gudur Circle gave written report to the Station House Officer of Khanapur Police Station and produced A.1 to A.7 in the Police Station along with panchanama and seized articles. Thereupon, V.Rajender, Head Constable registered written report of Inspector of Police, Gudur Circle as case in Cr.No.47 of 2012 and issued F.I.R. A.9 and A.10 filed this Criminal Petition under Section 482 Cr.P.C. to quash the proceedings in the said Cr.No.47 of 2012 of Khanapur Police Station of Warangal District.

2. It is contended by Senior Counsel appearing for the petitioners that the petitioners are social and cultural activists fighting for separate Telangana Statehood and are working in Telangana Praja Front. According to the prosecution/Police, Telangana Praja Front is a Maoist frontal organization. It is the prosecution case that in exercise of powers conferred by Section 35(1) of the Act, the Government of India in its Gazettee No.954 Extraordinary dated 22.06.2009 published S.O. 1525 (E) making an order adding the Communist Party of India

(Maoist) and all its formations and front organizations as terrorist organizations in the Schedule to the said Act as serial number 34.

3. It is pointed that Section 43 of the Act prescribes that a Police Officer below the rank of Deputy Superintendent of Police/Assistant Commissioner of Police is not competent to investigate any offences under the Act. Section 43 of the Act prescribes rank of an Investigating Officer as Deputy Superintendent of Police/Assistant Commissioner of Police for the purpose of investigation of any offence punishable under Chapter IV or Chapter VI of the Act. Chapter IV consists of Sections 15 to 23 and Chapter VI consists of Sections 35 to 40. The prescription under Section 43 of the Act is not applicable to offences and penalties under Chapter III consisting of Sections 10 to 14. All the offences in the present crime occur under Chapters IV and VI only.

4. Section 43 prescribes rank of the Investigating Officer. Investigation starts after registration of the crime under Section 154 Cr.P.C. Sections 155 to 176 Cr.P.C. occurring in Chapter XII of the Code of Criminal Procedure, 1973 deal with investigation and powers of the Police Officers to investigate into a crime. In the case on hand, Inspector of Police, Gudur Circle during routine vehicle check, detected the offence and gave First Information Report to the Station House Officer, who is Head Constable in Khanapur Police Station. Neither Inspector of Police, Gudur Circle nor Head Constable in Khanapur Police Station took up any investigation in this case. They are only in the nature of first informant and the person who registered the said First Information Report in the Police Station. It is only after registration of the First Information Report, the question of taking up further steps by way of investigation arises. Therefore, it cannot be said that the Inspector of Police or the Head Constable is an Investigating Officer in this crime and consequently registration of this crime is illegal. In my opinion, registration of this crime does not offend Section 43 of the Act.

5. Secondly, Section 45 of the Act contemplates requirement of previous sanction of the Central Government or the State Government as the case may be for taking cognizance of any offence under Chapter IV and Chapter VI by any Court. Section 45 operates at the stage of taking cognizance of the offence or offences under the

Act under Section 190(1)(b) Cr.P.C. when a final report is filed by the Police before the Magistrate under Section 173(2) Cr.P.C. after completion of investigation. For registration of crime under the Act, Section 45 of the Act has no application.

6. It is vehemently contended by Senior Counsel for the petitioners that First Information Report given by Inspector of Police, Gudur Circle is based on panchanama dated 09.06.2012 which contains the alleged confessional statements of A.1 to A.7 and that, that part of the statement given by A.6 relating to the alleged activity of the petitioners/A.9 and A.10, is inadmissible under Sections 25 and 26 of the Indian Evidence Act, 1872 as no part of the said statement is saved by Section 27 of the Evidence Act. Sections 25 and 26 of the Evidence Act read as follows:

'25. Confession to police officer not to be proved: No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him: No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.'

7. The above sections deal with proof of evidence of confession. They make such confession ineligible for proof against a person accused of any offence. The question of proving a statement, be it a confession or otherwise, arises during the course of trial before a Court. In the present case, the case is yet to reach the precincts of a Court and it is pending investigation with the police after registration of the crime. During investigation, the Police Officer simply collects pieces of evidence for placing the same before the Court during trial. It is only during trial, the Court where the trial goes on decides whether a particular piece of evidence is admissible or relevant or capable of being proved. Until the case reaches the stage of trial in a Criminal Court, applicability of Sections 25 and 26 of the Evidence Act may not arise. It is no doubt true, trial includes the stage of framing of charges against the accused or discharging an accused who is charge sheeted.

8. In **Nisar Ali v The State of U.P., (AIR 1957 Supreme Court 366 (1))** the Supreme Court considered value of a First Information Report during trial and held as follows:

‘A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under S.157, Evidence Act, or to contradict it under S.145 of the Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence.’

When a First Information Report is not a substantive piece of evidence, the question of proving the same for being used as evidence against the maker, say in this case, one of the accused does not arise at all. During the course of trial, the prosecution is not going to examine an accused person as a prosecution witness, in order to use his statement contained in First Information Report to contradict or to corroborate his/her evidence. After all, a First Information Report is only useful for the purpose of putting the Criminal Law missionary into motion on commission of an offence.

9. In **Aghnoo Nagesia v State of Bihar (AIR 1966 Supreme Court 119)** also the Supreme Court dealt with value of a First Information Report during trial and more particularly if such First Information Report offends Section 25 of the Evidence Act. It was held therein:

“10. Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under S.157 of the Evidence Act or to contradict him under S.145 of the Act, if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under S.8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under S.21 of the Evidence Act and is relevant, see *Faddi v. State of Madhya Pradesh*, CrI.Appeal No.210 of 1963, dated 24-1-1964: (AIR 1964 SC 1850), explaining *Nisar Ali v. State of U.P.*, (S) AIR 1957 SC 366 and *Dal Singh v. King Emperor*, 44 Ind App 137: (AIR 1917 PC 25). But a

confessional first information report to a police Officer cannot be used against the accused in view of S.25 of the Evidence Act.

18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S.25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S.25 is lifted by S.27.”

10. The position that a confessional statement of an accused person given to a Police Officer cannot be proved in evidence against the accused, will not make the First Information Report itself illegal. There is no embargo under Section 154 Cr.P.C. for taking a confessional statement of an accused person as First Information Report, in case it is in the nature covered by Sections 25 or 26 of the Evidence Act. A confessional statement of an accused person given to a Police Officer is not totally prohibited for all purposes. Sections 25 and 26 of the Evidence Act lay a ban on such statements for being proved against the maker who is an accused person. Such statements of an accused person are valid pieces during investigation in case they afford clues or leads for further investigation during the course of which valid, legal and provable evidence under the provisions of the Evidence Act may be collected by the Investigating Officer. Such confessional statements though not provable against the accused during trial, will not invalidate registration of the case under Section 154 Cr.P.C. and further investigation made in pursuance of it under Sections 155 to 176 Cr.P.C. under Chapter XII. Therefore, F.I.R. in Cr.No.47 of 2012 of Khanapur Police Station of Warangal District is not liable to be quashed insofar as the petitioners 1 and 2/A.9 and A.10 are concerned in exercise of power under Section 482 Cr.P.C.

11. It is finally contended for the petitioners that under the Act, the accused are not entitled to approach the Sessions Court or this Court for anticipatory bail and that

therefore this Court may consider granting stay of arrest of the petitioners/A.9 and A.10 in exercise of the inherent power of this Court under Section 482 Cr.P.C. Having regard to the allegations against the petitioners 1 and 2/A.9 and A.10, as persons who collect party funds for Maoist party and who recruit people into Maoist party, this Court is of the opinion that this Court may not invoke its inherent power under Section 482 Cr.P.C. to prevent the Police or the Investigating Officer from taking the petitioners into custody during the course of investigation.

12. In the result, the Criminal Petition is dismissed.

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