

**\*THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY**

**+Criminal Revision Case No.401 of 2013**

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% 05-03-2013

# Injeti Venkata Rami Reddy

... Petitioner

Vs.

\$ State of A.P., rep. by  
it's Public Prosecutor, High Court of A.P.

... Respondent

! Counsel for the petitioner : Sri T.Pradyumna Kumar Reddy

Counsel for 2<sup>nd</sup> Respondent: Additional Public Prosecutor

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> Head Note:

? Cases referred:

(2007) 12 Supreme Court Cases 1  
2012 (1) ALT (Cr.) 506 (SC)  
AIR 1980 SC 1883

**THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY**

**Criminal Revision Case No.401 of 2013**

**ORDER:**

This Criminal Revision Case is directed against the order dated 15-02-2013 passed in P.R.C.No.7 of 2013 whereby and whereunder, the learned Magistrate took cognizance of the offences punishable under Sections 147, 148, 452, 302 and 307 read with 149 IPC against A-1 to A-19 including the petitioner, who has been arrayed as A-3 and whose name has been deleted in the array of the accused while filing charge sheet in Crime No.21 of 2012 of Allagadda Town P.S.

2. Facts, in brief, are:-

Injeti Venkata Raghava Reddy @ Raghava Reddy and Injeti Krishna Reddy were staunch followers of Bhuma Nagi Reddy, Ex. Member of Parliament of Nandyal Parliamentary constituency. Both of them were trying to establish supremacy over the other in the village-Chintakunta. On 24-02-2012 at about 9.30 P.M., Injeti Krishna Reddy (hereinafter referred to as `D2`) was chitchatting with his wife-Govindamma (hereinafter referred to as `D1`), his son-Injeti Mallikharjuna Reddy (hereinafter referred to as `D4`) and Pakir Nadipi Mabu @ Dubba (hereinafter referred to as `D3`) in his house. A-1 to A-19 formed into an unlawful assembly, armed with deadly weapons with the common object of doing away the life of D2-Krishna Reddy and his associates. They trespassed into the house of D2 by pushing main gate and attacked D1 to D4 and Lw-8-Sathugari Rama Subba Reddy.

D1 to D4 succumbed to the injuries at the scene of offence. More precisely; A-2, A-9 and A-6 dealt blows on D1-Govindamma; A-3, A-4, A-8, A-10, A-14 and A-15 dealt blows with deadly weapons on D2-Krishna Reddy; A-1, A-6, A-16 dealt blows with deadly weapons on D3-Pakkir Nadipi Mabu @ Dubba; A-4, A-7, A-10, A-11, A-12, A-13, A-17, A-18 dealt blows on D4-Mallikharjuna Reddy, and A-2, A-3 and A-19 dealt blows with deadly weapons on Lw-8-Sathugari Rama Subba Reddy and caused bleeding injuries to him. Apart from the injured, LW-1-Shaik Chand Basha, LW-2-Ketireddy Jaya Rami Reddy, LW-3-Annem Sunith, LW-4-Khammam Naga Sulochana, LW-5-Suraboina Sujatha, LW-6-Boya Kondaiah and LW-7-Madiga Bala Hussaini witnessed the incident. LW-1-Shaik Chand Basha presented a report on 25-02-2012 at about 0015 hours before the Station House Officer, Allagadda P.S., who registered a case in Crime No.21 of 2012 for the offences under Sections 147, 148, 452, 302, 307 read with 149 IPC and issued F.I.R. During the course of investigation, A-3-Injeti Venkatrami Reddy, A-5-Kristipadu Pedda Dasthagiri Reddy @ Dasthagiri Reddy, A-7-Kurduru Venkatrami Reddy pleaded alibi. The Sub Divisional Police Officer, Dhone examined the alibi pleaded by A-3, A-5 and A-7 and accepted the alibi pleaded by A-3-Injeti Venkatrami Reddy while rejecting the alibi pleaded by A-5-Kristipadu Pedda Dasthagiri Reddy @ Dasthagiri Reddy and A-7-Kurduru Venkatrami Reddy. The Superintendent of Police, Kurnool issued orders to delete the name of A-3-Injeti Venkatrami Reddy from the array of the accused. For better appreciation, I may refer the text of the proceedings issued by the Superintendent of Police, Kurnool in Rc.No.C1/11520/2012, Dated 8-8-2012 and it is thus:-

“

As per the orders of Dy. Inspr.Genl. of Police, Kurnool Range, Kurnool in the reference 1<sup>st</sup> cited, the Sub-Divisional Police Officer, Dhone .... took up investigation in Cr.No.21/2012 u/s 147, 148, 452,

302, 307 r/w 149 IPC of Allagadda Town P.S.

The S.D.P.O Dhone in his enquiry revealed that according to the versions of witnesses examined in the enquiry and documentary evidence collected by him the Injeti Venkatrami Reddy (A-3) in Cr.No.21/2012 u/s 147, 148, 452, 302, 307 r/w 149 IPC of Allagadda Town P.S .... was not at all present at P.Chintakunta village on 24-02-2012 at 10.45 PM, he was present at Chinnakomerla village of Mylavaram Mandal, YSR Kadapa Dist. to attend the marriage of Chinatryapalli Lakshmi who is the daughter of his cousin and he was not present at scene of offence on 24-02-2012 at P.Chinthakunta village. The witnesses who are very much known to A-3 categorically stated that A-3 was very much present Chinnakomerla village of Mylavaram Mandal, YSR Kadapa District.

In the above circumstances explained by the Sub-Divl. Police Officer, Dhone permission is accorded to delete the name of accused (A-3) Injeti Venkatrami Reddy aged 57 years s/o Injeti Venkata Subba Reddy of P.Chinthakunta village, Allagadda Mandal from the list of Accused in Cr.No.21/2012 u/s 147, 148, 452, 302, 307 r/w 149 IPC of Allagadda Town P.S”.

3. Pursuant to the proceedings issued by the Superintendent of Police, Kurnool; the Sub-Divisional Police Officer, Dhone, deleted A-3- Injeti Venkatrami Reddy from the array of the accused and filed charge sheet in Crime No.21 of 2012 of Allagadda Town P.S. in the Court of the Judicial First Class Magistrate, Allagadda against A1, A2 and A-4 to A-19. The learned Magistrate issued notice to the *de facto* complainant with regard to deletion of A-3 Injeti Venkatrami Reddy from the array of the accused. The *de facto* complainant appeared before the Judicial First Class Magistrate, Allagadda and placed on record his objections to the charge sheet filed by the Sub Divisional Police Officer with regard to deletion of A-3- Injeti Venkatrami Reddy from the array of the accused. The learned Magistrate considered the charge sheet and the material documents enclosed to it as well as the objections placed on record by the *de facto* complainant and proceeded to take cognizance of the case against A-1 to A-19 including the petitioner whose name has been deleted from the array of the accused in the charge sheet, for the offences u/s 147, 148, 452,

302, 307 r/w 149 IPC, by order dated 15-02-2013. For completion of narration of facts, the relevant portion of the order dated 15-02-2013 needs to be noted and it is thus:-

“In the circumstances of the case and in the light of the contents of the FIR, the statements of LWS.1 to 4 given to the Investigating Officer under Section 161(3) Cr.P.C prima facie shows there is sufficient material to proceed against the accused No.3 also.

On considering the totality of the facts and circumstances of the case, cognizance of the offence U/s.147,148,452,302,307 r/w 149 of I.P.C is taken against the accused Nos.1 to 19 whose names are arrayed in the charge sheet including the accused No.3 Injeti Venkata Rami Reddy whose name deleted. Issue summons to accused No.11 as he is on bail. The accused No.1, 2, 4 to 10, 12 to 19 are in Judicial Custody. Hence, the case posted to 18-2-2013. Issue non bailable warrant against accused No.3.Injeti Venkata Rami Reddy. Call on 18-2-2013”.

The said order is assailed in this Criminal Revision Case by A-3-Injeti Venkata Rami Reddy.

4. Heard *Sri T.Pradyumna Kumar Reddy*, learned counsel appearing for the petitioner and learned Additional Public Prosecutor appearing for the 2<sup>nd</sup> respondent-State.

5. It is contended by the learned counsel appearing for the petitioner that taking cognizance of the case against the petitioner ignoring the report submitted by the Sub Divisional Police Officer on the alibi pleaded by the petitioner/A-3 cannot be sustained. He would further contend that had the learned Magistrate referred the report submitted by the S.D.P.O., on the plea of alibi taken by the petitioner/A-3, he would not have taken cognizance of the case against the petitioner/A-3. A contention has been advanced by the learned counsel that the objections placed on record by the *de facto* complainant amount to a complaint, in which case, the Magistrate has to follow the procedure contemplated under Section 200 Cr.P.C. His next contention is that

the learned Magistrate ought not to have issued N.B.W straightaway without exhausting the course of summon or bailable warrant. In a way, the contention of the learned counsel is that the power of issuing warrant being discretionary must be exercised judiciously with extreme care and caution. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. In support of his contentions, reliance has been placed on the judgment of Supreme Court in **Inder Mohan Goswami v. State of Uttaranchal**<sup>[1]</sup> and **Vasanti Duvey v. State of Madhya Pradesh**<sup>[2]</sup>. In **Inder Mohan Goswami's** case (1 supra), the Supreme Court issued certain guidelines as to when N.B.W should be issued. Paragraphs (53) and (54) of the cited judgment needs to be noted and it is thus:-

“53. Non bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive”.

6. In **Vasanti Duvey's** case (2 supra), the Supreme Court held that

on closure report from police pursuant to reference u/s 156(3) Cr.P.C., the Magistrate cannot direct the police to file charge sheet.

7. It is well settled that when the police submitted a final report of investigation of a case, the Magistrate may take cognizance or direct further investigation. This legal position has been time and again clarified by the Supreme Court in several pronouncements, viz., in the

matter of **Bains v. State** <sup>[3]</sup>, wherein it has been held as hereunder:-

“1. When a Magistrate receives a complaint, he may, instead of taking cognizance at once under Sec.190(1)(a) direct a police investigation under Section 156(3) ante;

2. Where, after completion of the investigation, the police sends an adverse report under Section 173(1), the Magistrate may take any of the following steps:

“i. If he agrees with the police report, and finds that there is no sufficient ground for proceeding further, he may drop the proceedings and dismiss the complaint.

ii. He may not agree with the police report and may take cognizance of the offence on the basis of the original complaint, under Section 190(1)(a) and proceed to examine the complainant under Section 200.

iii. Even if he disagrees with the police report, he may either take cognizance at once upon the complaint, direct an enquiry under Section 202 and after such enquiry take action under Section 203. However, when the police submits a final report or closure report in regard to a case which has been lodged by the informant or complainant, the magistrate cannot direct the police to straightway submit the charge sheet as was the view expressed in the matter of *Abhinandan Jha* [AIR 1968 SC 117] which was relied upon in the matter of *Ram Naresh Prasad* [(2009)11 SCC 299].

8. Coming to the facts of the case on hand, the Sub Divisional Police Officer, accepted the alibi pleaded by the petitioner and deleted the name of the petitioner from the array of the accused after obtaining necessary permission from the Superintendent of Police, Kurnool. The learned Magistrate, on going through the charge sheet and the

documents enclosed to it, more precisely, the 161 Cr.P.C statements of PWs. 1 to 4, proceeded to take cognizance of the offences u/s 147, 148, 452, 302, 307 r/w 149 IPC against A-1 to A-19 including the petitioner, who has been arrayed as A-3. Had the learned Magistrate treated the objections placed on record by the *de facto* complainant as complaint petition, necessarily the procedure contemplated under Section 200 Cr.P.C is required to be followed. The learned Magistrate has not treated the objections placed on record by the *de facto* complainant as complaint petition. The main basis for taking cognizance of the offences is based on material gathered by the police during the course of investigation, more precisely the statements of witnesses recorded during the course of investigation. Much emphasis has been laid by the learned Magistrate on the 161 Cr.P.C statements of LWs.1 to 4. It is not the case of the petitioner that his name has not been spoken out by L.Ws 1 to 4. Therefore, the learned Magistrate is justified in taking cognizance of the case against the petitioner along with other accused. There is no flaw in the order impugned in the revision warranting interference of this Court in exercise of powers under Sections 397 and 401 of Cr.P.C. It is required to be noted that the petitioner was very much accessible to the Investigating Officer as he pleaded alibi and placed on record material to substantiate his plea. It is not the case of the prosecution that the petitioner avoided the investigating officer during the investigation of the case. In these circumstances, the learned Magistrate ought not to have issued N.B.W straightaway. Therefore, I am inclined to modify the warrant issued against the petitioner from Non Bailable to Bailable.

9. Subject to the above observation, this Criminal Revision Case is

dismissed at the stage of admission.

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**B.SESHASAYANA REDDY, J**

Dt.05-03-2013

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[\[1\]](#) (2007) 12 Supreme Court Cases 1

[\[2\]](#) 2012(1) ALT (Cr.) 506 (SC)

[\[3\]](#) AIR 1980 SC 1883