

Andhra High Court

Namathoti Sankaramma vs State Of A.P. And Ors. on 15 September, 2000

Equivalent citations: 2000 (2) ALD Cri 588, 2001 (1) ALT Cri 17, 2000 CriLJ 4831

Author: V Rao

Bench: V Rao

ORDER Vaman Rao, J.

1. Heard both sides.

2. In this criminal petition, the docket order passed by the learned Sessions Judge dt. 29-5-2000 in Cri. P. No. 178 of 2000 filed under Section 5 of the Limitation Act under which the application for condoning the delay in presenting criminal revision petition filed by the complainant-petitioner herein is said to have been dismissed is assailed.

3. It may be mentioned at the out set that though the learned Sessions Judge is purported to have passed an order under Section 5 of the Limitation Act, the concluding portion of the order would suggest that: he proceeded as if he has condoned the delay in filing the revision petition and made his observations and orders on the merits of the case. This is obvious from the concluding part of his order, which is extracted below Further by virtue of Section 210(2) of Cr.P.C. both the matters can be clubbed together and tried together treating as if both the cases are instituted on a police report.'

4. Under these circumstances, I treat the order of the learned Sessions Judge as having been passed on the merits of the matter after condoning the delay in filing the application before him. At any rate I am inclined to condone the delay under the circumstances stated by the petitioner.

Further what has been placed before the Court is a serious legal question having vital bearing on the trajectory of the Sessions Case committed by the learned Judicial First Class Magistrate, Venkatagiri in P.R.C. No. 5 of 1999 and P.R.C. No. 7 of 1999 as such it is necessary to dispose of the matter on merits.

5. The quint essential facts as glean from the committal order passed by the learned Magistrate are as follows :

The incident which occurred on 24-2-1995, in which the death of Namathoti Ratnam came to light at about 5.30 a.m. on that day. The deceased, who was a dummy candidate of the Congress Party for the post of Zilla Parishad Territorial Constituency, came to be projected as official candidate of the party in view of the rejection of the nomination of the official candidate. The accused are said to have brought pressure on him to withdraw from the context against the candidate on behalf of the Telugu Desam Party. The accused threatened the deceased with dire consequences in case he failed to abide by their demand. Alternatively, they are said to have offered him inducements. Undaunted by the inducements or threats, the deceased is said to have decided to go ahead with his contest and filed his "B" form on behalf of the congress party with the concerned election officer. Ganta Poliah, A7 is alleged to have gone to the deceased on 23-3-1995 and he was with him till 9.30 p.m. for attempting admitting to persuade his withdrawal. The said Ganta Poliah went to the deceased's

house on the next day morning i.e. 24-2-1995 at about 5.30 a.m. and woke up the son of the deceased, and enquired about his father. When they came out they found the dead body of the deceased having to a neem tree by the side of his house. On a report from the wife of the deceased, a case in Crime No. 19 of 1995 was registered at Dakkli police station for offences under Sections 302 and 209 of IPC. After investigation, the charge-sheet was filed by the police for the offences under Sections 448, 306 and 506 of IPC. This charge-sheet was registered as P.R.C. No. 7 of 1997 on the file of the learned Magistrate, Verikatagiri.

6. In the meanwhile, as the petitioner-complainant was not satisfied with the investigation by the police, she filed a private complaint in respect of the same incident which was registered as P.R.C. No. 5 of 1997 on the file of the same Magistrate. The learned Magistrate has taken cognizance of this complaint under Section 302 of IPC after examining the complainant and her witnesses as stated in the committal order.

7. While both the P.R.Cs came up for consideration for committal, the learned Judicial First Class Magistrate passed orders on 5-1-1999 in P.R.C. No. 7 of 1999 clubbing P.R.C. No. 5 of 1997 with P.R.C. No. 7 of 1997 and treated P.R.C. No. 5 of 1997 as merged with P.R.C. No. 7 of 1997 by virtue of provision under Section 210 of Cr.P.C. without giving any notice to the complainant in P.R.C. 5 of 1997. Ultimately, he committed the case in P.R.C. No. 7 of 1997.

8. The learned counsel for the petitioner contends that the merger of the two P.R.Cs. and committing the case only on the basis of the charge-sheet in P.R.C. No. 7 of 1997 is illegal and contrary to the provisions of Section 210 of Cr.P.C. It is further contended that when this was brought to the notice of the learned Sessions Judge this aspect was not examined and the revision petition questioning the committal proceedings was rejected without any examination.

9. From the committal orders, it would appear that the Magistrate failed to examine the provisions of Section 210 of Cr.P.C. before passing his order of merging the complaint case P.R.C. No. 5 of 1997 with the case in P.R.C. No. 7 of 1997 registered on the basis of the police report. Similarly, the learned Sessions Judge, when these matters were brought to his notice summarily rejected the objections justifying it as per the provisions under Section 210 of Cr.P.C.

10. To appreciate the question involved, it appears apposite to extract Section 210 of Cr.P.C.

210. PROCEDURE TO BE FOLLOWED WHEN THERE IS A COMPLAINT CASE AND POLICE INVESTIGATION IN RESPECT OF THE SAME OFFENCE :

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

11. In this case, it would appear from the bare facts as gleaned from the committal order of the learned Magistrate that when enquiry in the complaint case filed by the petitioner herein which was registered as P.R.C. No. 5 of 1997 was under way, an investigation by the police was in progress in relation to the same incident about which the complaint case was filed. That being so, Sub-section (1) of Section 210 of Cr.P.C. contemplates that when the enquiry or trial in the complaint case is under way, if it is brought to the notice of the Court that an investigation with the police is in progress in respect of the same offence or incident, which is the subject matter of the enquiry or trial in the complaint case, the Magistrate shall stay the proceedings of such enquiry or trial and call for a report on the matter from the police officer conducting investigation. However, the record in this case does not show, in fact, as to on what date the complaint was filed and on what date the FIR with the police was registered. It is obvious as seen from the committal order that the complaint case was registered as P.R.C. No. 5 of 1997 and the report of the police was obviously filed subsequently which was registered as P.R.C. No. 7 of 1997. But, however, it is not apparent from this record whether the pendency of investigation with the police in respect of the same incident was brought to the notice of the Court and enquiry proceedings in P.R.C. No. 5 of 1997 were stayed or not.

12. However, it would appear that a report under Section 173 of Cr.P.C. was filed by the police for the offences under Sections 448, 506 and 306 on the basis of the first information report registered by them whereas the Magistrate has taken cognizance of offences under Sections 302 read with 109 of IPC on the basis of the complaint in respect of the same incident. It is also apparent that in the police report on which P.R.C. No. 7 of 1997 was registered. A1 to A6 are arrayed as accused. In the private complaint i.e. P.R.C. No. 5 of 1997, apart from the accused in the police report, the complaint also included another person as accused No. 7, who was shown as a witness in the charge sheet.

13. Sub-section (1) of Section 210 of Cr.P.C. is designed to ensure that the enquiry or trial in the case instituted on the basis of a complaint and enquiry or trial on the basis of a police report in respect of the same incident do not proceed tangentially but proceed in tandem. To enable the Magistrate to monitor the enquiry or trial under these two different streams to ensure simultaneously such enquiry or trial, Sub-section (1) of Section 210 of Cr.P.C. provides that when the case is instituted on the basis of a complaint, if it is brought to the notice of the Magistrate during the course of enquiry or trial on the basis of the said complaint that the investigation by the police in relation to the same offence is under way, the Magistrate shall stay the proceedings of such enquiry or trial and call for a report on the matter from the police officer conducting investigation. The condition for applicability of Section 210(1) of Cr.P.C. is that there must be commonality of the 'offence' in the subject of investigation by the police and the subject of enquiry by the Magistrate in the complaint case. But

considering the context and the object of the provision, the word 'offence' used in Sub-section (1) of Section 210 of Cr.P.C. cannot be construed to refer to a particular provision of law defining certain offence. But it must be deemed to denote the incident or transaction in which an offence or offences have been committed.

14. However, under Sub-section (2) of Section 210 of Cr.P.C., the word 'offence' appears to have been used to indicate a particular transgression labelled as a particular offence under IPC or any other law. It is obvious from the fact that normally when the Court takes cognizance of an offence, it does not refer to taking cognizance of the whole incident in which offences are committed but to particular violations, which have been defined as specific offences. Inasmuch as the object of the provision appears to be as stated above to avoid enquiries or trials sought to be initiated on two different footings, namely, the complaint and the police report on parallel tracks leading to conflicting results, obviously it is the commonality of the incident which are the subject matters of the complaint and the first information report under investigation by the police and not the labels of a particular transgression of law affixed by the complainant in the complaint or in the first information report which, if it were not so, the provisions of Section 210 of Cr.P.C. can be evaded by a mere device of labelling the transaction with different offences. As stated above in this case, the stage of staying the proceedings in the complaint case under Sub-section (1) of Section 210 of Cr.P.C., has passed and the stage for calling for a report from the police has also been passed inasmuch as the police report under Section 173 of Cr.P.C. has been filed already. The provision in Sub-section (1) of Section 210 of Cr.P.C. has been made as stated above for preventing parallel enquiries or trials. Where a question as to application of the provisions under Section 210 of Cr.P.C. arises at certain stage of enquiry in the complaint case or after the report under Section 173 of Cr.P.C. has been filed by the police, it cannot be said that because the stage for invoking Sub-section (1) of Section 210 of Cr.P.C. has crossed, the other provisions under it are not applicable.

15. For application of Sub-section (2) of Section 210 of Cr.P.C., two conditions are required to be satisfied, (i) On the report of the police under Section 173 of Cr.P.C., cognizance of some offences has been taken by the Magistrate; and (ii) Any person who is an accused in the complaint case is among the accused against whom the Magistrate has taken cognizance of an offence on the basis of the police report.

16. According to the Oxford English Reference Dictionary, Oxford University Press 1995 Edition, the word 'any' means-

- a) one, no matter of which of several;
- b) some, no matter how much or many or of what sort.

Thus, it stipulates commonality of atleast one accused person among those against whom cognizance has been taken on the basis of a police report and those who are the accused in the complaint case. If cognizance has been taken against only one person, he should be an accused in the complaint case. Similarly, the requirements of Section 210(2) are satisfied if cognizance is taken in respect of 'any' offence. It is not necessary that cognizance should have been taken in respect of all

the offences, which are covered in the complaint case.

17. In this case, it is obvious that the Magistrate has taken cognizance of certain offences i.e., under Sections 489, 306 and 406 of IPC on the basis of the police report. It is also seen that six accused out of seven against whom the complaint case has been filed happen to be the common accused against whom cognizance has been taken on the basis of the police report. Thus, there can be no doubt that the provisions under Section 210(2) of Cr.P.C. are applicable.

18. The Kerala High Court in *Joseph v. Joseph* 1982 Cri LJ 595 has taken the same view and held that the word 'offence' occurring in Sub-section (1) of Section 210 of Cr.P.C. cannot be given restricted meaning and that it is used there to denote the occurrence, incident or the event and it also held that the word offence used in Sub-section (2) of Section 210 of Cr.P.C. has to be understood in the restricted sense of violation of a particular law.

19. The learned Public Prosecutor however contends that Inasmuch as no stay was ordered as contemplated under Section 210(1) of Cr.P.C., in the enquiry into the complaint case, the provisions of Section 210(2) of Cr.P.C. are not attracted. In support of this contention he relies on a decision of the Patna High Court in *Ram Chandra Prasad v. Ram Saran Sharma* 1979 Cri LJ NOC 198 wherein the learned Judge opined that existence of an order under Section 210(1) of Cr.P.C. With great respect, I am unable to agree with this view. A careful reading of the provisions in Section 210 of Cr.P.C., would indicate that Sub-section (1) has been enacted to give effect to the provisions of Section 210 effectively at the earliest when the matter of possibility of two parallel enquiries is brought to the notice of the Court by staying enquiry or trial in the complaint case. Thus, what is contemplated under Section 210(1) is to ensure that the purpose for which sub-sections (2) and (3) are enacted is not defeated. But it cannot be postulated that the provisions of Section 210(2) Cr.P.C., cannot be invoked or applied unless the enquiry in the complaint case has been stayed under Sub-section (1) of Section 210 of Cr.P.C. This is the view taken by the Kerala High Court in *Joseph's case*, (1982 Cri LJ 595) (supra).

20. In *Chintamani Parida v. Jadumani* 1981 Cri LJ 541 a learned single Judge of the Orissa High Court has taken a view that where on the basis of a police report cognizance has been taken in respect of some of the accused, then the complaint must be deemed to be a police report in regard to accused persons who are common to both the cases under Section 210(2) of Cr.P.C. and on that basis it has been held that those accused persons not involved in police case can be proceeded against under Section 210(3) of Cr.P.C. It has been seen above that commonality of all the accused is not required for application of Section 210(2) of Cr.P.C. Where cognizance has been taken on the basis of a police report in respect of some offence against some accused who are common to the police report and the complaint case, the requirements of Section 210(2) Cr.P.C. must be deemed to have been satisfied. With great respect, I am unable to agree with the view taken by the Orissa High Court that where all the accused are not common, in respect of other accused Section 210(3) Cr.P.C. applies.

21. Section 210(3) Cr.P.C., would apply in two situations (i) Where the police report does not relate to 'any' accused in the complaint case, and (ii) if the Magistrate does not take cognizance of any

offence on the police report at all. The word 'any' with reference to the accused and the offence in Section 210(3) and for that matter in Sub-section (2) of Section 210 of Cr.P.C. would only mean 'one or more' and not 'all'. The Judgment of the Orissa High Court supra proceeds on the basis that Section 210(3) of Cr.P.C., will be applicable where all the offences and all the accused are not common in both the cases.

22. In this case as seen above, in view of the application of the provision of Section 210(2) Cr.P.C., an enquiry on the basis of a police report and the complaint case for the purpose of committal proceedings was required to be conducted together as if both were instituted on a police report.

23. In that view of the matter, the learned Judicial First Class Magistrate, as seen from the committal order, purported to have acted in accordance with Section 210(2) of Cr.P.C., inasmuch as it is stated that-

since after investigation by police the present charge sheet is numbered under the sections referred to above, it is felt that it is desirable to merge P.R.C. No. 5/97 also in this P.R.C. No. 7/97 and according the private P.R.C. 5/97 is merged with the present charge sheet under Section 210 of Cr.P.C. Hence the seriatim of the accused in this charge sheet is followed by treating it as police P.R.C. to avoid confusion, however, as already another accused is also on record in the private P.R.C. 5/97, he is being added as A. 7 herein while deleting his name, which is shown as L.W.8. The present case is, therefore, against A. 1 to A. 7 out whom the case against A.4 has abated.

The learned Magistrate further observed that as the offence under Section 306 IPC is exclusively triable by a Court of Session, he is committing the case to the Court of Sessions.

24. The grievance of the learned counsel for the petitioner is that though by stating that he has merged the complaint case with the police report case, the learned Magistrate expressed himself to have acted under Section 210(2) of Cr.P.C., but in fact the purpose and the object of the provisions of Section 210(2) Cr.P.C., has been defeated. The contention of the learned counsel for the petitioner is that as explicitly stated in paragraph 4 of the committal order, the learned Magistrate on the basis of the complaint and the enquiry conducted therein under Section 202 of Cr.P.C., has taken cognizance of offences under Section 302 read with Section 109 IPC and Sections 302 read with Section 120-B of IPC against A.1 to A.7. But the learned Magistrate has committed the case indicating an offence under Section 306 IPC and deleting the offence under Section 302 IPC. It is obvious from the committal order passed by the learned Magistrate that he has failed to carry out the mandate and the spirit of Section 210(2) Cr.P.C. What Section 210(2) contemplates where the requirement as to its application are satisfied is that the Magistrate would enquire into the case arising out of police report and the complaint case 'together' as if both the cases were instituted on a police report. This provision mandates that the Magistrate shall enquire into these two cases simultaneously, in conjunction with each other i.e., at the same time one with the order. The word 'merge' used by the learned Magistrate does not carry the true meaning of the requirement of 'enquiring together'. The law does not contemplate that the complaint case is effaced from the scene or the material available in the complaint case would evaporate into thin air. The committal order would disclose that the learned Magistrate proceeded on ' the assumption that there was no

complaint case at all. Though he purported to merge the two, in fact he has ignored the existence of the complaint case altogether. There is no reference to the offence under Section 302 IPC in respect of which he has taken cognizance in the complaint case. There is no , reference to material available in the complaint case, which was brought on record during enquiry under Section 202 of Cr.P.C. The learned Magistrate proceeded on the basis that the only material he was required to consider was the one available in the case instituted on the police report. He over-looked the requirement to consider the material available in complaint case as if it was material in the police report. This manifestly militates against the law enacted in Section 210(2) of Cr.P.C.

When this was brought to the notice of the learned Sessions Judge, he dismissed the petition by observing as follows :

Further, by virtue of Section 210(2) of Cr.P.C., both the matters can be clubbed together and tried together treating as if both the cases were instituted on a police report. Hence petition is dismissed.

25. The learned Sessions Judge ought to have examined the committal order to ensure whether the requirements under Sub-section (2) of Section 210 Cr.P.C. have been complied with or not. It was necessary for him to ascertain whether the learned Magistrate while enquiring into the matter has treated the material available in the complaint case as if it was material brought forth on record in the police report case. This was not done. I am, therefore, satisfied that there was no substantial compliance of Section 210(2) Cr.P.C. For the purpose of committing the case not only the material available in the police report has to be considered, but | the material available in the complaint case also requires to be considered as if it is material placed before the Court in the police report case.

26. For the foregoing reasons, the learned Sessions Judge is directed to withdraw the Sessions Case made over to Principal Assistant Sessions Judge, Gudur and rehear Crl.R.P. No. 178 of 2000 and examine the matter afresh in the light of the provisions 'contained in Section 210(2) of Cr.P.C. and observations made in this order and pass appropriate orders thereon after giving opportunity of being heard to all concerned.

The Criminal Petition is disposed of with the above directions.