

Cr1.A.No. 359 OF 1999
ITEM NO. 102 (PH)
COURT No.6

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.359/1999

Angadi Yesobu & Anr.

Appellant(s)

Versus

Dy. Suptd. of Police & Ors.

Respondent(s)

(with office report)

DATE : 19/08/2004 This/These matter/matters was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant(s) Mr. G.R.K. Prasad, Adv.

Mr. Wasay Khan, Adv.

Mr. V Bhavani Shankar, Adv.

Mr. Y Raja Gopala Rao, Adv.

For Respondent(s) Ms. D Bharathi Reddy, Adv.

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rr-2 Mr. Dinesh Kumar Garg, Adv.

Mr. S.K. Bandyopadhyay, Adv.

Ms. Amitaya Poddar, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed, impugned order is set aside and the writ petition filed before the High Court is dismissed. Now the learned Magistrate shall apply his mind to the police report which is in the form of charge-sheet, case diary and any other material collected by the police during the course of investigation and thereafter consider whether it is a case for taking cognizance and summoning the accused persons. It is clarified that we should not be misunderstood to have expressed any opinion, one way or the other, in relation to merit of the matter as the same is a matter to be examined by the Magistrate.

[Charanjeet Kaur]

Court Master

[Promila Nagpal]

Court Master

{ Signed order is placed on the file }

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 359 OF 1999

Angadi Yesobu & Anr.

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O R D E R

Heard the parties.

This appeal by special leave has been filed against order dated 17.4.1997 rendered by the Andhra Pradesh High Court in Writ Petition No. 17150 of 1991 whereby the High Court has quashed the proceeding in PCR No. 18 of 1989 which was pending in the Court of Second Addl. Magistrate, Chirala.

The short facts are that Angadi Prabhakara Rao was apprehended in connection with a criminal case on 26.4.1985 and while in police custody, on 27.4.1985 he was found dead. As it was a custodial death, the State Government passed an order on 24.9.1985 appointing one-man Commission consisting of a retired District Judge who upon inquiry submitted a report that it was a case of custodial death and police officials were responsible for the same. On the basis of the said report on 15.7.1986 the State Government gave a direction for launching prosecution against the police officials whereupon on 21.8.1986, a first information report was lodged and the case was made over to Director General (Crime)CBCID who handed over the investigation to Deputy Superintendent of Police (CBCID). Upon completion of

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investigation on 1.12.1987, Investigating Officer submitted report to the Director General (Crime)CBCID for giving further instruction in the matter who referred the matter to the Chief Secretary who passed an order on 15.4.1988 to proceed further with prosecution of the officials without further delay. After passing of order by the Chief Secretary, the Investigating Officer, it appears, had submitted a charge-sheet against the accused persons, but before the competent Court could apply its mind thereon, accused persons filed writ petition referred to above before the High Court for quashing the prosecution. The High Court quashed the prosecution, principally on the ground that the Chief Secretary had given a direction to the police for submission of charge-sheet and thereupon charge sheet was submitted, which procedure was wholly unknown to law. A copy of order dated 15.4.1988 has been produced for our perusal in which nowhere police has been directed to submit any charge-sheet. It appears that after order of the Chief Secretary, the Investigating Officer fully applied his mind to the materials collected during the course of investigation and thereupon charge sheet was submitted upon which, the Magistrate is still to apply his mind. In our view, entertainment of writ petition by the High Court was pre-mature and quashing the prosecution on the ground that the Chief Secretary had given a direction for submission of charge-sheet was unwarranted as it was based on erroneous premise in view of the fact that there was no such direction by the Chief Secretary. This being the position, it is not possible to sustain the impugned order.

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Accordingly, the appeal is allowed, impugned order is set aside and the writ petition filed before the High Court is dismissed. Now the learned Magistrate shall apply his mind to the police report which is in the form of charge-sheet, case diary and any other material collected by the police during the course of investigation and thereafter consider whether it is a case for taking cognizance and summoning the accused persons. It is clarified that we should not be misunderstood to have expressed any opinion, one way or the other, in relation to merit of the matter as the same is a matter to be examined by the Magistrate.

.....J[B.N. AGRAWAL]

.....J [H.K. SEMA]

NEW DELHI,
AUGUST 19,2004.

