

Dr. Pranesh Vs. The State of Karnataka, rep. by PSI and Another

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Court : Karnataka Kalaburagi

Decided On : Mar-12-2015

Judge : K.N. Phaneendra

Appeal No. : Criminal Petition No. 200925 of 2014

Appellant : Dr. Pranesh

Respondent : The State of Karnataka, rep. by PSI and Another

Advocate for Pet/Ap. : Sri. R.S.Lagali

Judgement :

(Prayer: This Criminal Petition is filed under Section 482 of Cr.P.C., praying to quash the order dated 26.09.2014 passed in Crl.Rev.Petition No.249/2013 by the II-Additional Sessions Judge, Bijapur, in reserving liberty to respondent No.2 to file fresh protest petition before the II-JMFC Court, Bijapur, in C.C.No.3483/2013 (arising out of P.C.No.264/2009) against the petitioner.)

1. Petitioner has approached this Court seeking for quashing of the order dated 26.09.2014 passed in Criminal Revision Petition No.249/2013 by the II-Additional Sessions Judge, Bijapur, in reserving the liberty to respondent No.2 herein to file fresh protest petition before II-Additional J.M.F.C., Bijapur, in C.C.No.3483/2013 (arising out of P.C.No.264/2009).

2. I have heard the arguments of Sri R.S.Lagali, learned counsel for the petitioner, Sri Prakash Yeli, learned Additional State Public Prosecutor appearing for respondent No.1 and Sri Shivanand V. Pattanshetti, learned counsel appearing for respondent No.2. Perused the records.

3. It is an undisputed fact that respondent No.2 herein lodged a private complaint against the petitioner in P.C.No.264/2009 on the file of II-Additional JMFC Bijapur, for the offences punishable under Sections 403, 406, 417, 419, 465, 468, 420 r/w Section 34 of IPC. The said case was referred to the jurisdictional police for investigation and report under Section 156 (3) of Cr.P.C. The police, after due investigation, submitted B summary report before the Magistrate. Being aggrieved by the B report, the complainant filed a protest petition. On the basis of the contents of the protest petition, the learned Magistrate took cognizance and then proceeded to record the sworn statement of the complainant and thereafter ordered to register a criminal case against the petitioner and issued summons to the accused.

4. Being aggrieved by the said order, the petitioner herein approached the II-Additional Sessions Judge, Bijapur, by way of revision in Criminal Revision Petition No.249/2013, wherein the learned Sessions Judge allowed the Revision Petition and the order dated 25.11.2013 passed by the learned II-Additional JMFC, Bijapur, in issuing process against the petitioner was set aside. However, it was further ordered that the complainant is at liberty to file fresh protest petition before the learned Magistrate and in that event, the learned Magistrate has to consider the same along with the B report filed by the police and then take appropriate decision in this regard. Challenging the said order passed by the learned Sessions Judge, the petitioner has approached this Court.

5. The strong contention put-forth by Sri R.S.Lagali, learned counsel for the petitioner is that the learned Sessions Judge has power to set aside the order of the learned Magistrate, but he has no jurisdiction to provide any liberty to the complainant to file fresh protest petition, directing the Magistrate to consider the fresh protest petition along with the B report. He contends that once the B report is filed and contested by way of a protest petition, the protest petition shall contain all

the ingredients of the offences alleged against the petitioner. If not, on the basis of the protest petition, no cognizance can be taken and no process can be issued. Therefore, the learned Sessions Judge should have simply dismissed the complaint on the ground that the learned Magistrate has not properly acted upon.

6. Per contra, Sri Shivanand V. Pattanshetti, learned counsel appearing for respondent No.2 and Sri Prakash Yeli, learned Additional State Public Prosecutor appearing for respondent No.1 contends that it is the original complaint on which basis the Magistrate has referred the complaint to the police under Section 156(3) of Cr.P.C., therefore, till the report is filed before the Magistrate and order is passed, the complaint exists before the Magistrate. The learned Magistrate would have taken cognizance on the basis of the original complaint, though there are no certain allegations made in the protest petition. Therefore, some irregularity is committed by the learned Magistrate but no illegality is committed by him in taking cognizance and issuing summons.

7. I have carefully perused some of the rulings cited in this regard.

8. The learned counsel for the petitioner has relied upon a decision of the Apex Court reported in 2014 SAR (Criminal) 75 in the case of B.Chandrika Vs. Santosh and another, wherein, the Apex Court has held that,-

Cognizance of offences on the basis of the complaint or a protest petition, power of the Magistrate has been described that it is well settled law that when a complaint is filed and sent to police under Section 156(3) for investigation and then a protest petition is filed, the Magistrate after accepting the final report of the police under Section 173 and discharging the accused persons has the power to deal with the protest petition. However, the protest petition has to satisfy the ingredients of complaint before Magistrate takes cognizance under Section 190 (1)(a) of Cr.P.C.

9. The brief factual matrix of the above said case are little bit relevant. It is stated in paragraph 3 of the judgment that,-

This appeal has been preferred by the second accused, a divorced wife of the first accused. The first respondent herein initially filed a complaint against accused Nos.1 and 2 before the Police Station Mohamma which was registered as Crime No.302/2010.

At Paragraph-4 of the said judgment, it is stated that,-

An FIR was registered and the investigation ordered. Police conducted detailed investigation and submitted report. The police referred the case as not proved. Reference report was submitted to the Judicial Magistrate, First Class, for appropriate action. Later, the respondent/claimant filed a protest complaint before the above-mentioned Court for cancellations of the reference report and for taking cognizance of the case.

10. The head note of the decision differs from the facts narrated in the body of the judgment, but it is clear from the contents of the relevant portion of the above said ruling that, initially the first information report was submitted before the police and the police after investigation submitted B report and thereafter, protest complaint was filed. Therefore, the Honble Apex Court was of the opinion that protest petition or the protest complaint shall contain the ingredients of the offences alleged so as to constitute the said protest petition as a complaint under Section 2(d) of Cr.P.C. In this particular case, that is not the factual aspect. On the contrary, a private complaint was filed and it was referred and B report was submitted by the police. In this regard, it is worth to refer to a decision of the Honble Apex Court reported in H.S. Bains Vs. The State (Union Territory of Chandigarh), wherein, the exact position of law is exposed, on considering what should happen after private complaint is referred and B report is submitted by the police, the Apex Court has held that,-

A Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in

their report;(3) he may take cognizance of the offence under Section 190 (1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.

(emphasis supplied)

11. This decision clarifies the situation as to what the learned Magistrate has to do. Third part of the above said judgment clearly discloses that even in the absence of any protest petition, once opportunity is given to the complainant to say whether he would like to continue with the complaint or whether he is satisfied with the B report submitted by the police, the Court can pass appropriate order. If the complainant does not want to proceed with the complaint, the Court while accepting B report can close the case. When an opportunity is given to the complainant to contest the B report and when the original complaint is very much in existence before the learned Magistrate, it is the bounden duty of the learned Magistrate once again to look into the contents of the complaint to find out whether allegations made in the complaint constitute any penal offences for the time being in force or whether an opportunity should be given to the complainant to furnish his sworn statement and to examine his witnesses and thereafter, the learned Magistrate has to pass appropriate order under Sections 203 or 204 of Cr.P.C. In order to provide an opportunity to the complainant, the Court shall go through the contents of the complaint, it must take cognizance and then proceed to record the sworn statement of the complainant and his witnesses and pass appropriate orders under Section 203 or 204 of Cr.P.C., either by dismissing the complaint or issuing process against the accused.

12. In this particular case, the learned Sessions Judge has set aside the order of the learned Magistrate only on the ground that the protest petition did not contain allegations which constitute any offence against the accused. Therefore, giving liberty to the complainant to file fresh protest petition, the order of the Magistrate was set aside. In my opinion, the order passed by the learned Sessions Judge, is erroneous so far it relates to reserving a right to the complainant to file fresh

protest petition. It goes without saying that when once B report is submitted, after going through the contents of the B report, it is the complainant and his advocate who have to challenge the said B report by bringing it to the notice of the Court by way of protest complaint by narrating how exactly the incident had happened and how the accused have committed the offences. In such an eventuality, those allegations in protest petition shall be sufficient to constitute offences under any penal laws for the time being in force so as to enable the learned Magistrate to take cognizance. But when the original complaint is already there, there is no necessity for the complainant to reiterate the same contents of the complaint in his protest petition. It suffice, if the protest petition is filed stating that the police have not properly investigated and therefore, the Court has to once again intervene in the matter and provide opportunity to the complainant to prove his case before the Court. Therefore, in that context, the Apex Court in the above said decision has held that even on the basis of the original complaint the learned Magistrate can take cognizance of the offences and proceed with the case irrespective of the report submitted by the police.

13. Another contention raised by the learned counsel is that once the B report is filed it cannot be thrown out as useless material, the learned Magistrate has to look into the contents of the B report in order to weigh the material on record to ascertain whether it is a fit case for taking cognizance and proceeded with, and whether allegations made in the complaint are vague or whether allegations are made due to private vengeance in order to falsely implicate the accused persons into the crime etc. Therefore, the learned Magistrate not only should go through the contents of the complaint but also should go through the contents of the B summary report. I entirely agree with the submission made by the learned counsel. The learned Magistrate is bound to look into the contents of the B report though he may or may not rely upon the said B report, nevertheless, he has to apply his judicious mind before taking cognizance on the original complaint lodged by the complainant.

14. It should be borne in mind that if a private complaint is filed, it empowers the learned Magistrates either to refer the matter to the police for investigation under Section 156(3) of Cr.P.C., or to proceed to inquire into the matter under Section

200 of Cr.P.C. Even after taking cognizance also if he feels that any further inquiry is needed, he can also refer the matter under Section 202 of Cr.P.C., for investigation and for report. The gamut of the above said provisions i.e., Sections 200, 202 and 156(3) of Cr.P.C., is that if the Magistrate is not fully satisfied to proceed with the case immediately, in order to issue process to the accused under Section 204 of Cr.P.C., he has to satisfy himself whether it is a fit case to issue process against the accused under Section 204 of Cr.P.C. Therefore, he is empowered to gather the truthful facts either under Section 156(3) of Cr.P.C., or under Sections 200 and 202 of Cr.P.C. In that context, in my opinion, B report submitted by the police also play some role to assist the Magistrate in proceeding with the case. Therefore, in my opinion, though the learned Sessions Judge has committed an error in providing opportunity to the complainant to file fresh protest petition but he has not committed any error in remanding the matter to the jurisdictional Magistrate.

15. As a matter of caution, it should also be said that once B report is submitted by the police after investigation on the basis of FIR directly to the police and the protest petition is filed and the learned Magistrate has passed the order either taking cognizance or dismissing the complaint, then the parties are bound by such proceedings. Care to be taken by the complainant and his advocate at the time of filing protest petition. Unless there is extraneous circumstances and reasons assigned, why protest petition did not contain the ingredients of any offence, the Court normally should not interfere with the contents of the protest petition by saying that another protest petition can be filed. If such being the case, it will definitely open a pandora box, in each and every case, where the protest petition is filed without adhering to Section 2(d) of Cr.P.C., and without applying their mind the protest petitions are filed, in each and every such case if the appellate Court or the revisional Court provide such an opportunity to the complainant, definitely, in my opinion, it would be a kind of mockery of justice, that attitude should not be encouraged.

16. In view of the above said reasons, the revisional Court has committed an error in providing opportunity to file fresh protest petition. However, the remand order is valid.

17. Hence, I pass the following:

ORDER

The petition is partly allowed. The direction issued by the learned Sessions Judge in providing opportunity to the complainant to file fresh protest petition is hereby set aside. However, the remaining part of the order is kept intact. Further, it is directed that the learned Magistrate has to look into the contents of the original complaint and also contents of the B report and then pass appropriate orders in accordance with law following the procedure under Sections 202 to 204 of Cr.P.C., in the light of the observations made in this order.

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