

N Jayaram Vs. The State of Karnataka,

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Court : Karnataka Dharwad

Decided On : Jan-12-2017

Judge : S.N.Satyanarayana

Appeal No. : CRL.P 100744/2016

Appellant : N Jayaram

Respondent : The State of Karnataka,

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE12H DAY OF JANUARY 2017 BEFORE THE HONBLE MR. JUSTICE S.N. SATYANARAYANA CRIMINAL PETITION No.100744/2016 C/w CRIMINAL PETITION NO.100814/2016 CRIMINAL PETITION No.100744/2016 BETWEEN:

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2. 3.

4. N JAYARAM S/O NARASIMHAIAH, AGE:

50. YEARS, OCC: DEPUTY COMMISSIONER AND DISTRICT MAGISTRATE, R/O: BELAGAVI. B R RAVIKANTHEGOWDA S/O RAMANNA, AGE:

45. YEARS, OCC: SUPERINTENDENT OF POLICE, R/O: BELAGAVI. RAVINDRA K GADADE, AGE:

40. YEARS, OCC: ADDITIONAL SUPERINTENDENT OF POLICE R/O: BELAGAVI. B S ANGADI, AGE:

45. YEARS, OCC: DEPUTY SUPERINTENDENT OF POLICE, R/O: CHIKODI, DISTRICT: BELAGAVI. 2 5.

6. R S BADADESAR, AGE:

38. YEARS, OCC: CIRCLE INSPECTOR OF POLICE, R/O: ATHANI, DISTRICT: BELAGAVI. HANUMANT S/O LAKKAPPA DHARMATTI, AGE:

36. YEARS, OCC: POLICE SUB INSPECTOR, R/O: KAGAWAD, TQ: ATHANI, DISTRICT: BELAGAVI. (By Sri : K L PATIL, ADVOCATE) AND1 2. THE STATE OF KARNATAKA, REP BY STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, DHARWAD. DEVADAS S/O DHONDIBA SHERKHANE, AGE:

32. YEARS, OCC: ADVOCATE, R/O: NAVLIHAL2(KIDAGEDI) TQ: ATHANI, DISTRICT: BELAGAVI. ... PETITIONERS ... RESPONDENTS (By Sri : RAJA RAGHAVENDRA NAIK, HCGP FOR R1 SRI.D.D.SHERKHANE, PARTY-IN-PERSON) THIS CRIMINAL PETITION IS FILED U/S.482 OF CR.P.C., SEEKING TO QUASH THE ENTIRE PROCEEDINGS IN PC NO.4/2016 ON THE FILE OF III ADDL. DISTRICT JUDGE, BELAGAVI REGISTERED FOR THE OFFENCES PUNISHABLE U/S. 219, 220, 221, 307, 504, 506, 511, 500 R/W149OF IPC AND U/S. 3(1)(8), 3 3(1)(9), 3(1)(10), 3(2)(5) AND SEC. 4 OF SCHEDULE CASTE AND SCHEDULE TRIBES PREVENTION OF ATROCITIES ACT, 1989. CRIMINAL PETITION NO.100814/2016 BETWEEN: VIJAY SANKESHWAR S/O BASAVANNEPPA SANKESHWAR, AGE:

66. YEARS, OCC: CHAIRMAN & MANAAGING, DIRECTOR OF VRL MEDIA LTD., R/O: NAVEEN PARK, KUSUGAL ROAD, KESHWAPUR, HUBBALLI. (By Sri : NEELENDRA.D GUNDE, ADVOCATE) AND1 STATE OF KARNATAKA BY COMMISSIONER OF POLICE, BELAGAVI, REPRESENTED BY THE STATE, PUBLIC PROSECUTOR, HIGH COURT BUILDING, DHARWAD-580001 2. DEVADAS DHONDIBA SHERKHANE AGED ABOUT32YEARS, OCC: ADVOCATE, R/O: NAVALIHAR-II (KIDAGEDI) TQ: ATHANI,DIST: BELAGAVI. ...

PETITIONER ... RESPONDENTS (By Sri : RAJA RAGHAVENDRA NAIK, HCGP FOR R1 SRI.D.D.SHERKHANE, PARTY-IN-PERSON) THIS CRIMINAL PETITION IS FILED U/SEC.482 OF CR.P.C., PRAYING TO CALL FOR RELEVANT RECORDS AND ALLOW THIS CRIMINAL PETITION AND SET ASIDE THE

ORDER

4DATED2406/2016 PASSED BY THE LEARNED III ADDL. SESSIONS COURT-BELAGAVI, THEREBY REFERRING THE MATTER FOR INVESTIGATION U/SEC. 156(3) OF CR.P.C. THROUGH COMMISSIONER OF POLICE BELAGAVI AGAINST THE PETITIONER AND CONSEQUENTLY ENTIRE PROCEEDINGS PENDING THEREON. THESE PETITIONS COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Accused 1 to 7 in PC.4/2016 on the file of Sessions Court, Belagavi, have come up in these two petitions seeking quashing of the aforesaid private complaint. Crl.P.100744/2016 is by accused 1 to 6 and Crl.P.100814/2016 is by accused No.7. The second respondent in both criminal petitions is the complainant in PC.4/2016.

2. The sum and substance of private complaint is that the complainant and his family members are subjected to oppression by the officers of State Government, particularly the Deputy Commissioner and District Magistrate, Belagavi as well as Senior Officers of police department of Belagavi in discharging their duties at 5 various levels. According to him, the reason for causing harassment to him is based on his caste.

3. It is stated by complainant that earlier he had filed a private complaint in PC.1/2016 before the Court of District and Sessions Judge, Belagavi, wherein the learned District Judge after registering complaint had directed the matter for investigation by the Commissioner of Police, Belagavi. It is stated that said private complaint was against Deputy Commissioner of Police, Belagavi and Superintendent of Police, Belagavi, namely N.Jayaram and B.R.Ravikanthegouda. It is thereafter that the officials in police department are said to have ganged up

against him; causing harassment to complainant in registering false cases against him and also giving publicity to the media that he is involved in criminal cases.

4. It is also stated by complainant that some of the petitioners have opened a rowdy sheet in his name and booked him under the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, 6 Goondas (Immoral Traffic Offenders, Slum Grabbers and Video or Audio Pirates) Act, 1985 (Goonda Act for short) and are said to have send him to civil prison for more than a month. Infact, he has made specific accusation against all the accused 1 to 7 as could be seen from the averments in paragraphs 1 to 5 of PC.4/2016, dated 21.6.2016.

5. It is further stated by complainant that rowdy sheet, which was opened against him, his consequential arrest and detention in preventive custody at Gulbarga for more than a month, is struck down by the Advisory Committee, consisting of three senior judges of the High Court of Karnataka, wherein a direction was issued for his release forthwith. It is further stated by complainant that there is an attempt on the part of petitioners herein to put an end to his life by creating an encounter and also to ensure that his professional career is ruined. He has also made specific accusation against the petitioners herein that they are casteism minded people having no respect and consideration for the people belonging to oppressed 7 class and particularly to the denomination of SC and ST. That they are also in the habit of registering false cases against people belonging to oppressed class, consequently arresting and subjecting them to harassment.

6. The complainant has also stated in his complaint that he has made an application to the Government seeking permission to prosecute accused 1 to 6 in the private complaint since they are government employees and same is pending consideration. In the complaint, an accusation is also made against accused No.7/publisher of a newspaper having its publication office at Hubballi in Dharwad District.

7. It is seen that said complaint was filed on 21.6.2016. Thereafter, when it is taken up by the learned Magistrate on 24.6.2016, after going through the complaint as well as documents annexed to it, having appreciated the gravity of

offence against accused 1 to 7 in the light of supportive documents produced along with complaint, has directed the same for investigation holding 8 that enquiry is required to be conducted through Commissioner of Police, Belagavi, after the complainant filed original caste certificate to demonstrate that he belongs to Scheduled Caste. The Court below has further opined that though investigation is ordered, sanction for prosecution of government officials is necessary under Section 197 of Cr.P.C. The court below while passing said order has further observed that the report is required to be submitted by Commissioner of Police Belagavi on 28.10.2016.

8. As normally expected in such cases, the accused/petitioners herein have immediately rushed to this Court by filing two criminal petitions. It is seen initially the order for investigation was stayed and notice was ordered. Pursuant to which notices are duly served and this matter came up for admission this day. It is also necessary to mention that in CrI.P.100744/2016 interim stay was granted on 14.7.2016 till next date of hearing. However, when this matter was taken up on 21.11.2016, after going 9 through the petition this Court felt that this is not a fit case where the interim order is required to be extended. On the contrary, this court felt that matter requires immediate consideration to ensure that same is not kept in cold storage and should reach logical end at the earliest. Therefore, interim order was not extended. However, CrI.P.100814/2016 is concerned, there is a specific order, wherein interim order is until further orders. Therefore, both the matters are taken up together for consideration.

9. When these matters are taken up for consideration, learned counsel for the petitioners in CrI.P.100744/2016 would bring to the notice of this Court that there are several litigations pending against the complainant in PC.4/2016 for various offences punishable under the provisions of Indian Penal Code ranging from Sections 143, 147, 504 506, 507 and 307 and for other serious offences. In addition to that it is also stated that 10 proceedings are also initiated against him for disruption of peace under Section 107 of Cr.P.C., with Kagawada police.

10. The learned counsel tried to substantiate that the complainant in PC.4/2016, a person belonging to Scheduled Caste though pursuing the profession of advocacy,

is indulging in various activities, which are detrimental to the interest of society. According to petitioners, complainant is misusing the provisions of SC and ST (Prevention of Atrocities) Act and he is using the same as a sword to settle score with persons, who are not supportive of him. He is also misusing said provisions for protection of the people belonging to his caste. It is specifically stated by the counsel for petitioners that petitioners in Crl.P.100744/2016 are government officials and when they have taken note of the illegal activity of complainant and initiated proceedings, he being aggrieved of the same has indulged in launching false complaint in PC.4/2016, which has no substance or merit. 11 11. Whereas in reply the party-in- person/complainant before the court below, who is second respondent in these proceedings would bring to the notice of this Court that he is permanent resident of Navalihal village (Kidagedi), Athani Taluk, Belagavi District. He is residing in said village along with his six brothers, out of them three are elder to him and three are younger and they belong to oppressed class of society. In his family, he is the only educated person and rest are all carrying on agricultural activity in an extent of 10 acres of land owned by the family.

12. According to second respondent/complainant, the local politician, who is having a sugar industry in the area where he is residing is developing a tank and for said purpose he is trying to usurp 10 acres of land belonging to the family of complainant. According to him, said attempt on the part of local politician to take away his land is the root cause for all these criminal proceedings. 12 13. Though aforesaid background is put forth by complainant same is not reflected in the private complaint, to which he would substantiate that since complaint is filed against the police officers the dispute which is pending between him and landlord in his village is not part of private complaint in PC.4/2016. Further, as and by way of reply to nine cases referred to in paragraph 5 of Crl.P.100744/2016 he has made aforesaid submission.

14. According to complainant, the landlord being chairman of sugar industry located in his village using his influence with government officials, namely accused 1 to 6 in the private complaint and other officers in trying to get false cases booked against him, which has been going on from the year 2010, which has resulted in the complaint being registered against him under Section 107 of Cr.P.C., and for

various other offences as could be seen in Crime Nos.78/2010, 127/2012 and other proceedings listed out in paragraph 5 of CrI.P.100744/2016 filed by accused 1 to 6 in PC.4/2016. He would also submit that when he has filed complaint in Crime No.170/2015 against a person by name Vittal Appasab Gayakwad alleging certain offences against him, the police have registered a counter complaint against him through said person in Crime No.171/2015, wherein they have illegally invoked the provisions of Section 307 of IPC and have given wide publicity to the general public and to media as if he is involved in an offence punishable under Section 302 of IPC.

15. According to complainant, accused No.7 in the private complaint, a person who is required to be responsible in the society has without verification published the same in his publication dated 18.3.2016 as if complainant has undergone imprisonment for a period of one month for the offence of committing murder, which is factually incorrect. According to him, as responsible publisher, accused No.7 ought to have verified the records before publishing said false accusation against him, thereby reducing his image in the society and also projecting him as if a person practicing as an advocate is indulged in committing such heinous crime, which has scuttled his future. Therefore, all the aforesaid offences cannot go unpunished and hence, sought for the private complaint to be investigated and registered against all the accused.

16. The argument of both sides are appreciated in the light of judgments relied upon by them. So far as Criminal Petition No.100744/2016 is concerned, the learned counsel further submits that the learned Sessions Judge ought not to have taken the complaint and referred the same for investigation under Section 156(3) of Cr.P.C., without applying mind. In that behalf, he tried to rely upon the judgment rendered in the matter of Priyanka Srivastava & Anr., vs. State of Uttar Pradesh & Ors., reported in (2015) 6 SCC287 wherein he would to rely upon the observations made by the Apex Court regarding the manner in which complaint is required to be appreciated before ordering enquiry into the same. 15 According to him, the learned Sessions Judge has not applied his mind and on going through the complaint he has mechanically passed the order impugned for investigation, hence, the same is required to be set aside and the complaint is required to be

dismissed in the light of aforesaid judgment.

17. The learned counsel would also rely upon the provisions of Section 16 of the Goonda Act to demonstrate that since the apprehension of complainant is under good faith, accused 1 to 6 are entitled to protection for their action in apprehending the complainant and sending him under preventive detention.

18. However, when said provision is looked into, it is clearly seen that the prosecution or other legal proceeding shall lie against the State Government or any officers or person for anything in good faith done or intended to be done in pursuance of the Act. In the instant case, when the material on record is perused, it is clearly seen that there is enough material to demonstrate that there is an attempt to target the complainant without there being sufficient material either for his preventive detention under Goonda Act or to launch various criminal prosecution against him as could be seen from the order passed by the Advisory Committee of the High Court of Karnataka, for his preventive detention, which is sufficient to demonstrate that there is deliberate attempt on the part of accused 1 to 6 in PC.4/2016, which calls for investigation as ordered by the learned District Judge. Therefore, the aforesaid contentions of learned counsel does not merit consideration.

19. Further the learned counsel for petitioners tried to substantiate that accused 1 to 6 were not the officers during 2010 when Section 107 of Cr.P.C., proceedings were initiated as well as other criminal cases were launched against the complainant. However, it is clearly seen from the records that from the date when dispute between the complainant and his family members with the local politician is said to have started in the year 2010 as argued by complainant before this Court while drawing attention of this Court to the cases referred to at paragraph 5 of the criminal petition, wherein he would state that the police officers of the district of Belagavi have targeted him and his family members and are out to finish them by launching one or the other criminal prosecution. When such serious allegations are there, the same cannot be left un-addressed and it is just and necessary to unearth the truth in the allegation and counter allegation between complainant and accused 1 to 6 in PC.4/2016.

20. It is needless to say that if accusation made by the complainant is false, he will also be equally responsible for the consequences. Per contra, if the accusation made by him against petitioners 1 to 6 herein/accused 1 to 6 in PC.4/2016 if proved to be prima facie correct, then there cannot be a more serious oppressive act by the government officials against the person of a oppressed class, more particularly in the background when the special enactments are passed by the government to protect said 18 class of people, the officials themselves targeting them in support of the wealthy and politically well endowed persons to support their caste, is un-comprehensible.

21. In that view of the matter, this Court feel it is just and proper that investigation is required to be conducted into the allegation made in private complaint in PC.4/2016 against accused 1 to 6 in the said complaint.

22. Now coming to the complaint against accused No.7 in PC.4/2016, namely publisher of the local newspaper, who has come up in CrI.P.100814/2016, according to the learned counsel for petitioner the offence alleged against accused No.7 under Section 500 of IPC, is a non cognizable offence, therefore, question of passing the order of investigation against him does not arise. According to him, if there is sufficient material, the court can take cognizance or otherwise dismiss the complaint at threshold. In that behalf, he would rely upon the judgment in Gambhirsingh R.Dekare vs. Falgunbhai Chimanbhai Patel & Anr., reported in (2013) 3 SCC697 19 He would further submit that accused No.7 is not the publisher as stated in PC.4/2016. He is only a Chairman and Managing Director of the company. However, this Court is not considering registering of criminal complaint against any of the accused in PC.4/2016. What is considered is whether investigation is required to be conducted, or not. In the investigation if it is found that publisher of Vijaya Vani is any person other than accused No.7, it is open for the investigating authority to arraign that person as a necessary party in the final report to be filed after investigation. In that view of the matter, this Court hold that no grounds are made out to interfere with the order of learned Sessions Judge in directing investigation on the publisher also, who is accused No.7 in PC.4/2016.

23. With the aforesaid observations, these criminal petitions filed by accused 1 to 7 in PC.4/2016 are dismissed. 20 IA.2/2016 filed seeking production of additional documents in Crl.P.100744/2016 does not survive for consideration in view of the dismissal of criminal petitions. Sd/- JUDGE nd/-

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