

B C Suresha Vs. Sumithra

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Court : Karnataka

Decided On : Sep-20-2016

Judge : Rathnakala

Appeal No. : CRL.P 1650/2016

Appellant : B C Suresha

Respondent : Sumithra

Judgement :

- 1 - IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 20^H DAY OF SEPTEMBER 2016 BEFORE THE HONBLE MRS. JUSTICE RATHNAKALA CRIMINAL PETITION NO. 1650/2016 BETWEEN: B.C. SURESHA S/O LATE CHIKKASIDDAIAH, 54 YEARS, KASABA HOBLI HALEBOODANOOOR VILLAGE - 571 404 (MANDYA DISTRICT). (BY SRI S.G. BHAGAVAN, ADV.) AND: SUMITHRA W/O LATE MADAPPA, 51 YEARS, KASABA HOBLI, HALEBOODANOOOR VILLAGE - 571 404 (MANDYA DISTRICT). (BY SRI S. SHANKARAPPA, ADV.) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C. NO. 1214/2015 PENDING IN THE COURT OF THE J.M.F.C., MANDYA. THIS DAY, THE COURT MADE THE FOLLOWING: THIS CRIMINAL PETITION COMING ON FOR ADMISSION PETITIONER ... RESPONDENT - 2 -

ORDER

Though the matter is listed for Admission, is taken up for final adjudication by consent of learned Counsel appearing for the parties.

2. Heard the learned Counsel appearing for the parties.

3. Petitioner herein is the accused of P.C.R.No.110/2015 on the file of J.M.F.C., Mandya.

4. Succinctly stated, the respondent filed a private complaint before the concerned J.M.F.C. Court in respect of the offences under Sections 415 and 420 of IPC against three accused persons, which was registered by the Court in P.C.R.No.110/2009 presented on 6.10.2009. Learned Magistrate recorded the sworn statement of the complainant and referred the matter to the Police for investigation. The police registered a FIR, on investigation submitted B Report to the Court. Learned - 3 - Magistrate again recorded the sworn statement of the complainant and issued process to the accused. When the issue of process by the J.M.F.C. Court was challenged in Revision, the Sessions Court allowed the petition so far as accused Nos.2 and 3 were concerned. The revision petition was dismissed so far as present petitioner was concerned.

5. The Co-ordinate Bench of this Court in Criminal Petition No.4377/2012 dated 6th September 2013, considered the legality of the order passed by the court below and allowed the petition, the operative portion of which reads thus: In view of the above, petition is allowed. The entire proceeding in C.C.No.589/2010 on the file of JMFC, Mandya, is hereby quashed. The learned Magistrate is directed to consider the matter afresh from the stage of presentation of the complaint as against this petitioner- accused No.1 only.

6. The learned Magistrate commenced the proceedings afresh and recorded the sworn statement of - 4 - the complainant and thereafter took cognizance and issued summons to the accused persons, that culminated in the accused filing Criminal Petition No.6014/2015 before this Court. Vide order dated 15.9.2015, the said criminal petition was allowed. The operative portion of the order reads thus: With the above observation, the petition is allowed. The proceeding in C.C.No.589/2010 pending on the file of the J.M.F.C., Mandya, is hereby quashed.

is directed to proceed with the complaint either as contemplated under Section 156(3) or under Section 200 of Cr.P.C. Learned Magistrate

7. Now it is the submission at the Bar that, subsequent to the above order, the complainant filed a fresh petition on 27.11.2015. This time also, without taking cognizance, sworn statement of the complainant is recorded. Thereafter cognizance was taken and summons was issued to the accused. It is also the submission that, new C.C. number is assigned as C.C.No.1214/2015.-. 5 -

8. It is unfortunate that both the Bar and the Bench in the court below could not fathom the direction given by this Court on both occasions. At para No.7 of the order in CrI.P.No.4377/2012, this Court observed thus: .. From perusal of the certified copy of the order sheet produced, it is clear that before proceeding to record the sworn statement, the learned Magistrate has not indicated that he has taken cognizance of the offence alleged. But this observation was skipped over and on remand, the learned Magistrate firstly recorded the statement of complainant and thereafter took cognizance before issuing summons to the accused.

9. The mistake was repeated after the matter was remanded vide order of this Court in Criminal Petition No.6014/2015. The observation at para No.5 of said order reads thus: With the above observation, the petition is allowed. The proceeding in C.C.No.589/2010 pending on the file of the J.M.F.C., Mandya, is - 6 - Learned Magistrate hereby quashed. is directed to proceed with the complaint either as contemplated under Section 156(3) or under Section 200 of Cr.P.C. 10. This time the above order sounded for the Court and the complainant as a direction to file fresh complaint and to take up the matter afresh from the stage of recording sworn statement of the complainant. This Court would have endorsed the process issued to the accused, if the learned Magistrate, on receipt of the complaint, had perused the contents of the complaint and taken cognizance. But that did not happen. On receipt of the complaint, matter was listed for recording the sworn statement of the complainant. From the statement of accused and the materials placed, the learned J.M.F.C. felt that there is sufficient material to take cognizance in respect of the offence under Sections 415 and 420 of IPC.-. 7 - 11.

Since second complaint was filed without abandoning the first complaint under the mistaken notion, the second complaint dated 27/11/2015 in P.C.R.No.110/2015 and the consequential irregular proceedings is vitiated and liable to be quashed. If really the complainant intends to take his case to its logical end, he shall proceed on his complaint in P.C.R.No.110/2009 dated 06.10.2009.

12. Law on the question, as to at what stage the Court takes cognizance in a private complaint is without any uncertainty. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed (CREF Finance Ltd. -vs- Shree Shanthi Homes (P) Ltd. And Another [(2005) 7 SCC467.

13. The concern of this Court is, the way the procedure of the Courts is abused which deserves nothing less than censure. Precious time of this Court so - 8 - also that of the court below is spent for nothing and every time the petitioner herein made is to rock from here to there and vice versa. Both parties are sufferers languished before the Court since 2009, but without a final solution.

14. It is expected of both the Bar and the Bench to read the orders passed by this Court in Criminal Petition No.4377/2012 and Criminal Petition No.6014/2015 with the relevant statutory provisions before taking further steps in the matter. For the reasons supra, the entire proceedings of P.C.R.No.110/2015 registered in C.C.No.1214/2015 is bad in law and is liable to be quashed. Accordingly, the petition is allowed. The complaint and also the subsequent proceedings in P.C.R.No.110/2015 (C.C.No.1214/2015) on the file of the J.M.F.C., Mandya, are quashed. The Trial Court is directed to take up on its Board the complaint dated - 9 - 6.10.2009 registered on its file in P.C.R.110/2009, peruse the contents of the complaint and then record the sworn statement of the complainant. If a prima facie case is made out from the materials placed by the complainant, order to register the criminal case and proceed in accordance with Chapter XV of Cr.P.C. Registry is directed to mark a copy of this order to all the Principal District and Sessions Judge of the concerned Districts to sensitize the Judicial Officers/J.M.F.Cs. of his/her respective Districts in respect of procedural aspect enumerated above.
KNM/- JUDGE Sd/-

