

Imran Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Nov-27-2020

Judge : K.Somashekar

Appeal No. : CRL.RP 1029/2017

Appellant : Imran

Respondent : The State Of Karnataka

Judgement :

R :

1. : IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE27H DAY OF NOVEMBER, 2020 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL PETITION NO.9232 OF 2016 CONNECTED WITH CRIMINAL REVISION PETITION NO.1029 OF 2017 CRIMINAL PETITION NO.9232/2016: BETWEEN1 Imran S/o Late Rabbu Sab Aged about 35 years Near House of Khuddus Sab 5th Ward, Yelahanka Street Devanahalli Town-562110.

2. Jabeen @ Jabeen Taj W/o Rabbu Sab Aged about 47 years Near Masjid Taluk office Road Devanahalli Town-562110. ... Petitioners (By Sri. Shaik Saoud, Advocate) AND1 The State by Devanahalli Police Bengaluru District Rep. by State Public Prosecutor High Court of Karnataka Bangalore - 560 001. :

2. :

2. Abdul Rashid S/o Late Mohammed Sadiq Age 36 years House No.182/2, 8th Cross 7th Main, 2nd Phase, Jaynagar Bengaluru City-560041. ... Respondents (By Smt. Rashmi Jadhav, HCGP for R-1; Sri Govardhan S - Adv., for R-2) This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, praying to quash the entire proceedings in S.C.No.15039/2015 pending on the file of V-Additional District and Sessions Judge, Devanahalli for the offence under Section 304 r/w 34 of IPC. CRIMINAL REVISION PETITION NO.1029/2017: BETWEEN1 Imran S/o Rabusab Aged about 35 years Taluk Office Road Devanahalli Town Bengaluru District Karnataka-562110.

2. Jabeena @ Jabeen Taj W/o Late Syed Abdul Rab Aged about 45 years Taluk office Road Devanahalli Town Bengaluru District Karnataka-562110. ... Petitioners (By Sri. Shaik Saoud, Advocate) :

3. : AND1 The State of Karnataka By Devanahalli Police Rep. by The State Public Prosecutor High Court of Karnataka Bangalore - 560 001.

2. Abdul Rasheed S/o Late Mohammed Sadiq Age 36 years House No.182/2, 8th Cross 7th Main, 2nd Phase, Jayanagar Bengaluru-560041. ... Respondents (By Smt. Rashmi Jadhav, HCGP for R-1; Sri Rahman - Adv., and Smt. Hashmi - Adv., for R-2) This Criminal Revision Petition is filed under Section 397 of the Code of Criminal Procedure, praying to quash the order dated 19.07.2017 passed by the V-Additional District and Sessions Judge, Devanahalli in S.C.No.15039/2015 under Sections 304 r/w 34 of IPC at Annexure-A. These Criminal Petition and Criminal Revision Petition coming on for Hearing this day, the court made the following:

ORDER

Both these petitions have been filed by common petitioners / Accused Nos.1 and 2 in S.C.No.15039/2015 arising out of Cr.No.52/2015. :

4. : Crl.P.9232/2016 is filed under Section 482 of the Code of Criminal Procedure, praying to quash the entire proceedings in S.C.No.15039/2015 pending on the file

of V-Additional District and Sessions Judge, Devanahalli for the offence under Section 304 r/w 34 of IPC. CrI.RP.No.1029/2017 is filed under Section 397 of the Code of Criminal Procedure, praying to quash the order dated 19.07.2017 passed by the V-Additional District and Sessions Judge, Devanahalli in S.C.No.15039/2015 under Sections 304 r/w 34 of IPC at Annexure-A, rejecting the application filed by them under Section 227 of the Cr.P.C. seeking discharge. Since both these petitions arise out of the case in S.C.No.15039/2015 relating to the case in Cr.No.52/2015 for the offences under Section 304 read with 34 of IPC, they are heard together and are disposed of by this common order.

2. Factual matrix of these cases are as under: The complainant, namely Abdul Rasheed is arraigned as Respondent No.2 in CrI.P.No.9232/2016 as well as in CrI.RP.No.1029/2017 relating to the case in :

5. : S.C.No.15039/2015. The complainant had filed the first complaint before the Devanahalli P.S. and based upon the report of complaint filed by him, initially the case came to be registered in UDR No.6/2015 under Section 174(3) (iv) Cr.P.C. In the complaint, it discloses that the deceased Niaz Ahmed was the brother-in-law of the complainant Abdul Rasheed who has submitted a report before the Devanahalli P.S. / Respondent No.1. Respondent No.2 was constructing a house on the site situated at Taluk Office road, Devanahalli Town. The foundation work was in progress. But on 10.03.2015 at around 6.30 p.m., all of a sudden, the petitioners who are arraigned as Accused Nos.1 and 2 are alleged to have trespassed into the residential site and stopped construction which was under progress. Therefore, some scuffle took place between them. The accused are alleged to have abused in filthy language and also had assaulted Respondent No.2 who is the author of the complaint in UDR No.6/2015 who has submitted in detail the report relating to the death of Niaz Ahmed who is none other than the brother-in-law of the :

6. : complainant. There was some altercation between the complainant and the accused persons, who had abused them in filthy language. The accused are alleged to have assaulted the complainant and his sister Hajira by hand and also on parts of her leg with means of sticks. As a result of that incident, Hajira was

injured. At once, Niaz Ahmed had gone to rescue his wife Hajira from the clutches of the accused. At that time, the petitioners who were arraigned as accused are alleged to have hit his wife by force. As a result of that, Niaz Ahmed who had gone in the middle of the scuffle to rescue his wife, had fallen down to the ground and died. It is further stated in the typed complaint filed by the complainant before the first respondent, Devanahalli P.S. on 10.03.2015 at around 21.30 hours based upon his complaint, a case in Cr.No.35/2015 came to be registered by the Devanahalli P.S. for offences punishable under Sections 341, 323, 324, 504, 506 read with Section 34 of IPC. Subsequent to registration of the crime by the Devanahalli P.S., the same was taken up for investigation :

7. : in Cr.No.35/2015 and laid a charge-sheet against the accused in C.C.No.1609/2015. The said case is pending for trial before the Court of the Addl. Civil Judge & JMFC, Devanahalli. Subsequent to registration of the second FIR, the case in Cr.No.52/2015 came to be registered by the Devanahalli P.S. and laid a charge-sheet against the accused in S.C.No.15039/2015 for the offences punishable under Section 304 read with Section 34 of IPC. In S.C.No.15039/2015, Accused Nos.1 and 2 had filed application under Section 227 of the Cr.P.C. seeking for discharge from the offences levelled against them. But the discharge application filed by Accused Nos.1 and 2 came to be dismissed by its order dated 19.07.2017. However, the case in UDR No.6/2015 came to be registered by Devanahalli P.S. based upon the complaint report of the second respondent as contemplated under Section 174(3)(iv) Cr.P.C. But in respect of the same incident, based upon the statement given by the witnesses, the case in Cr.No.35/2015 came to be registered at a later point, on a typed complaint given by :

8. : respondent No.2 on 10.03.2015 at around 21.30 hours. Subsequent to recording the statement of witnesses in the same incident on death of Niaz Ahmed, the case in Cr.No.52/2015 came to be registered by recording a second FIR. But the entire case is revolving around the complaint report initially filed by the complainant in UDR No.6/2015. However, the second FIR in Cr.No.52/2015 came to be registered on 8.5.2015. i.e., after a lapse of almost after completion of 58 days, the second FIR came to be registered relating to the case in Cr.No.52/2015. This crime came to be registered by the first respondent,

Devanahalli P.S., which amounts to a statement as hit under Section 162 Cr.P.C.

3. Whereas the learned counsel for the petitioners has taken me through the entire theory of the prosecution set up that on 10.03.2015 at around 6.30 p.m., the alleged incident had taken place in between the complainant and the deceased Niaz Ahmed that Niaz Ahmed fell down and as a result of that he sustained some grievous injuries on his head as he came into :

9. : contact with a stone which was found on the ground. As a result of that, the said Niaz Ahmed died due to head injury sustained. This is the theory set up by the prosecution in order to register the crime against the accused and laid the charge-sheet against the accused in S.C.No.15039/2015. But nowhere in the inquest proceedings of the Dead Body of deceased discloses the grievous injuries sustained on the head part of the deceased Niaz Ahmed. But the dead body has been sent to conduct autopsy. In the PM report, it discloses that the deceased had sustained injuries on his head part. Because of that injuries and so also other material which were secured by the Investigating Agency, the second FIR in Cr.No.52/2015 has been recorded and then laid the charge-sheet against the accused in S.C.No.15039/2015. It is hit by section 162 Cr.P.C. and there shall be some contradiction in the theory set up by the prosecution in Cr.No.35/2015 and so also in Cr.No.52/2015, which is the second FIR and based upon the second FIR, this crime came to be registered. But looking from any angle, the :

10. : order passed by the V Addl. District and Sessions Judge sitting at Devanahalli in S.C.No.15039/2015 for having rejected the application filed by Accused Nos.1 and 2 under Section 227 of the Cr.P.C. in its order dated 19.07.2017 requires for intervention. If not, certainly there shall be a miscarriage of justice and also abuse of process of law. Securing the ends of justice is the foremost object of Section 482 Cr.P.C. But in the instant case, initially the case came to be registered in UDR No.6/2015 based upon the complaint report given by the second respondent as contemplated under Section 174(3)(iv) Cr.P.C. in Cr.No.35/2015, whereby the I.O. has investigated the case and laid the charge-sheet against the accused in C.C.No.1609/2015, wherein accused Nos.1 and 2 require to face trial pending before the Court of the Addl. Civil Judge & JMFC,

Devanahalli.

4. No doubt, there is a delay in lodging the FIR said to have been recorded by the police, because the incident had taken place on 10.03.2015 at around 6.30 p.m. But on 8.5.2015, at around 1.00 p.m., Respondent No.1 - :

11. : Devanahalli P.S. had received the complaint and proceeded with the case for recording the second FIR and registered the case in Cr.No.52/2015 and laid the charge- sheet against the accused for the offences under Section 304 read with Section 34 of the IPC. Niaz Ahmed had died as a result of fatal injuries. But prima facie it goes to show that Devanahalli police though had received first information at an appropriate point of time, but the Devanahalli police did not follow the requisite procedure by recording the FIR under the relevant provisions of the Cr.P.C. Therefore, the second FIR said to have been recorded by the Devanahalli P.S. in Cr.No.52/2015 and recording the statement of witnesses and laying the charge-sheet against the accused in the same incident and the accused facing trial in C.C.No.15039/2015, is hit under Section 300 Cr.P.C. as a double jeopardy, where the accused are required to face trial in C.C.No.1609/2015 and again in respect of the same incident in Cr.No.35/2015. Merely because the second FIR came to be registered in Cr.No.52/2015 relating to :

12. : S.C.No.15039/2015, the accused cannot face trial twice in respect of the same incident. On all these premise, learned counsel for the petitioners is seeking for intervention of the order passed by the Court of the V Addl. District & Sessions Judge in S.C.No.15039/2015 dated 19.7.2017 for having rejected the discharge application filed by them under Section 227 of the Cr.P.C. and thereby allow Crl.RP.No.1029/2017. If not, certainly it would result in a miscarriage of justice and abuse of process of law.

5. In Crl.P.No.9232/2016, the learned counsel for the petitioners has contended in conformity with the similar submission relating to questioning the discharge order passed by the V Addl. District and Sessions Judge sitting at Devanahalli in S.C.No.15039/2015 dated 19.07.2017. However, the I.O. has laid the charge-sheet against the accused in a second FIR said to have been recorded relating to the case in Cr.No.52/2015. The material which has been secured by the I.O.

during the course of investigation in respect of Cr.No.35/2015 and in :

13. : respect of the second FIR in Cr.No.52/2015 which was registered by the first respondent, Devanahalli P.S. are in respect of the same incident that had taken place on 10.03.2015 at around 6.30 p.m. But charge-sheet has been laid in respect of the later complaint in Cr.No.52/2015 pertaining to the same incident against accused nos.1 and 2 under Section 304 read with Section 34 IPC, in C.C.No.1609/2015. It amounts to double jeopardy as hit under Section 300 of Cr.P.C. since in respect of the same incident, two independent FIRs ought not to have been registered against the petitioners. Registering two FIRs against Accused Nos.1 and 2 for the same incident however alleging different offences against the accused, is patent violation of the principles of natural justice. On this premise, it requires interference for quashing of the proceedings. If not, certainly there shall be miscarriage of justice and abuse of process of law, which is the cardinal principle of the Criminal Procedure Code and so also the scope and object of Section 482 Cr.P.C. On this premise, learned counsel for the :

14. : petitioners in both these petitions is seeking for intervention under Section 482 Cr.P.C. Consequently, seeking for quashing the criminal proceedings initiated against the accused in S.C.No.15039/2015 and set aside the order passed by the Court of the V Addl. District and Sessions Judge, Devanahalli in S.C.No.15039/2015 dated 19.07.2017 rejecting the application filed by Accused Nos.1 and 2 under Section 227 of the Cr.P.C.

6. Learned HCGP for the State, counter to the arguments in these petitions, submits that the case in Cr.No.35/2015 is based upon the complaint given by the second respondent and based upon the complaint report on 8.5.2015, the second FIR in Cr.No.52/2015 came to be registered and then laid the charge-sheet against the accused for the offences under Section 304 read with Section 34 IPC in S.C.No.15039/2015. The incident took place on 10.03.2015, wherein the accused had picked up a quarrel with the complainant and Hajira, wife of the deceased. When Niaz Ahmed went in between them to rescue his wife from clutches of the accused, he was :

15. : forcefully pushed down by the accused. Therefore, Niaz Ahmed had fell down forcefully and came into contact with a stone and died. Therefore, initially a case in Cr.No.35/2015 came to be registered but thereafter, since post-mortem conducted over the dead body indicated that the deceased had sustained head injuries as the accused persons had forcefully pushed the deceased and caused his death. Therefore, the variations of the complaint in Cr.No.35/2015 and variations in Cr.No.52/2015, she contends that merely because there are certain variations in the allegations in both these crime, it cannot be a ground for seeking intervention under Section 482 Cr.P.C. and seeking for quashing of the entire criminal proceedings initiated against the accused in S.C.No.15039/2020. The learned V Addl. District and Sessions Judge sitting at Devanahalli in S.C.No.15039/2015 rejecting the application filed by the accused for discharge, is justified. Hence, it cannot be interfered in Crl.RP.No.1029/2017 for setting aside the impugned order which is under challenge. Similarly, it :

16. : cannot arise for intervention for quashing of the proceedings initiated against the accused in S.C.No.15039/2015 relating to the second FIR in Cr.No.52/2015. The I.O. has collected the material documents and also recorded the statement of witnesses to show that these accused were the cause for the death of the deceased Niaz Ahmed wherein these accused had pushed him forcefully and made him fall on to the ground after which he came into contact with a stone on the vital part of the head. As a result, he lost his breath. Therefore, the accused are not deserving for seeking intervention under Section 482 Cr.P.C. On all these premises, the learned HCGP seeks for dismissal of these two petitions.

7. In the context of the contentions, it is relevant to refer to the judgment in the case of BABUBHAI vs. STATE OF GUJARAT ((2010) 12 SCC254 wherein various judgments have been discussed. Particularly, the judgment in the case of NIRMAL SINGH KAHLON VS. :

17. : STATE OF PUNJAB (2009 (1) SCC441 has been referred by the Apex Court and its opinion is summarised thus: The law on the subject emerges to the effect that an FIR under Section 154 Cr.P.C. is a very important document. It is the first information of a cognizable offence recorded by the Officer In- Charge of the

Police Station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C. Therefore, at this juncture, it is relevant to refer to Section 169 Cr.P.C., which reads thus: 169. Release of accused when evidence deficient. If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a :

18. : police report, and to try the accused or commit him for trial. Section 170 Cr.P.C. reads thus: 170. Cases to be sent to Magistrate, when evidence is sufficient. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed. (2) When the officer in charge of a police station forward an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed :

19. : and prosecute or give evidence (as the case may be) in the matter of the charge against the accused. (3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice

of such reference is given to such complainant or persons. (4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report. As the case may be, after recording FIR the police report requires to be forwarded under Section 173 Cr.P.C.. It is the duty cast upon the Investigating Agency to proceed with the case for investigation by following the requisite condition and to lay the charge sheet against the accused persons if there are any materials facilitated by the complainant to lay the charge-sheet against the accused persons.

8. In the instant case, second respondent / complainant had initially given a report in writing of the death of Niaz Ahmed and based upon his report, initially :

20. : the case in UDR No.6/2015 came to be registered as contemplated under Section 174(3)(iv) of the Cr.P.C. The proceeding has been taken up by the competent authority after registering UDR No.6/2015. During the proceedings as contemplated under Section 174(3)(iv) Cr.P.C., nowhere it is stated initially that these Accused Nos.1 and 2 have caused the death of the deceased. Based upon the complaint filed by the complainant initially, the case in Cr.No.35/2015 came to be registered for the offences under Sections 341, 323, 324, 504, 506 read with Section 34 IPC. Consequently, charge-sheet has been laid against the accused in C.C.No.1609/2015. In respect of the same incident of death of Niaz Ahmed, on filing a subsequent complaint report on 8.5.2015, the second FIR came to be registered in Cr.No.52/2015 and also charge- sheet was laid against the accused, which amounts to double jeopardy. Section 300 of the Cr.P.C. reads thus: (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on :

21. : the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof. Two independent FIRs have been registered against the accused persons in respect of the same incident but however, different offences are levelled against the accused

and certainly accused should not inflicted punishment twice in respect of the same incident or same offences. The second FIR though it would be maintainable, but in the instant case, based upon the typed complaint, case in Cr.No.35/2015 came to be registered. But on the same incident, second FIR came to be registered on 8.5.2015 and charge sheet was laid against the accused in S.C.No.15039/2015 for the offences under Section 304 read with Section 34 IPC.

9. The learned counsel for the petitioners placed reliance on an order passed by a co-ordinate Bench of this court in CrI.P.842/2013 disposed of on 21.05.2013. :

22. : Following the said judgment, it is felt that if the instant case is examined in the light of the above settled legal propositions, it is clear that the complaint brought by the second respondent is a belated counter to the complaint filed by the second respondent on 10.3.2015 itself. If both these proceedings are proceeded further in respect of trial of the case of the accused, it would certainly result in a miscarriage of justice in view of the fact that since second FIR has been filed in respect of the same incident, it is hit under Section 300 Cr.P.C. for double jeopardy and it would be violation of principles of natural justice in respect of the gravamen of the accused in these cases. Section 482 Cr.P.C. has to be exercised judicially, judiciously, sparingly, consciously and precautiously. If not, certainly there shall be a miscarriage of justice and an abuse of process of law and ultimately securing the ends of justice is the object of Section 482 Cr.P.C. But in the instant case, Accused Nos.1 and 2 are facing trial in C.C.No.1609/2015 which is pending on the file of the Court of the Addl. Civil Judge and JMFC, Devanahalli, :

23. : relating to the case in Cr.No.35/2015. But it is relevant to refer to a judgment of the Apex Court reported in AIR 2019 SC210 wherein in the said case, the judgment in the case of STATE OF KARNATAKA VS. L. MUNISWAMY AND OTHERS (AIR 1977 SC1489 has been referred, the relevant portion of which reads thus: In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Courts

has inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.

10. In the instant case, based upon the complaint report filed by the complainant, case in UDR No.6/2015 :

24. : came to be registered as contemplated under Section 174(3)(iv) Cr.P.C. and subsequent to the typed complaint filed by the complainant, the case in Cr.No.35/2015 came to be registered, whereby the I.O. has laid the charge sheet against the accused and the accused were facing trial in C.C.No.1609/2015, which is pending before the Court of the Addl. Civil Judge and JMFC, Devanahalli. But subsequent to the second FIR in Cr.No.52/2015 on the same incident, the I.O. has laid the charge-sheet against the accused in S.C.No.15039/2015 for the offences under Section 304 read with Section 34 IPC. Therefore, keeping in view the ratio of the reliances stated supra, power under Section 482 Cr.P.C. requires to be exercised to quash the proceedings in S.C.No.15039/2015 and so also requires for intervention to set aside the order passed by the Court of the V Addl. District and Sessions Judge, Devanahalli in S.C.No.15039/2015 dated 19.7.2017 rejecting the application filed by Accused Nos.1 and 2 under Section 227 Cr.P.C. Consequently, it is made clear that criminal :

25. : proceedings initiated against Accused Nos.1 and 2 in S.C.No.15039/2015 requires to be quashed. Accordingly, I proceed to pass the following:

ORDER

The petitions filed by the petitioners / Accused Nos.1 and 2, i.e., CrI.P.No.9232/2016 filed under Section 482 Cr.P.C. and CrI.RP.No.1029/2017 filed under Section 397 Cr.P.C. are hereby allowed. Consequently, the order passed by the court of the V Addl. District and Sessions Judge, Devanahalli in S.C.No.15039/2015 dated 19.07.2017 is hereby set aside. Consequently, the application filed by Accused Nos.1 and 2 filed under Section 227 Cr.P.C. seeking

discharge is considered. The petition filed by petitioners / Accused Nos.1 and 2 in CrI.P.No.9232/2016 is allowed and criminal proceedings initiated against the accused in S.C.No.15039/2015 is hereby quashed. However, any observations made in these petitions shall not influence the mind of the Trial Court while :

26. : deciding case in C.C.No.1609/2015 which is pending for trial against Accused Nos.1 and 2 before the Court of the Addl. Civil Judge and JMFC, Devanahalli. All contentions on the part of the prosecution and so also defence shall be kept open, in accordance with law. Consequence upon disposal of the main petition in CrI.P.No.9232/2016, I.A.No.1/2016 is dismissed as it does not survive for consideration. Sd/- JUDGE KS

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