

Chandmiya Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Sep-14-2021

Judge : K.Somashekar

Appeal No. : CRL.P 8656/2019

Appellant : Chandmiya

Respondent : The State Of Karnataka

Judgement :

R :

1. : IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE14H DAY OF SEPTEMBER, 2021 BEFORE THE HON'BLE MR. JUSTICE K.SOMASHEKAR CRIMINAL PETITION No.8656 OF 2019 BETWEEN:

1. Chandmiya S/o. Mohammad Sab Aged about 69 years 2. Sadiq S/o. Chandmiya Aged about 32 years 3. Chandrashekhar Reddy S/o. Venkata Reddy Aged about 50 years The petitioners No.1 to 3 are R/o 3rd Ward, Bagepalli Town Bagepalli Taluk - 561 207 Chikkaballapura District. .. Petitioners (By Sri. D.P. Mahesh - Advocate) AND1 The State of Karnataka By Bagepalli Police Station Rep. by State Public Prosecutor High Court of Karnataka Bengaluru - 560 001.

2. Syed Babajan S/o. Abdul Karim Sab Aged about 57 years :

2. : R/o 3rd Ward Bagepalli Town and Taluk Chikkaballapura District - 561207. ...Respondents (By Sri. Rahul Rai .K - HCGP for R-1; Smt. Sunitha H. Singh - Advocate for R-2) This Criminal Petition filed Under Section, 482 of Cr.P.C by the advocate for the petitioner pleased to quash the complaint in P.C.R.107/2019 and consequential FIR No.353/2019, pending on the file of Civil Judge and JMFC, Bagepalli vide Annexure-A and C and quash the order dated 05.10.2019 passed in P.C.R.107/2019 by the Civil Judge and JMFC, Bagepalli directing the Respondent No.1 to investigate under Section 156(3) of Cr.P.C., and consequential criminal proceedings vide Annexure-B. This petition coming on for Admission this day, the court made the following:

ORDER

This petition is filed by the petitioners seeking for quashment of the complaint in PCR No.107/2019 and consequently registration of the case in FIR No.353/2019 pending before the Court of the Civil Judge & JMFC, Bagepalli, Chikkaballapura District and so also seeking quashment of the order dated 5.10.2019 passed in the aforesaid criminal proceedings initiated by the complainant against the accused. :

3. :

2. Heard the learned counsel Shri D.P. Mahesh for petitioners / Accused Nos.1 to 3, who appears before court physically and so also the learned HCGP for Respondent No.1. Respondent No.2 / Syed Babajan is the complainant who initiated criminal prosecution against Accused Nos.1 to 4 vide Annexure-A. By exercising power under Section 156(3) of the Cr.P.C., the Civil Judge & JMFC, Bagepalli, had referred the said complaint to the Bagepalli P.S. for investigation and to submit a report thereon, and awaiting the report by 03.01.2020. Subsequent to referring the case to the police having jurisdiction to proceed for investigation, the Bagepalli Police have registered the case in Cr.No.353/2019 by recording an FIR dated 24.10.2019 vide Annexure-C.

3. Learned counsel for petitioners has referred to a judgment rendered by the Honble Supreme Court of India in the case of Priyanka Srivatsava and another Vs. State of UP & Others reported in AIR 2015 SC1758:: (2015) 6 SCC287 In this

judgment, the Honble Supreme Court has addressed the issues and the scope of :

4. : Section 156(3) Cr.P.C. and Sections 340 to 344 as regards an application under Section 156(3) Cr.P.C. seeking a direction for registration of FIR, wherein it is held that it must be supported by an affidavit. In Head Note B of the said judgment, it is held that - Addressing the issue of Section 156(3) - duty and approach of Magistrate while exercising power under Section 156(3) - pre-conditions to be satisfied - Law clarified - Prevention of abuse of process -- Vigilance required of Magistrate

4. In this judgment, the learned counsel for the petitioners who is present before court physically mainly concentrated on Paragraph No.20 of the said judgment relating to the concept of Section 156(3) Cr.P.C. and so also the order to register an FIR for offences mentioned in the application and also Section 156 of Cr.P.C. relating to the police officers power to investigate cognizable cases. Section 156 Cr.P.C. states that, any officer in charge of a Police Station may, without the order of a Magistrate, investigate any cognizable case which a court having :

5. : jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

5. In the judgment cited supra, the Hon'ble Supreme Court has referred several decisions such as: (1) RAMDEV FOOD PRODUCTS (P) LTD. VS. STATE OF GUJARAT ((2015) 6 SCC439) (2) LALITA KUMARI vs. STATE OF U.P. ((2014) 2 SCC1) (3) MADHAO vs. STATE OF MAHARASHTRA ((2013) 5 SCC615) (4) ANIL KUMAR vs. M.K. AIYAPPA ((2013) 10 scc 705)) (5) MANHARIBHAI MULJIBHAI KAKADIA vs. SHAILESHBHAI MOHANBHAI PATEL ((2012) 10 SCC517) (6) PRIYANKA SRIVASTAVA vs. STATE OF U.P. (REVERSED) ((CRL.MISC.WP No.24561/2011 DECIDED ON2312.2011 (ALL)) (7) MAKSUD SAIYED vs. STATE OF GUJARAT ((2008) 5 SCC668) (8) DILAWAR SINGH vs. STATE OF DELHI ((2007) 12 SCC641) (9) MOHD. YOUSUF vs. AFAQ JAHAN ((2006) 1 SCC627) (10) CREF FINANCE LTD. vs. SHREE SHANTHI HOMES (P) LTD ((2005) 7 SCC467) :

6. : (11) P. SUNDARRAJAN vs. R. VIDHYA SEKAR ((2004) 13 SCC472) (12) DEVARAPALLI LAKSHMINARAYANA REDDY vs. V. NARAYANA REDDY ((1976) 3 SCC252) These judgments relate to the concept of Section 156(3) Cr.P.C. and so also the power of the Police Officer under Section 156, which is stated in Paragraphs 19 and 20 of the said judgment.

6. The second limb of arguments advanced by the learned counsel for petitioners is that civil in nature of the case between the complainant and the accused has turned into criminal in nature with the initiation of the case in PCR No.107/2019 by the complainant against the accused who are petitioners before this court.

7. When once the case has been referred by exercising power under Section 156(3) of the Cr.P.C., the domain is vested with the Investigating Agency under Section 173(2) Cr.P.C. to investigate the case and during investigation, to record the statement of witnesses and so also to secure the material documents and so also to draw the mahazar in the presence of panch witnesses in order :

7. : to lay the charge-sheet against the accused persons relating to the ingredients of the offences lugged against them. So far as Section 167(2)(a)(i) and (ii) relating to offences which are classified in the Schedule of the Cr.P.C., the investigation must be completed within a period of 90 days or 60 days. But according to Section 173(8) of the Cr.P.C., even after filing of a charge-sheet by the Investigating Agency under the relevant provisions of the Cr.P.C., domain is vested with him to file an additional charge-sheet as well. That is the concept of Section 173(8) of the Cr.P.C. Section 170 of the Cr.P.C. makes it clear that during investigation, the I.O. has to secure the material documents and so also record the statement of witnesses and if found to be satisfied with the evidence, then only to lay the charge-sheet against the accused before the court having jurisdiction.

8. Whereas in the instant petition, learned counsel has produced the document Annexure-D in respect of civil case which has been initiated by the plaintiff against the defendants in O.S.No.87/2001. It is in between Smt. Raziya Begum who is the plaintiff and this suit has been :

8. : initiated by her against Defendants 1 to 8. The suit is for declaration and permanent injunction in respect of the suit schedule properties depicted therein.

9. Subsequent to referring the case by exercising power under Section 156(3) Cr.P.C., the Bagepalli P.S. having jurisdiction have registered the case in Cr.No.353/2019 by recording an FIR dated 24.10.2019 for offences punishable under Sections 420, 504, 506 of IPC, 1860. The accused are alleged to have committed cheating in respect of the issues which have been narrated in Column No.10 of the FIR in detail in respect of the land in Sy.No.1/3, to an extent of 2 acres 11 guntas and Sy.No.16/1 to an extent of 6 guntas, even creating the sale deed documents as well. On 14.02.1977, they had created a sale deed document by forging the thumb impression of a deceased person by name Abdul Kareem, which finds place in the material documents. Further on 11.12.1980 a sale deed has been created illegally by forging the thumb impression of Smt. Raziya Begum thought petitioners were not connected to her. The said thumb impression finds place in the documents of the :

9. : sale deed. The same is said to have been done by colluding with the revenue officials. These are all the facts which have been narrated in Column No.10 of the FIR which has been recorded by the Bagepalli P.S., Chikkaballapura District.

10. As already stated, a civil in nature of a case has been instituted which is in between Smt. Raziya Begum who is the plaintiff who initiated a suit against the defendants Abdul Azeez and others in O.S.No.87/2001 vide Annexure-D.

11. Section 2(d) of Cr.P.C. relates to complaint, meaning any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

12. In the instant case, private complaint has been initiated by the complainant who is Respondent No.2 and complainant is a gravamen of the incident narrated in his complaint in detail, which is in conformity with the sum and substance of Clause 10 of the FIR recorded by the :

10. : Bagepalli P.S. Section 190(1)(a)(b)and (c) of Cr.P.C. relates to cognizance. Cognizance is a judicial action and it is in terms of a judicial process. But in the instant case, subsequent to initiation of a private complaint against the accused, the case in PCR.No.107/2019 has been registered by the Court of the Civil Judge (Jr.Dn) & JMFC, Bagepalli and based upon exercising power under Section 156(3) Cr.P.C., the case in Cr.No.353/2019 is pending before the aforesaid court having jurisdiction. Moreover, under Section 156(3) of the Cr.P.C., the matter has been referred to the Bagepalli P.S. in Chikkaballapura District to proceed for investigation and to submit a report. But Section 173(2) Cr.P.C. it is for investigation and that domain is always vested with the Investigating Agency. But we cannot anticipate whether the Investigating Agency would file a challan / final report / charge-sheet or any other report. But the matter is under process for investigation by the Bagepalli Police having jurisdiction where the matter has been referred by exercising power under Section 156(3) of the Cr.P.C. Whereas the :

11. : learned counsel for the petitioners in this matter seeks for intervention under Section 482 of the Cr.P.C.

13. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code. This is the first limb of the aforesaid provision of Section 482 Cr.P.C. for intervention by exercising inherent powers of the High Court. The second limb of the aforesaid provision is to prevent the abuse of the process of any court and the third limb of the said provision is to otherwise secure the ends of justice.

14. The scope and object of the said provision of Section 482 Cr.P.C. is equally applicable to both the complainant who is the gravamen of the incident narrated in the oral or written complaint as well as the accused being the gravamen of the accusation. But in the instance case, the complainant has approached the court of law by initiating a private complaint against the accused by narrating the incident which is to be termed as charges of the offences leveled against the accused. The petitioners / accused they are the gravamen of the accusation narrated :

12. : in the private complaint initiated by the complainant against the accused. Therefore, it does not arise to dwell in this matter as regards the factum of charges narrated in the private complaint in detail. But inherent power under Section 482 of the Cr.P.C. should be exercised sparingly, judicially, judiciously and cautiously. Therefore, the petitioners who are arraigned as accused in FIR No.353/2019 registered by the Bagepalli P.S. Chikkaballapura District, do not deserve seeking quashment of the aforesaid crime registered by the police having jurisdiction to investigate the case. Accordingly, I proceed to pass the following:

ORDER

The petition filed by petitioners / accused under Section 482 Cr.P.C. is hereby rejected. Sd/- JUDGE KS

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