Krishnappa Vs. Thoppaiah Shetty

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Court : Karnataka

Decided On : Jul-24-1996

Reported in : 1997CriLJ188; ILR1996KAR3249; 1996(6)KarLJ674

Judge : B.N. Mallikarjuna, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 143, 186, 193, 195, 307 and 341; Code of Criminal Procedure (CrPC) , 1973 - Sections 173, 195, 195(1) and 340

Appeal No. : Criminal Revn. Petn. No. 54 of 1993

Appellant : Krishnappa

Respondent : Thoppaiah Shetty

Advocate for Def. : M.T. Nanaiah, Adv.

Advocate for Pet/Ap. : P.G.C. Changappa, Adv.

Judgement :
ORDER

1. Revision petitioner calls in question the legality and the correctness of issue of notices to him and six others by the II Addl. Sessions Judge, Bangalore in Crl. Misc. 1143/92 on 20-8-1992 on an application by the respondent herein under Section 340 of Cr.P.C. praying the court to conduct preliminary enquiry, record its

findings and punish the petitioner and six others for an offence under Section 195 R/w Section 34 of IPC.

2. Thopaiah Setty, respondent herein is the applicant. Krishnappa revision petitioner, Sanna Setty and five others are the respondents in the application.

3. Few facts leading to the presentation of this revision may be stated thus :

On a complaint by Krishnappa for the alleged attempt to murder Sanna Setty, Sub-Inspector of Police in Srirampuram police station registered a case against Thopaiah Setty, his son T. Nagaraja and 2 others continued investigation and thereafter charge-sheeted them for offences under Section 341, 307 R/w 34 of IPC. The case was committed to the Court of Sessions for the trial of the accused for the said offences and the case was taken on file in S.C. 112/88. The learned Sessions Judge framed charge for an offence under Section 307, R/w 34 of IPC and since the four accused pleaded not guilty, they were put on trial. Thereafter the prosecution examined 12 witnesses including the present revision petitioner and produced certain documents. The learned Sessions Judge after hearing both the learned Public Prosecutor and the defence counsel and after considering the evidence by judgment dated 21-2-1992 acquitted A-1 of the offences they stood charged. In the course of the judgment, the learned Judge made an observation that the second witness for the prosecution Senna Setty (Respondent No. 1 in the application) has no regard for truth, the prosecution has miserably failed to prove Ex. P-8 the medical certificate and the prosecution has failed to put forth the correct facts effectively and the whole of the evidence is either concoction or exaggeration.

Thereafter on 13-8-1992 Thopaiah Setty (A-1) made this application under Section 340 of Cr.P.C. before the Sessions Judge against the complainant Krishnappa. PW 2 Sanna Setty and 5 others praying the court to conduct preliminary enquiry, record its findings and punish all of them for having committed an offence punishable under Section 195 R/w 34 of IPC and such other offences the court may deem fit in the interest of justice.

On receipt of this application, the learned Prl. City and Sessions Judge assigned the case to the Sessions Judge sitting in CH-2. The learned Judge in CH-2 on 20-8-1992 ordered notices to respondents and this portion of the order is now under challenge.

4. Learned counsel for the revision petitioner contended that taking cognizance and issuing notices to the petitioner and six others is bad in law, the court could not have entertained the application at the first instance and having entertained could not have proceeded to issue notice. He further contended that taking cognizance against the revision petitioners and others for an offence under Section 195 of IPC without there being a complaint by the court is bad in view of Section 195(1)(b) of Cr.P.C. and therefore the order needs to be quashed. In support of his arguments, he invited my attention to two decisions of this court, one in Hosmukh Rai V. Mevani v. Navlamal Mukchand Jain, ILR (1980) 2 Kant 1503 in Nanjegonda v. State of Karnataka, : ILR 1987 KAR1912 .

5. In Hoshmukh Rai Mevani's case, court took cognizance of an offence under Section 193 of IPC on a private complaint and ordered registering a case against accused named therein. The court while considering the scope of Section 195 of Cr.P.C. held that cognizance could not have been taken on a private complaint and court have taken cognizance only on a written complaint as provided under Section 195(1)(b) of Cr.P.C. Further held that the person competent to make a complaint was the Court of Small Cause at Bombay.

6. In Nanjegowda's case (1988 Cri LJ 807) (Kant), on a complaint by one Smt. Gangamma, Cubbonpet police registered a case in Cr. No. 26/84 and after completion of investigation submitted charge-sheet against the petitioner therein and several others for offences under Sections 143, 186, and 341 of IPC. The Court, took cognizance of those offences and issued process to the accused. One of the accused challenged that order before this Court and this court held that taking cognizance for an offence under Section 186 of IPC on a police report under Section 173, Cr.P.C. is bad in law, cognizance for an offence under Section 186 of IPC can only be taken on a complaint by a public servant concerned or of some other public servant to whom he is administratively subordinate in view of

sub-section (1)(a)(i) of Section 195, Cr.P.C.

7. In the above two cases, the scope, object and the purport of Section 340 of Cr.P.C. did not come up for consideration.

In the instant case, the question for consideration would be whether an accused in a criminal case ended in acquittal could make an application under Section 340, Cr.P.C. praying the same court which acquitted him to initiate proceedings to prosecute, some of the witnesses examined in the case for the prosecution, for an offence under Section 195 of IPC.

8. Cognizance for an offence punishable under Section 195 of IPC can only be taken on a complaint in writing by the court before which the alleged offence is committed or of some other court to which that court is subordinate and not otherwise in view of Section 195(1)(b)(i) of Cr.P.C.

A plain reading of sub-sections (1) and (3) of Section 340 of the Code of Criminal Procedure make it clear that an application under that section can be made by the accused in a criminal case or any one in relation to a proceeding in that court as the case may be, praying the court to enquire and make a complaint in writing to prosecute certain person/persons for any of the offence referred to in clause (b) of sub-section (1) of Section 195 of the Code of Criminal Procedure. Further, Section 340 contemplates the procedure to be followed by the Court on receiving such application. An offence under Section 195 of the Penal Code is referred to in Section 195(1)(b) Cr.P.C.

On an application under Section 340, Cr.P.C. the Court is required to consider the application and if it is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195 of Cr.P.C. which appears to have been committed in or in relation to a proceeding in that court or as the case may be, may proceed to make a preliminary enquiry and thereafter the court is required to record a finding to that effect, make a complaint thereof in writing and then send it to a Magistrate of the First Class having jurisdiction. An offence under Section 195 of IPC is one of the offences referred to in Section 195(1)(b)(i) of Cr.P.C. But the court on receiving an

application under Section 340, Cr.P.C. cannot straight away proceed to issue notice against whom such application is made.

Therefore, I find no merit in the argument that the court committed an error in entertaining an application under Section 340, Cr.P.C. However, there is merit in the arguments that the court on receiving such application could not have straight away proceeded to issue notices to those persons against whom such application is made.

In the instant case, it is averred that there was enough material in the statement of the witnesses in the Sessions trial that the respondents gave false evidence with intent to procure conviction of the applicant and three others for an offence under Section 307 of I.P.C. On receiving the application the court should have considered the allegations therein and only thereafter if the court was of the opinion that there was material to proceed against those persons for an offence under Section 195 of I.P.C, should have resorted to the course of action as provided under sub-section (1)(b) to (e) and 3(b) of Section 340, Cr.P.C. It after preliminary enquiry the court is of the opinion that there exists no material to proceed, can reject the application. But the procedure adopted by the court is registering it and issuing notices straight away after receiving the application is irregular and improper, and cannot stand the test of judicial scrutiny. Therefore, the petitioner succeeds.

9. In the result, this revision is allowed and the order dated August 20, 1992 issuing notices to the revision petitioner and six others is set aside, matter is remitted back to II Addl. Sessions Judge, Bangalore City with a direction to take it on file in its original number and proceed to dispose of the application in accordance with law keeping in mind the observations made during the course of this order.

10. Petition allowed.