



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 17TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 100989 OF 2020

BETWEEN:

USMAN MAKANDAR

... PETITIONER

(BY SRI. S.H. MITTALKOD, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
PSI, TOWN POLICE STATION, JAMKHANDI,
R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD-580001.

2. SMT. HEENA W/O AMAN AFRAJ

... RESPONDENTS

(BY SRI. V.S. KALASURMATH, HCGP FOR R1;
SRI. NADIM S. PATHAN, ADVOCATE FOR R2)

**VISHAL
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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., SEEKING TO QUASH THE ENTIRE PROCEEDINGS AGAINST THE PETITIONER/ACCUSED IN C.C.NO.09/2020 (JAMKHANDI TOWN POLICE STATION CRIME NO.09/2020) PENDING ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND JMFC JAMKHANDI, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS.354(A),354(B) AND 504 OF IPC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court calling in question the proceedings in C.C. No.43/2020 registered for the offences punishable under Sections 354A, 354B & 504 of IPC.

2. Heard the learned counsel Shir S.H. Mittalkod appearing for the petitioner learned HCGP Shri V.S. Kalasurmath appearing for respondent No.1; & learned counsel Shri Nadim S.Pathan appearing for respondent No.2.

3. Facts in brief, germane are as follows:

A complaint comes to be registered by the second respondent on 21.01.2020 alleging that the complainant is



married to one Aman Afraj and after the marriage she started to live separately along with her husband in a particular house and the neighbor of the house was the petitioner. It is the further allegation that in the year 2017, the petitioner became close to the complainant and started misusing the said friendship by asking her for a physical relationship. It is said that the petitioner had recorded the phone calls and videos and shown it to her husband and brother-in-law and had deleted the recording after having abused the complainant. This is the gist of the fraud that is so registered against the petitioner. The complaint becomes a crime in Crime No.9/2020 and the police after investigation file a charge sheet in the matter. Filing of the charge sheet is what drives the petitioner to this Court in the subject petition.

4. Learned counsel appearing for the petitioner submits that a crime comes to be registered on 21.01.2020 for an incident that is happened in the year 2017 that too for the allegations that the petitioner had



allegedly recorded the phone call conversation between him and the complainants and shown it to her husband and brother-in-law and had caused disruption in the family of the complainant. It is his submission that if the incident has happened in the year 2017, nothing prevented the complainant to register a complaint for three long years. He would contend that on a sheer delay the complaint is required to be annulled.

5. Learned counsel for the complainant has remained absent. Even today there is no appearance on behalf of the complainant. On 01.08.2023, this Court had passed the following order:

"Heard the learned counsel appearing for the petitioner.

There is no representation on behalf of the second respondent.

Awaiting his appearance, list the matter on 17.08.2023. In the event, the counsel would not represent, orders would be passed in his absence.

Interim order granted earlier stands extended till the next date of hearing."



6. In the light of the earlier order, the matter is taken up in the absence of the learned counsel appearing for the complainant. Learned counsel for the petitioner and the learned HCGP are heard.

7. The afore narrated facts are not in dispute. The petitioner and the complainant's house abutting each other is also not in dispute. What is required to be noticed is the veracity of the complaint. Though the complainant and the petitioner were residing next to each other at Jamakhandi, the complaint is registered at Satara, Maharashtra State. The complaint then transferred to the jurisdictional Police, which becomes a crime in Crime No.9/2020. The complaint reads as under:

"One Heena Aman Afraj, Age-24 years, Occupation Private Job, Religion-Muslim, R/o: Jamkhandi, Bijapur Road, Dist- Bagalkot, currently residing at NK Plaza, Ekta Colony, Karanje Peth, Satara has lodged a complaint at Shahupuri Police Station stating that she resides at her Mother's house since June 2018. That she married Aman Chandsahab Afraj with everyone's consent bon since the people in her matrimonial home did not cooperate with her, she along with her husband started to live near Hudco colony,



Jamkhindi, Dist- Bagalkot and her husband owned a Garage thereby. But due to quarrels between her and her husband, she came to Satara at her mother's house. It is stated by her in the FIR that when she was residing near Hudco colony, her sister-in-law Madina Usman Makandar living with her husband Usman Makandar were her neighbors and the complainant used to go to their house if she had any work.

It is stated that in year 2017 Usman Makandar started to be close and tried to talk more and more with the complainant. Later, Usman Makandar started to call her and tell her that he likes her and started telling her to have physical relations with him. It is stated that the complainant recorded the phone call and showed it to her husband and her brother-in-law Afras but they both deleted the recording and abused the complainant instead. In September 2017 at 8.00 AM when her husband had went to his garage at around 12.00 PM to 1.30 PM Usman Makandar came to the complainant's house and at that Time complainant was alone at her house. Usman Makandar asked for water and when the complainant brought a glass of water he pulled the complainant towards him and tore her clothes. It is alleged that Usman Makandar forcefully Nat over the complainant and pressed her chest while the complainant was trying to push him. It is also alleged that he kept on touching her private parts and when the complainant started to shout loudly he ran away. It is stated in the FIR that the complainant told the incident to her husband and her brother- in-law Afras, but they both didn't listen to her and kept on believing that the



complainant must have behaved wrongfully instead. The complainant states she did not file a complaint at that time because of tension. Since the year 2018 she went to live at her mother's house and she told the said incident to her mother and therefore files a complaint against Usman Makandar today at -Shahupuri Police Station, Satara."

8. The incident that is narrated in the complaint is of the year 2017. The complaint admittedly is registered on 15.11.2019, which on transfer becomes a crime in Crime No.9/2020 before the jurisdictional Police, Jamkhandi Circle. The offences are the once punishable under Sections 354A, 354B & 504 of the IPC. The Police after the investigation also file a charge sheet against the petitioner. Filing of the charge sheet is what drives the complainant to this Court in the subject petition. The issue is the delay in lodging the complaint. If the modesty of the complaint had been outraged according to the contents of the complaint, nothing prevented the complainant from registering the complaint immediately. The complainant has taken more than two years to register the crime for an incident that has happened in the month of September



2017 and the crime is registered on 15.11.2019 and not at the place where the alleged incident had occurred, but at Satara, Maharashtra State. The complaint is then transferred noticing the fact that all incident alleged had happened within the jurisdictional of Jamkhandi Circle.

9. A perusal at the complaint would not indicate any semblance of explanation for the delay that in filing the complaint. The delay in the peculiar facts of this case is fatal for the reason that the offences alleged are ones punishable under Sections 354A & 354B of the IPC they are ones that are grave, which would touch upon the outraging the modesty of the complainant. The complainant could not have waited for two years and register the crime elsewhere in Maharashtra for the incident that have happened at Jamkhandi Circle in Karnataka, the complaint on the face of it, is a misuse and abuse of the process of law. The delay in registering the crime in the peculiar facts of this case as observed hereinabove is fatal.



10. The issue in the lis would stand covered by the judgment of the Apex Court in the case of **Chanchalapati Das Vs. State of West Bengal** reported in **2023 SCC Online 650**, wherein the Apex Court at paragraph Nos.13 to 21 it is held as under:

"13. It cannot be gainsaid that the High Courts have power to quash the proceedings in exercise of powers under Section 482 of Cr.P.C. to prevent the abuse of process of any Court or otherwise to secure the ends of justice. Though the powers under Section 482 should be sparingly exercised and with great caution, the said powers ought to be exercised if a clear case of abuse of process of law is made out by the accused. In the State of Karnataka Vs. L. Muniswamy and Ors. had held that the criminal proceedings could be quashed by the High Court under Section 482 if the court is of the opinion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings are to be quashed.

14. This Court, way back in 1992 in the landmark decision in case of State of Haryana and Ors. Vs. Bhajan Lal and Ors (Supra), after considering relevant provisions more particularly Section 482 of the Cr.P.C. and the principles of law enunciated by this Court relating to the exercise of extra-ordinary powers under Article 226, had laid down certain guidelines for the exercise of powers of quashing, which have been followed in umpteen number of cases. The relevant part thereof reads as under:



"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except*



under an order of a Magistrate within the purview of Section 155(2) of the Code.

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the*



aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. In State of A.P. Vs. Golconda Linga Swamy & Another this Court had observed that the Court would be justified to quash the proceedings if it finds that initiation or continuance of such proceedings would amount to abuse of the process of Court.

16. As regards inordinate delay in filing the complaint it has been recently observed by this Court in Hasmukhlal D. Vora & Anr. vs. State of Tamil Nadu that though inordinate delay in itself may not be a ground for quashing of a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint.

17. In the light of afore-stated legal position, if the facts of the case are appreciated, there remains no shadow of doubt that the complaint filed by the respondent-complainant after an inordinate unexplained delay of eight years was nothing but sheer misuse and abuse of the process of law to settle the personal scores with the appellants, and that continuation of such malicious prosecution would also be further abuse and misuse of process of law, more particularly when neither the allegations made in the complaint nor in the chargesheet, disclose any prima facie case against the appellants. The allegations made against the



appellants are so absurd and improbable that no prudent person can ever reach to a conclusion that there is a sufficient ground for proceeding against the appellants-accused.

18. *Before parting, a few observations made by this Court with regard to the misuse and abuse of the process of law by filing false and frivolous proceedings in the Courts need to be reproduced. In the Court. In Dalip Singh vs. State of Uttar Pradesh and Others it was observed that:*

"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre- Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings."

19. *In Subrata Roy Sahara vs. Union of India and Others it was observed as under:*

"191. The Indian judicial system is grossly afflicted with frivolous



litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims.”

20. We would like to add that just as bad coins drive out good coins from circulation, bad cases drive out good cases from being heard on time. Because of the proliferation of frivolous cases in the courts, the real and genuine cases have to take a backseat and are not being heard for years together. The party who initiates and continues a frivolous, irresponsible and senseless litigation or who abuses the process of the court must be saddled with exemplary cost, so that others may deter to follow such course. The matter should be viewed more seriously when people who claim themselves and project themselves to be the global spiritual leaders, engage themselves into such kind of frivolous litigations and use the court proceedings as a platform to settle their personal scores or to nurture their personal ego.

21. Having regard to the facts and circumstances of the present case and for the reasons stated hereinabove, we deem it appropriate to quash the criminal proceedings pending against the appellants in the Court of Chief Judicial Magistrate, Alipore, arising out of the FIR No. 33 of 2009 registered at Ballygunge Police Station, and quash the same.”

11. The Apex Court has clearly held that the complaint brought before the Court under Section 482 of the Cr.P.C. will have to be scrutinized where there is a gross unexplained delay or delay is unsatisfactorily



explained, those would become the circumstances where the Court would exercise its jurisdiction under Section 482 of the Cr.P.C. and quash the proceedings.

12. The case at hand forms a classic illustration of what the Apex Court has held in the case of ***Chanchalapati Das*** (Supra), therefore, permitting further proceedings would become an abuse of process of law and results in miscarriage of justice. For the aforesaid reasons, the following:

ORDER

- (i) The petition is allowed.
- (ii) The proceedings in C.C. No.43/2020 registered for the offences punishable under Sections 354A, 354B & 504 of IPC stands quashed.

Sd/-
JUDGE

Vnp*Ct:Bck
List No.: 1 Sl No.: 54