

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

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DATED THIS THE 02ND DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

CRIMINAL PETITION No.201596/2022

BETWEEN:

1. RAMCHANDRA S/O KRISHNA NAYARI

2. GURURAJ DESHPANDE

... PETITIONERS

(BY SRI AVINASH A. UPLAONKAR, ADVOCATE)

AND:

1. THE STATE THROUGH NETAJI NAGAR P.S.,
RAICHUR, DIST. RAICHUR
NOW REPRESENTED BY ADDL. SPP
HIGH COURT OF KARNATAKA,
AT KALABURAIG BENCH-585107

2. SHRIDHAR R. BANARE

... RESPONDENTS

(BY SMT. MAYA T.R., HCGP FOR R1;
SRI SUDARSHAN M., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE TAKING COGNIZANCE DATED 01.10.2021 IN C.C.NO.24172/2021 (CRIME NO.110/2018 NETAJI NAGAR POLICE STATION, RAICHUR) FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 420, 409, 120(B) OF IPC, PENDING BEFORE THE ADDITIONAL CIVIL JUDGE & JMFC-III COURT AT RAICHUR, AGAINST THE PETITIONERS.

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

ORDER

Heard Sri Avinash A. Uplaonkar, learned counsel for the petitioners, Smt. Maya T.R., learned High Court Government Pleader for respondent No.1 and Sri Sudarshan M., learned counsel for respondent No.2/defacto complainant.

2. The present petition is filed under Section 482 of Cr.P.C., with the following prayer:

"WHEREFORE, it is most humbly prayed, Hon'ble court by exercise of power U/s.482 Cr.P.C. be pleased to quash the taking cognizance dated 01-10-2021 in C.C.No.24172/2021 (Crime.No.110/2018 Netaji Nagar P.S., Raichur) for the offence punishable U/sec. 420, 409, 120(B) of IPC, pending before the ADDL CIVIL JUDGE & JMFC-III Court at Raichur, against the petitioners, in the interest of justice and equity."

3. Brief facts which are necessary for disposal of the present petition are as under:

Shridhar R. Banare S/o Ramdas O. Banare lodged a complaint with Netajinagar Police Station, Raichur District, on 01.10.2018 which was registered in Crime No.110/2018 for the offence punishable under Section 420 r/w Section 34 of IPC against Girish Ramdas Banare and Manager of Pragati Krishna Grameen Bank.

Gist of the complaint averments reveal that the mother of the complainant by name Smt. Kamala had an Account with Pragati Krishna Grameen Bank and she also had the services of a safe locker in the joint names of the complainant and herself, at the first instance. In the said locker, 45 tola of gold rings and 65 tolas of gold ornaments were kept. So also, the original Will and other documents pertaining to immovable properties were kept in the said locker. On 19.10.2015, Smt. Kamala, who is the mother of the complainant died and on 24.05.2016, the complainant gave an application to the Bank Manager stating that the locker was to be operated in the joint names of the complainant and Smt. Kamala. Since Smt. Kamala is no more, he alone be permitted to operate the safe locker which was obtained by his mother. To his surprise, he came to know that the safe locker operations were made in the name of first accused who is his elder brother and Smt. Kamala

by giving a necessary written mandate. Therefore, his request was turned down by the Manager. As such, complainant sought for action against his brother and bank officials.

4. The Police after registering the case, investigated the matter and filed chargesheet against the petitioners herein as well as the elder brother of the complainant.

5. The petitioners being the Manager of Pragati Krishna Grameen Bank and retired Chief Manager of Karnataka Grameen Bank, have challenged the chargesheet on the following grounds:

- *"That the petitioners are innocent of the alleged offences against them and they are falsely involved in the above case.*
- *That, the petitioners are falsely involved by respondent and there are*

no other evidences to state that the petitioners are involved in the above said offences, which is bad in law.

- *That, the petitioner No.1 joined the services of the Bank as Probationary officer (Manager-Scale-II) and posted to Koppal branch on 09/02/2012. Thereafter he has been transferred to work at Jawahar nagar Branch and from 15-05-2012 to 15-08-2014 worked at the Branch and discharged his duties as second line officer.*
- *That, on 31/05/2014 petitioner No.1 was neither 1st key holder or a 2nd key holder therefore he was not aware of any operations of Locker No.66 on 31/05/2014. There were also other 2nd line officers who were looking after such duties. That, the officers who were authorized for operation of the Bank lockers are A-1 & A-4. The copy of the duty chart is enclosed herewith.*

- *That, petitioner No.2 was working as Branch Manager at Jawarhar Nagar Branch, Raichur from 18/05/2012 to 20/05/2014. Thus, no culpability can be fastned against the petitioner No.2 as the entire incident of misusing of the locker pertain to specifically on 31.05.2014.*
- *That, it is pertinent to mention that the petitioner was transferred from the Jawahar Nagar Branch Raichur to Regional Manager on promotion as senior Manager who took the charge on 21/05/2014. Thus, an act which is unconnected to the petitioner can be forced to face the ordered of criminal trial. The copy of his duty chart is enclosed.*
- *The safe deposit locker agreement can be terminated by neither party on giving to the other, 7 days notice in writing of such intention and the keys of the locker shall in that event be delivered by the hirer to the Bank at*

noon on the day of expiry of the notice (not withstanding that the period for which the locker as rented shall not have expired). Upon the locker being vacated and the keys surrendered pursuant to the notice by the hirer, the bank shall return the proportionate charges (if paid in advance) for the unexpired period of lease treating part of the quarter as full for the purpose of calculating rent payable to the Bank.

- *In case of joint hires were the operational condition is several, the notice of termination and surrender of keys by one or more of them shall be construed to have been made under the express authorization of other/s of the hirers and the notice of termination so given and surrender of key by one or more of them shall be notice and surrender of keys as if it is from all the joint hires for all purposes and intents.*

- *It is submitted that on a bare perusal of FIR and Charge-sheet papers, there is not even an allegation let alone prima-facie material as against the petitioner under any of the penal provisions enumerated in the charge sheet. Hence, the criminal proceedings as against the petitioners are maliciously launched vexatious, illegal and unsustainable in law.*
- *That, even as per the prosecution case itself in the charge sheet their no material averred to make out any material of the involvement of the petitioners.*
- *That, there is absolutely no cogent or reliable materials to connect the petitioners to this case based on the materials collected by the police as per the charge sheet and thus the above proceeding has resulted in gross abuse of the process of the court and hence the same has to be quashed.*

- *Thus, looking towards the chain of circumstances, the allegation made prima facie no material is there in the case, initiated and continuation of criminal proceeding is nothing but abuse of process of law.*
- *That, if the present petition is not allowed then there would be continuation of misuse of the provisions of law and harassment to the petitioner. Hence proceeding with the case will not served the purpose of any body.*
- *No other case has been filed or pending before this Hon'ble High Court or any other court seeking the relief sought in the petition.*
- *The petitioner craves leaves to urge any other points that may be available at the time of arguments."*

6. Learned counsel for the petitioners reiterating the grounds urged in the petition vehemently contended that admittedly there was a safe locker facility in Krishna Grameen Bank in the name of Smt. Kamala who is the mother of the complainant and the first accused. He further contended that initially the safe locker was being operated in the joint names of the complainant and mother and subsequently, the mother has given necessary instructions to the Bank in writing whereby the joint operation of the safe locker was modified and it was being operated by the first accused and Smt. Kamala. Petitioners being Managers of the Bank, they were required to adhere to the instructions of the customer and accordingly, they have made necessary modification in their records and permitted the first accused and Smt. Kamala to operate the safe locker.

7. After the death of Smt. Kamala, the complainant gave a letter for operation of the safe locker which was in the name of Smt. Kamala and was to be operated jointly by Smt. Kamala and the complainant. The said letter could not be processed in view of the subsequent mandate received from the customer namely Smt. Kamala earlier to her death on 27.11.2013.

8. Therefore, there is no criminality in petitioners permitting the first accused to operate the locker. He also contended that if there is any misuse of the articles found in the safe locker, it is the first accused who is responsible for the same and the Managers have no hand of whatsoever with the alleged misuse of the articles, inasmuch as, the mandate has been received on 27.11.2013 when Smt. Kamala was very much alive.

9. He further argued that if at all, the first accused has committed any fraud on his mother Smt. Kamala, the same needs to be decided by the learned Trial Judge in the pending criminal case and absolutely, these two petitioners have no hand in the same and sought for quashing of further proceedings.

10. *Per contra*, learned High Court Government Pleader appearing for respondent No.1 and learned counsel for respondent No.2/defacto complainant in chorus contended that the petitioners being Managers have been found fault by the Ombudsman and they have been warned as to their illegalities in allowing the first accused to operate the safe locker which *prima facie* shows that the Managers were also involved and they have colluded with the first accused in the alleged misuse of the articles found in the locker and therefore, sought for dismissal of the petition.

11. This Court perused the material on record meticulously in view of the rival contentions of the parties.

12. On such perusal, it is evident that at an undisputed point of time, Smt. Kamala who is the mother of the first accused and the complainant opened an Account in Pragati Krishna Grameen Bank.

13. She also availed the facility of the locker to keep her precious ornaments and the documents pertaining to the immovable properties. The locker was initially being operated in the joint names of the complainant and Smt. Kamala. However, by issuing a letter on 27.11.2013, Smt. Kamala wanted a modification in the joint operation of the locker whereby, name of the complainant was removed and in that place, she wanted the joint operation of the locker by herself and the first accused. Admittedly, on 27.11.2013, there

was no differences between the complainant and the first accused.

14. Being the Managers of the Bank, under the Banking rules, the petitioners were bound to adhere to the mandate issued by the customer. Accordingly, they did not suspect any foul play in the letter dated 27.11.2013 and modified the joint operation of the safe locker which was standing in the name of Smt. Kamala.

15. Subsequently, on 19.10.2015, Smt. Kamala passed away. But, the complainant visited the Bank on 24.05.2016 with a request to permit him to operate the locker by himself as Smt. Kamala was no more, as earlier he was also permitted to operate the locker along with Smt. Kamala jointly or severally. The said request was turned down by the Managers on the ground that there was a modification through letter dated 27.11.2013 and therefore, the criminal complaint came to be lodged.

16. As it could be seen from the material on record, the dispute is only between the complainant and the first accused and for which unnecessarily the Managers of the Pragati Krishna Grameen Bank who are the petitioners herein have been arraigned as additional accused by making a vague allegation of collusion.

17. Further, the complainant has also approached the Ombudsman. The Ombudsman has noted certain irregularities and warned the petitioners to be careful in future while dealing with similar situation. There is a thin line of difference between the irregularity and illegality. However, the said thin line is subtle. Every irregularity would not *per se* amount to illegality.

18. For the purpose of invoking Section 420 of IPC, there must be existence of a wrongful loss and wrongful gain by the alleged action.

19. In the case on hand, neither the complaint nor the charge sheet material makes out a case that the petitioners are the beneficiaries of the wrongful gain. Nor any wrongful loss has occurred to the complainant by an act which is attributable to the petitioners herein. To make out a case under Section 420 of IPC, wrongful loss occurred to the complainant and wrongful gain made by the accused persons is a *sine qua non*. In the case on hand, petitioners have simply adhered to the mandate issued by the accountholder Smt. Kamala on 27.11.2013 as dutiful bank officials.

20. Merely acting on the mandate of the customer, no intentions of criminality can be attributed so as to proceed against the petitioners in the trial. When such requisite material is not available on record and in the charge sheet materials, this Court is of the considered opinion that continuation of the criminal

proceedings as against the petitioners herein would definitely result in abuse of process of law.

21. However, the case against the first accused would continue, as according to the complainant, he has misused the articles found in the safe locker including the documents pertaining to the property left behind by the parents of the complainant.

22. Therefore, this Court is of the considered opinion that a case is made out by the petitioners to quash the further proceedings as against them only.

23. Hence, the following order is passed:

ORDER

The criminal petition is allowed.

The order of taking cognizance dated 01.10.2021 passed by Additional Civil Judge and JMFC-III Court at Raichur, in C.C.No.24172/2021 (Crime No.110/2018 of Netaji Nagar Police Station, Raichur) for the offences

punishable under Sections 420, 409, 120(B) of IPC and all further proceedings pursuant thereto is hereby quashed only as against the petitioners herein.

However, this shall not act as precedent for the first accused to obtain similar order.

**Sd/-
JUDGE**

NB*