

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.6639 OF 2022

BETWEEN

SRI. ANOOP BAJAJ

... PETITIONER

(BY SRI SANDESH J. CHOUTA, SENIOR ADVOCATE
FOR SRI ISMAIL MUNEEB MUSBA, ADVOCATE)

AND

SRI. JAYANNA

... RESPONDENT

(BY SRI BASAVARAJ S. SAPPANNAVAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE COMPLAINT IN C.C.NO.11057/2015 PENDING ON THE FILE OF THE VII ACMM, BANGALORE FOR THE OFFENCES PUNISHABLE UNDER SECTION 500 OF IPC AND ALL FURTHER PROCEEDINGS THERETO.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.01.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner accused No.1. under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C. No.11057/2015 pending on the file of VII Additional Chief Metropolitan Magistrate, Bangalore, for the offences punishable under Section 500 of IPC.

2. Heard the learned counsel for the petitioner and respondent.

3. The case of petitioner is that the respondent filed a private complaint under section 200 of Cr.P.C. which was registered in PCR No.13515/2014 for the offences punishable under Sections 500, 501, 504, 505(2) read with Section 120-B of IPC. The learned Magistrate, after recording the sworn statement of the complainant, took cognizance against the petitioner

for the offence punishable under Section 500 of IPC, which is under challenge.

4. The learned Senior Counsel appearing for the petitioner has contended that the petitioner is the President of Bowring Institute (for short 'Institute'). The respondent, an expelled member of the Institute, committed ruckus in the premises by trespassing into the Institute along with 150 people. Therefore, a complaint was filed against the respondent by the petitioner which was registered as FIR against him for the offences punishable under sections 506, 504, 120B, 143, 147, 119, 448, 323 of IPC. Charge sheet also was filed against the respondent-complainant and others. On the special general body meeting called for by the petitioner, the petitioner sent a letter showing some pictures, cartoons and the defamatory pictures against the respondent which insulted the respondent intentionally. Therefore, the complaint came to be

filed against respondent-complainant, which is under challenge.

5. The learned Senior counsel for the petitioner has further contended that the letter issued by the petitioner will not attract the definition under Section 499 of IPC and there is no intention to defame the respondent-complainant. The petitioner sent a letter to make the members of the Institute to understand about the criminal case filed against the respondent by the petitioner and the letter was within the members of the Institute and it was not publicized. Therefore, the ingredients of Section 499 of IPC will not attract and it squarely falls under Exception-8 to Section 499 of IPC. Therefore, the complaint is devoid of merits and is liable to be quashed.

6. The learned Senior Counsel for the petitioner also contended that the learned Magistrate has not

taken the cognizance of the complaint filed by the respondent but posted the case for sworn statement, which is against the law and even otherwise, there is no application of mind while passing the order by the learned Magistrate. Therefore, the criminal proceeding cannot be sustainable against the petitioner. Hence, prayed for quashing the criminal proceedings.

In support of his arguments, the learned counsel for the petitioner has relied upon the judgment of this Court and other High Courts.

7. Per contra, learned counsel for the respondent-complainant has seriously objected the petition and contended that the petitioner-accused No.1 expelled the respondent-complainant from the membership of the Institute, which was challenged by the respondent before the Civil Court and obtained a decree. The petitioner also filed an appeal before the

appellate court which was dismissed. Now the matter is pending before the Hon'ble Supreme Court in Special Leave Petition and the respondent is litigating the case before the Court in a dignified manner.

8. The learned counsel for respondent further contended that the petitioner was involved in mismanagement and misappropriation of funds of the Institute to the tune of 1,43,00,000/-. A Five Man Committee was appointed to unearth the fraud where the Committee gave a report, which says that misappropriation and mismanagement has been proved. The respondent also has filed a complaint before the Registrar of Co-operative Societies which is pending for adjudication. The petitioner, with an intention to tarnish the image of the respondent, insulted him and made a defamatory statement in the news letter against the members of the club, mentioning the same by cartoon picture, which is

marked as exhibit before the trial Court. On perusal of the cartoon picture, it clearly reveals that the petitioner-accused No.1 made a defamatory statement against the respondent stating that the respondent is conspiring against the petitioner and quarreled with the petitioner. Then police arrested respondent. Later, the respondent-complainant begging pardon by holding the legs of the petitioner-accused. Thereafter, the petitioner-accused No.1 shown the picture that the respondent-complainant standing inside the accused box before the court, etc. which clearly reveals as to how the petitioner defamed the respondent in the news letter and therefore, it clearly attracts Section 499 of IPC and it will not fall under any exception to provision to Section 499 of IPC. He further contended that in respect of taking cognizance by the Magistrate, the learned counsel for the respondent contended that the Magistrate has followed the procedure as provided

under Section 200 of Cr.P.C. and after ordering to register the PCR, posted the matter for sworn statement and thereafter, the Magistrate issued process under Section 204 of Cr.P.C. Therefore, there is no flaw in the order of taking cognizance by the Magistrate. The respondent has very good case on merit. Hence, prays dismissing the petition.

9. Having heard the arguments of the learned counsel for the parties, perused the records.

10. The first contention taken by the learned Senior counsel for the petitioner-accused NO.1 is that the news letter is not published to the public and it is within the members of the Institute and that the petitioner has only mentioned the facts of the criminal case registered against the respondent and therefore, it cannot be considered as defamatory statement, which falls under Exception 8 to Section 499 of Cr.P.C.

11. For better understanding, Exception 8 to Section 499 Cr.P.C. is referred as under:

"Exception 8 to Section 499:

Accusation preferred in good faith to authorised person.—*It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation."*

12. On this back ground, now, let me see the news letter sent by the petitioner-accused No.1 which reveals that the petitioner being the President of Bowring Institute sent a letter on 09.05.2014 calling the special general body meeting. In the said letter, the petitioner has mentioned some cartoon pictures along with the explanation of the pictures. On verifying the first cartoon picture, he is referring the respondent along with other three persons who are said to be the expelled members, conspiring to attack the petitioner. The second picture reveals that the

respondent hired mob carrying placards, shouting abusive slogans and targeting a particular community. The third cartoon picture reveals that the respondent is showing the muscle power along with others and assaulting the staff of the Institute. The fourth picture indicates that the respondent is preventing the guards. The fifth picture reveals that the respondent is kneeling down holding the leg of the petitioner and requesting for pardon and the petitioner accused is standing with suit. The last cartoon picture reveals that because of conspiracy and communal hatred, the respondent is put in accused box of the Court and he is standing in front of the Magistrate facing the criminal trial.

13. On perusal of the pictures of the cartoon, it is clear that the petitioner-accused No.1 with an intention to tarnish the image of the respondent-complainant has shown these cartoon pictures as good

as he has committed the robbery or dacoity or heinous crimes in the Institute. Though the learned Senior Counsel for the petitioner has contended that these cartoon pictures are only to make the members of the Institute better understanding of the criminal case, but the contention of the learned senior counsel cannot be acceptable because the members of the Institute are educated people, business people and professionals. Such being the case, there is no need for the petitioner to depict the picture of the respondent by showing the cartoon pictures to the members of Institute, the members of the Institute are not the small kids, who are not able to understand the criminal case filed against the respondent by the petitioner.

14. The back ground of the dispute between the parties are that the petitioner-accused is said to be involved in mismanagement and misappropriation of

the fund of Rs.1,43,00,000/- (One Crore and forty three lakhs) which was unearthed by the enquiry reports of the five man Committee and also the Registrar of Co-operative Societies. The same was questioned by the respondent being a member of the Institute and he protested against the petitioner for safeguarding the interest of the Institute. Hence, in order to take revenge against the respondent, the petitioner said to be expelled the respondent from the membership of the Institute. It is also an admitted fact that the respondent has already obtained decree against the petitioner for expelling from the membership of the Institute and the appeal also dismissed. Now, the appeal filed before the Hon'ble Supreme Court in SLP is pending. Therefore, it appears that the petitioner-accused made a complaint against the respondent and a case was registered and charge sheet has been filed, but in order to intimate

the members regarding calling of the meeting for taking further course of action, the petitioner was not required to make such a defamatory statement and cartoon pictures in the news letter sent to the members of the Institute by defaming the respondent. The members cannot be considered as the members of the inner house, but they are all the public figures in the society and they are members of the Institute/club. Such being the case, sending the defamatory statement and the cartoons directly insulting the respondent by way of such statement attracts Section 499 of IPC and it is not sent in good faith by the public authority in order to attract Exception 8 to Section 499 of IPC. Therefore, the contention of the learned senior counsel for the petitioner cannot be acceptable.

15. The learned counsel for the petitioner has relied upon the judgment of the Madras High Court in case of **BALAMURUGAN Vs. STATE, REP. BY THE INSPECTOR OF POLICE AND OTHERS** reported in **2021 SCC OnLine MAD 2086**, wherein a news paper published the cartoon of the District Collector, the Superintendent of Police and the Chief Minister of Tamil Nadu, wherein the Madras High Court held that the paper publisher has published those cartoons in order to show his angry against the non performance of the government in protecting the victim of the crime. The Madras High Court has further held that the intencion of the petitioner therein in depicting the people in such a form can be easily understood and he wanted to express his grief that the authorities have to be ashamed of themselves over the inability or inaction in containing the demand of exorbitant interest by the money lenders. Therefore, the said

facts of the case is altogether different from the present case on hand. Therefore, the said case is not applicable to the case on hand and there is clear case of defamation which falls under Section 499 of IPC.

16. The learned Senior Counsel for the petitioner has further relied upon the other judgments of this Court and they are not applicable to the present case on hand.

17. The next ground urged by the learned counsel for the petitioner is regarding taking cognizance by the Magistrate and the learned Magistrate, without taking cognizance, has posted the matter for sworn statement, which is bad in law. In this regard, learned counsel for respondent has objected and contended that there is no flaw in the order of Magistrate. On perusal of Section 200 of Cr.P.C., it reads as under:

200. Examination of complainant. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

18. The Co-ordinate Bench of this Court, in the case of **V.M. GANGADHAR AND OTHERS VS. S.D. VIJAY AND ANOTHER** (Criminal Petition No.5135/2014 and connected matter decided on 28.05.2019) has observed in respect of taking cognizance and posting the matter for issuing process. It is clear from Section 200 Cr.P.C. that, if the Magistrate wants to refer the complaint to the police under Section 156(3) of Cr.P.C., he can refer the

complaint without taking cognizance. If the magistrate wants to take cognizance, he can take cognizance and post the matter for recording the sworn statement and issue process under Section 204 Cr.P.C., otherwise he can dismiss the complaint under Section 203 Cr.P.C. In this regard, on perusal of the order sheet of the Magistrate which is noted as under:

"The complainant is present,

Complaint is presented.

*Perused, checked and registered as
PCR.*

*Put up with order sheet and report as
to jurisdiction by 07.10.2014."*

19. Thereafter, the sworn statement of the complainant was recorded and later, on 27.4.2015, an order was passed mentioning the averments in the complaint and thereafter held that there is prima facie case to proceed against the accused only under

Section 500 of Cr.P.C. and accordingly, ordered to register criminal case and ordered to issue summons.

20. On perusal of the order dated 03.09.2014, of course, the word 'cognizance' was not written by the Magistrate, but the order of the Magistrate clearly reveals that he has applied his mind in respect of the private complaint and ordered to register the PCR and posted the matter for recording sworn statement, which clearly reveals that the Magistrate has taken cognizance of the offence and thereafter, sworn statement was recorded and the order was passed on 27.04.2015. The learned Magistrate has not used the words 'cognizance taken on 27.4.2015 and issued process'. If the learned Magistrate has not taken the cognizance on 03.09.2014 and recorded the sworn statement and if the cognizance was taken on 27.04.2015, he could have mentioned that cognizance

is taken against the accused on 27.04.2015, but no such order is passed by the Magistrate on 27.04.2015. Therefore, it is clear that, as per Section 200 Cr.P.C., the Magistrate has received the complaint, examined the complainant by taking cognizance and postponed the issuance of process and thereafter, he has issued the process under Section 204 of Cr.P.C. Therefore, there is no flaw in the order passed by the Magistrate in taking cognizance of the offence against the petitioner. It is well settled that, even in the Code of Criminal Procedure, there is no definition for the word 'cognizance'. It is only an application of mind by a Judge. Therefore, merely not mentioning about the word 'cognizance', cannot be said that there is no cognizance taken by the Magistrate. Therefore, the contention of the learned Senior Counsel for the petitioner that taking cognizance by the Magistrate is wrong, cannot be acceptable. On the other hand, the

learned Magistrate is right in taking cognizance and thereafter, the sworn statement was recorded. Therefore, the petition is devoid of merit and liable to be dismissed.

21. Accordingly, the petition is dismissed.

The matter is pending before the Court below for the last seven years and the petitioner, for one or the other reason, is dragging the matter. Therefore, the trial Court is directed to dispose of the matter as early as possible, within 4 months from the date of receipt of the copy of this order.

**Sd/-
JUDGE**