

(2015) 11 KAR CK 0247

In the Karnataka High Court

Case No : Criminal P. Nos. 101350, 101351, 101352, 101353, 101354, 101355, 101356, 101357, 101358, 101359, 101360, 101361 and 101362/2015

Alimurtuza Dadepir Chamanmalik

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 16-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 482
Karnataka Police Act, 1963 — Section 78(3)

Citation : (2015) 11 KAR CK 0247

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : Ramachandra A. Mali, Advocate, for the Appellant; V.M. Banakar, Addl. State Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Budihal R.B., J.—The above petitions are filed by the petitioner-accused under Section 482 of Cr.P.C. seeking to quash the complaint, FIR dated 01.06.2015 registered in Kudachi Police Station Crime No. 123/2015, 138/2015, 246/2013, 405/2013, 8/2014, 58/2014, 373/2013, 256/2014, 18/2014, 124/2015, 192/2012 and Crime No. 19/2013 (charge sheet and the entire proceedings in C.C. No. 404/2015, C.C. No. 406/2015, C.C. No. 298/2014, C.C. No. 309/2014, C.C. No. 229/2014, C.C. No. 228/2014, C.C. No. 226/2014, C.C. No. 715/2014, C.C. No. 194/2014, C.C. No. 405/2015, C.C. No. 574/2012 and C.C. No. 396/2013 respectively on the file of the Addl. Civil Judge & JMFC, Raibag) and Crime No. 73/2015 in which case the investigation is yet to be completed, in so far as the same relate to the petitioners herein as the same being vitiated, illegal and not sustainable in law in view of the law laid down by this Court in CrI. P. No. 100319/2014 and other connected matters disposed on 25.07.2014 in the interest of justice. The offence alleged in all the above petitions is punishable under Section 78(3) of the Karnataka Police Act. In all the above petitions the petitioner and respondent are one and the same.

2. Brief facts of the case as averred in the petition are that, Kudachi Police of Belagavi District have registered a case against the petitioner punishable under Section 78(3) of the Karnataka Police Act and upon the complaint registered by Sri Anjaneya.N.H., P.S.I. (Law & Order), Kudachi Police Station, District Belagavi. The complainant further states that on 01.06.2015 when he was patrolling in Suttatti village received credible information that petitioners were engaged in playing "O.C. Matka/gambling" near Morab bus stand road and were cheating the people. After informing said information to the Dy. S.P., Gokak, I/C Chikkodi and C.P. I, Rayabag-complainant and his staff secured two panch witnesses and went to the spot in the jeep and observed that the petitioners were inviting the general public to play O.C./Matka by saying that they would give Rs. 80/- for Rs. 1/- and pay Rs. 800/- for Rs. 10/- and when the complainant and other staff members after ascertaining that the accused persons were engaged in playing of O.C./Matka for their benefit, attacked the said persons and caught hold accused No. 1 while other persons ran away from the spot. After enquiry from the said person he told his name as Chandrakant Virupakshi Shiragavi resident of Morab and it was from that accused No. 1 that he gives money after collecting to the petitioner. Accordingly, as per the say of the accused No. 1 name of the petitioner was also involved in the complaint and FIR registered by the Kudachi Police in Crime No. 123/2015. Thereafter, accused No. 1 was arrested and produced before the jurisdictional magistrate and later released on bail. On the strength of the complaint registered, Police conducted investigation and after completion of the investigation filed charge sheet for the offence punishable under Section 78(3) of the K.P. Act as against the petitioner herein and the same has been registered as C.C. No. 404/2015. Petitioners challenged the legality and correctness of the proceedings initiated on the ground as mentioned in the respective petitions.

3. After considering the charge sheet material, FIR, Complaint and other papers the JMFC, Raibag, taken cognizance of the offence punishable u/S 78(3) of the K.P. Act and criminal case was ordered to be registered for the said offence. The petitioners in the respective petitions being aggrieved by the same, approached this Court by filing separate petitions u/S 482 of Cr.P.C. seeking to quash the proceedings.

4. I have heard arguments of the learned counsel for the petitioner in the above respective petitions and also the learned Govt. Pleader for the respondent-State.

5. Counsel for the petitioner submitted that the very registration of the case u/S 78(3) of the K.P. Act itself is arbitrary, illegal and not sustainable either in law or on facts. He further submitted that since the offence alleged is a non cognizable offence the Police ought to have taken prior permission of the learned Magistrate to proceed with the matter immediately after receiving the information which is not done in this case. Hence, the action taken by the Police without prior permission of the learned Magistrate is null and void and not sustainable in view of the provisions u/S 155(2) of Cr.P.C. He further submitted that without

obtaining prior permission of the learned Magistrate the Police Officer was not at all authorized to proceed with the investigation of the matter. He further submitted that immediately after entering information in the diary the Police ought to have approached the learned JMFC seeking prior permission to proceed with the matter which is not done in this case and it is not an irregularity but it is an illegality which cannot be cured. He further submitted that even on the factual aspect of the matter the petitioners are innocent and they have not at all committed the alleged offence and the Police without any basis have registered such cases. Hence, proceedings are without any basis and they are arbitrary and illegal. It is also his submission that the petitioners are law abiding citizens and they are innocent no way connected with the alleged offence. The cases are filed with ill will and grudge against the petitioners. The petitioners are reputed persons and they are falsely implicated in the case. Hence, he made submission that in similar set of allegations and in a batch of cases this Court has already taken a view by passing order dated 25.07.2014 in CrI. P. No. 100319/2014 and connected matters.

6. Learned counsel made submission that the said order passed by this Court becomes final and the respondents have not at all challenged the said order before any other forum. Hence, he submitted that in view of the law laid down by this Court, the present petitions are to be considered and may be allowed and the proceedings initiated against them may be quashed.

7. Per contra learned Addl. State Public Prosecutor during the course of his arguments made submission that whether the petitioners have committed the alleged offence or not is a matter to be ascertained during the course of trial. It is also his submission that proceeding with the matter without seeking prior permission of the concerned Magistrate is not an illegality but it is a mere irregularity. Hence, he made submission that the trial Court rightly took cognizance of the offence and registered criminal case against the respective petitioners. He also submitted that so far as the law laid down by this Court by its order dated 25.07.2014 in CrI. P. No. 100319/2014 connected with other matters are concerned, he fairly submitted that the same has not been challenged before the higher authorities. Hence, he submitted that petitions are not maintainable and the same are to be dismissed.

8. I have perused the petition averments, grounds urged in the petition, copy of the complaint, F.I.R. and the charge sheet materials (except in CrI. P. No. 101361/2015 wherein charge sheet is not filed) produced in the case by the petitioner along with the petition. So also I have perused the order dated 25.07.2014 passed by learned Single Judge of this Court in CrI. P. No. 100319/2014 and all other connected matters (totally 43 matters).

9. Looking to the said order of this Court it is seen that the learned Single Judge has taken into consideration all the aspects of the matter in detail. So also considered the scope of Section 155(2) of Cr.P.C. and definition aspect with regard to cognizable and non-cognizable offences and the schedule appended to

the Criminal Procedure Code in connection with the said definition and the cognizable and non-cognizable offence. While considering these aspects the learned Single Judge has also referred to the relevant decisions on the aspect which are referred to in the said order. After considering all these aspects of the matter ultimately the learned Single Judge allowed the petitions and consequently quashed the proceedings initiated in the respective petitions.

10. As it is fairly submitted by the learned Govt. Pleader during the course of hearing the present petitions that against the order passed by the learned Single Judge dated 25.07.2014 no appeal/revision is preferred challenging the legality and correctness of the said order. Therefore, as on today the said order becomes final. Considering the present petitions and the petitions which were considered in the order of the learned Single Judge of this Court factually they are one and the same and the present petitions are also filed alleging that the petitioners in the respective petitions have committed the alleged offence punishable under Section 78(3) of the Karnataka Police Act. Therefore, when the alleged offence and the factual story in the present petitions are also one and the same compared to the alleged offences and the factual story in the order of the learned Single Judge of this Court dated 25.07.2014, I am of the opinion that, to have uniformity and consistency in the matter, it is necessary to allow the present petitions. Accordingly, the following order is passed.

All the above petitions are allowed and the complaint, FIR dated 01.06.2015 registered in Kudachi Police Station Crime Nos. 123/2015, 138/2015, 246/2013, 405/2013, 8/2014, 58/2014, 373/2013, 256/2014, 18/2014, 124/2015, 192/2012 and Crime No. 19/2013 (charge sheet and the entire proceedings in C.C. No. 404/2015, C.C. No. 406/2015, C.C. No. 298/2014, C.C. No. 309/2014, C.C. No. 229/2014, C.C. No. 228/2014, C.C. No. 226/2014, C.C. No. 715/2014, C.C. No. 194/2014, C.C. No. 405/2015, C.C. No. 574/2012 and C.C. No. 396/2013 respectively on the file of the Addl. Civil Judge & JMFC, Raibag) and Crime No. 73/2015 in which case the investigation is yet to be completed, in so far as the same relate to the petitioners herein, are hereby quashed.