

(2015) 10 KAR CK 0035

In the Karnataka High Court

Case No : Criminal Petition Nos. 101594 and 101643/2015

Anasuya and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482

Penal Code, 1860 (IPC) — Section 149, 323, 324, 384, 447

Citation : (2015) 10 KAR CK 0035

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

Bench : Single Bench

Advocate : Pavan B. Doddatti, Advocate, for the Appellant; V.M. Banakar, Addl. SPP, for the Respondent

Final Decision : Allowed

Judgement

Budihal R.B., J.—Since these two petitions are in respect of taking cognizance by the learned Magistrate in P.C. No. 17/11 and since common questions of law and facts are involved in both the petitions and with consent of both sides, they are taken up together for final disposal by this common order.

2. Criminal Petition No. 101594/2015 is filed by petitioners/accused Nos. 1 and 2, and Criminal Petition No. 101643/2015 is filed by petitioners/accused Nos. 3 and 4 under Section 482 of the Code of Criminal Procedure seeking quashing of the proceedings initiated by the learned Magistrate.

3. The brief facts of the case of the prosecution, as per the complaint averments, are that the complainant lodged a private complaint in P.C. No. 17/2011 before the Court of Principal Civil Judge and JMFC, Mudhol, for the alleged offences under Sections 447 , 323 , 324 , 504 , 506(2) , 384 read with Section 149 of the Indian Penal Code contending that the complainant is the owner of the land bearing Survey No. 66/1/2 measuring 2 acres 23 guntas of Bidari village of Mudhol Taluk and in the said land the complainant was growing sugarcane crop.

On 09.01.2011, at 11.00 a.m., when the said crop had come up for cutting, the complainant, his son namely Santosh Kamadinni and one Mallappa Khoratti had been to the land in question and at that moment at the instigation of the accused Nos. 1 and 2, accused Nos. 3 and 4 and 10 other factory gangmen had come to the land in question by trespassing into the land for cutting the sugarcane crop and when the complainant questioned the same, the complainant, his son and Mallappa Khoratti were abused with bad words and they were given life threat. Accused chased the complainant, his son and Mallappa Khoratti. Complainant's son and Mallappa Khoratti had taken the photographs of the incident and later on approached the police to narrate the said incident and lodged the complaint to which the police did not show any response and in fact the photographs which were taken were deleted by accused Nos. 3 and 4. The said complaint was not taken and accused Nos. 3 and 4 in turn abused them with bad words. The complainant approached higher Officers and even they did not come to the rescue of the complainant. Hence, the complainant filed the private complaint.

4. Heard the arguments of the learned counsel appearing for the petitioners in respect of both the petitions.

5. Learned counsel appearing for the petitioners in Crl. P. No. 101594/2015 made the submission that false allegations are made against the present petitioners and other accused and they have been falsely implicated in the said case. He made the submission that in respect of some landed property a civil suit in O.S. No. 276/2009 is filed by the complainant and in the said suit the complainant filed an application - I.A. No. 1 under Order 39 Rule 1 and 2 of the Civil Procedure Code seeking temporary injunction against the defendants therein to restrain the defendants from causing obstruction to the peaceful possession and enjoyment of the suit schedule property. Learned counsel also made the submission that defendants appeared in the suit and filed their objections statement denying the averments that the plaintiff therein was in possession of the suit schedule property. It is also his submission that the concerned Court, after considering the application on merits, ultimately, dismissed the application holding that the plaintiff in the said suit failed to establish that he was in lawful possession and enjoyment of the suit schedule property as on the date of the suit. He submitted that after the rejection of the said application, the complainant also approached higher Court preferring a miscellaneous appeal in M.A. No. 3/2010 on the file of the Senior Civil Judge, Jamkhandi, sitting at Mudhol, and the Appellate Court also, by its judgment dated 21st January 2011, dismissed the said appeal confirming the order passed by the Trial Court on I.A. No. 1. Hence, he submitted that because the complainant lost the battle in the civil suit, the present complaint was filed making false allegations. He made the submission that when the matter was referred by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure, the police investigated into the matter and ultimately they filed "B" summary report stating that the case of the complainant is false. Learned counsel submitted that the complainant has not at all filed the protest petition, but it is only the counsel appearing for the

complainant who filed the protest memo. He submitted that the said protest memo was considered by the Trial Court and the sworn statement of the complainant was recorded and ultimately, the Court has taken cognizance of the alleged offences ignoring the material that there was an order in favour of the petitioners/accused Nos. 1 and 2. He submitted that the matter is civil in nature and the learned Magistrate has passed the illegal order. Hence, the petition be allowed and the order initiating the criminal proceedings against the petitioners be quashed.

6. Learned counsel appearing for the petitioners/accused Nos. 3 and 4 in Crl. P. No. 101643/2015 submitted that he adopts the arguments submitted by the learned counsel appearing for the petitioners/accused Nos. 1 and 2.

7. Learned Additional State Public Prosecutor, during the course of his arguments, made the submission that though the civil courts have passed such orders, since the incident in question has taken place, accordingly the complainant filed complaint before the Magistrate Court by way of a private complaint and hence, he supported the order of the Trial Court.

8. I have perused the averments made in both the petitions and also perused the documents produced by the petitioners in support of their contentions.

9. Looking to the order passed in O.S. No. 276/2009, the complainant himself filed an application in I.A. No. 1 under Order 39 Rule 1 and 2 of C.P.C. seeking injunction to restrain the defendants therein. The said order clearly goes to show that out of the three points framed by the Trial Court, the Trial Court has answered point No. 1 in negative holding that the plaintiff had failed to establish prima facie case that he was in lawful possession and enjoyment of the suit schedule property as on the date of filing of the suit. The order also goes to show that on point Nos. 2 and 3, it has been observed by the civil Court that balance of convenience was in favour of the defendants therein and if the injunction order is granted it will cause hardship and loss to the defendants. The said order was challenged before the Appellate Court by filing Misc. Appeal No. 3/2010. I have perused the said order also and the Appellate court, ultimately dismissed the said appeal confirming the order passed by the trial Court on I.A. No. 1. These materials prima facie go to show that the plaintiff failed to establish his claim that he was in possession of the suit schedule property as on the date of the suit. Subsequently, the present complaint has been filed. Therefore, it prima facie goes to show that the said complaint has been filed in order to bring pressure on the petitioners herein for compromising the civil matter.

10. So far as the investigation of the case is concerned, when the matter was referred to the police under Section 156(3) of Cr.P.C., the matter was investigated and "B" summary report was also filed by the police. However, a protest petition was filed to the "B" summary report. I have perused the protest memo. The protest memo is not filed by the complainant, but it is filed by the advocate for the complainant. Even there is no supporting affidavit to the said

protest memo by the complainant. In this connection, learned counsel appearing for the petitioners/accused Nos. 1 and 2 relied upon the decision of this court reported in Basappa and Others Vs. State of Karnataka and Another, (in CrI. P. No. 538/1985 decided on 17.02.1987) and also on the decision of the Hon"ble Apex Court rendered in Criminal Appeal No. 2069/2012 (arising out of S.L.P (CrI.) No. 7720/2011) decided on 14.12.2012. Learned counsel drawn the attention of this Court to paragraph 7 of the decision of the Hon"ble Apex Court, wherein it is clearly stated as under-

"7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."

11. Looking to para 4 of decision of this Court referred to above, the protest memo to the "B" summary report must be by the complainant. But looking to the matter under consideration, no such protest memo was filed by the complainant nor the supporting affidavit of the complainant has been filed in respect of that. The learned Magistrate taking the said memo filed by the counsel proceeded with the matter and took cognizance of the offence. Considering the entire materials on record, it prima facie goes to show that the dispute between the parties is really of a civil nature. Therefore, registering the complaint and issuing process to the petitioners/accused herein is nothing but abuse of process of the Court. Hence, the petitioners have made out a case.

Accordingly, both the petitions are allowed and the impugned orders passed by the learned Magistrate taking cognizance of the offences and issuing process to the petitioner/accused herein are hereby quashed.