

(1997) 01 KAR CK 0035

In the Karnataka High Court

Case No : Criminal Petition No. 2834 of 1995

Basappa and Another

APPELLANT

Vs

State of Karnataka by Honnali Police Station

RESPONDENT

Date of Decision : 13-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195
Penal Code, 1860 (IPC) — Section 188

Citation : (1997) 2 KarLJ 46

Hon'ble Judges : Kumar Rajaratnam, J

Judgement

Kumar Rajaratnam, J.-The petitioners being aggrieved by the proceedings initiated by the learned Munsiff and J.M.F.C., Honnali, in Criminal No. 383 of 1995 against the petitioners and the F.I.R. filed by the Honnali Police for offences under Sections 188, 323, 379, 504 read with Section 149, I.P.C. have preferred this criminal petition.

2. The prosecution case is that the petitioners have filed suits with respect to the land situated in S.No. 67/1 of Muktenahalli village to an extent of 2 acres in O.S. Nos. 207 and 208 of 1995 on the file of the Munsiff, Honnali, and obtained an order of temporary injunction against one T.R. Basavarajappa in O.S. No. 208 of 1995. It is also stated that the said Basavarajappa filed O.S. No. 223 of 1995, but was denied any interim injunction. In spite of the pendency of the proceedings, the said Basavarajappa had harvested the crop. The petitioners gave a complaint before the police. The police on the basis of the complaint filed by the petitioners restored the crop to the petitioners. On 17-11-1995, at about 9.30 p.m., the wife of Basavarajappa gave a complaint stating that on 16-11-1995 at about 11 a.m. the petitioners and their agents trespassed over the land and harvested paddy crop worth Rs. 25,000/- by violating the order dated 2-11-1995 passed by the learned Civil Judge, Shimoga in M.A. No. 45 of 1995. The said wife of Basavarajappa one Chandramma laid a complaint before the police against the petitioners for offences under Sections 323, 504, 506(1) read with Section 149, I.P.C., for violating the order of the Court. It is submitted

that this complaint was given after a delay of two days. By virtue of the said complaint the Magistrate initiated proceedings under Sections 188, 323, 379, 504, 506(1) read with Section 149, I.P.C.

3. The contention of the learned Counsel for the petitioners is that on any complaint under Section 188, I.P.C., the Court is barred from taking cognizance except on a complaint in writing of the same Court or some other Court which is subordinate to it. Section 195 read with Section 340, Cr.P.C. states that after a preliminary enquiry, if the Court thinks necessary, such Court may send it to a Magistrate of the First Class having jurisdiction. This procedure not having been followed, the proceedings are liable to be quashed. Since the offence under Section 188, I.P.C. has been included in the F.I.R. the procedure that ought have been followed ought to be in conformity with Section 195 read with Section 340 Cr.P.C. The learned Counsel for the petitioners also relied on a judgment in *Murugesan v State of Tamil Nadu*, 1989 Cr. L.J. 1833, wherein the Madras High Court held that clubbing of other cognizable offences would not be permissible to evade the provisions of Section 195, Cr.P.C.

4. In that view of the matter, the proceedings in C.R. No. 383 of 1995, on the file of the Munsiff and J.M.F.C., Honnali, in Cr. No. 163 of 1995 filed by the Honnali Police against the petitioners, are quashed. The criminal petition is allowed.