

(2013) 07 KAR CK 0206

In the Karnataka High Court

Case No : Criminal Petition No. 3529 of 2009

Bore Gowda and Narasimha Murthy

APPELLANT

Vs

The State of Karnataka and Smt. Mahadevamma

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Penal Code, 1860 (IPC) — Section 509

Citation : (2013) 07 KAR CK 0206

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : B. Lethif, for the Appellant; K. Dilip Kumar, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—In these petitions filed u/s 482 of Cr.P.C. the petitioners-1 & 2 in CrI.P. No. 3529/2009 and petitioners-1 to 3 in CrI.P. No. 3426/2009 arraigned as Accused Nos. 1 to 5 respectively in C.C. No. 3969/2009 on the file of the VI Additional C.M.M., Bangalore, have sought for quashing the process issued against them and also to quash the entire prosecution launched against them. Respondent No. 2 herein filed a report before the jurisdictional police on 09.06.2004, based on which the police registered the case in Crime No. 33/2004 for the offence punishable u/s 509 IPC and submitted the FIR to the jurisdictional Magistrate.

2. After investigation, the Investigating Officer filed "B" Summary Report. Respondent No. 2 filed her protest petition against "B" Summary Report. The learned Magistrate, after perusing the protest petition, recorded the sworn statement of the complainant, took cognizance of the offence punishable u/s 509 of IPC and ordered issue of summons to the petitioners. Quashing of the proceedings is sought on the ground that the protest petition was not filed in the form of a complaint accompanied by list of witnesses; that there was a

Departmental Enquiry held by BBMP in relation to the allegations made in the very complaint and in the said enquiry, the petitioners have been exonerated; that in the protest petition, there are no allegations, which prima facie constitute the offence u/s 509 of IPC, therefore, the order taking cognizance of the offence and issuing process against the petitioners, is bad in law.

3. Having heard the learned counsel for the petitioners, I do not find any justifiable grounds to quash the prosecution launched against the petitioners.

4. As noticed supra, the Investigating Officer after investigation, filed "B" summary report to which the petitioner filed protest petition. The contention that the protest petition should be in the form of a complaint as provided u/s 200 of Cr.P.C., is without any basis. Reliance placed in this regard on the decision of this Court in the case of Basappa and Others Vs. State of Karnataka and Another, has no relevance. In this decision it is observed that, Where the complainant protests to the acceptance of the "B" summary report, in such cases, the Magistrate may take cognizance on the original complaint made to him, record sworn statement u/s 200 Cr.P.C. It is further stated therein that, If there is no complaint made to the Magistrate, the question of the Magistrate taking cognizance on the basis of the protest memo does not arise, particularly when the protest memo is not in the form of a complaint and there are no allegations constituting any offence in the protest memo filed and there is also no request to take action.

5. What has been observed in the said decision is, the protest petition should be in the form of complaint and in the absence of such protest memo making allegations, which prima facie constitute the offence and in the absence of any request to take action, the Magistrate would not have any power to take cognizance.

6. In the case on hand, perusal of the protest petition indicates that the allegations have been made against the petitioners, which prima facie constitute an offence punishable u/s 509 of IPC and a request was also been made therein to take action against the petitioners for the said offence.

7. The learned Magistrate, on perusal of the allegations made in the protest petition, after having taken cognizance has recorded the sworn statement and has found that there are reasonable grounds to proceed against the petitioners. Therefore, there is no substance in the contention urged in these petitions. The result of the Departmental Enquiry would not by itself a ground to hold that there was no offence made-out.

8. It is submitted that now the case is at the stage of recording evidence before charge. Therefore, it is open to the petitioner to bring-out circumstances which may indicate that the charge made against them are baseless and thereafter, urge for discharge. Under these circumstances, I find no ground to quash the proceedings at this stage. With the above observations, these petitions are dismissed.