

(2009) 11 KAR CK 0090
In the Karnataka High Court
Case No : Criminal Petition 1304 of 2009

Brijesh Pael and Ramaprasad K.M.

APPELLANT

Vs

H.S. Putta Kempanna Gowda and Others

RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 469
Penal Code, 1860 (IPC) — Section 499, 500, 501

Citation : (2010) ILR (Kar) 2257 : (2009) 5 KCCR 3589

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : B.K. Sampath Kumar, for the Appellant; Prabhulinga K. Navadgi, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—Petitioners have sought for quashing the proceedings pending before the VI Addl. CMM, Bangalore in CC 2566/2009 arising out of PCR 9814/2008.

2. According to the petitioners, the respondents were the members of the Managing Committee of the Karnataka State Cricket Association for the year 1995-96, 1997-1998. It was during their term the civil work contract was given to one C.A. Varadaraju who has completed the work. They came to know that the work executed by Varadaraju was of poor quality. However, civil suit was filed by Varadaraju only for recovery of money before the Civil Court, The 1st petitioner as Secretary filed a written statement as against the suit filed for recovery of amount. In the written statement filed, alleging that the petitioner had made baseless allegations against the respondents and that it amounted to per se defamation and also stating that another written statement is filed by the 2nd petitioner during August 2006 casting aspersions on the respondents which amounted to defamation, a private complaint was filed before the learned Magistrate. Learned Magistrate took cognizance on 7.2.2009 for the offences punishable u/s 500 and 501, IPC. The same has been assailed in this petition on

various grounds.

3. According to the petitioner's counsel, the alleged written statement filed by the 1st petitioner on 18.6.2001 and the words used are not per se defamatory and it falls within the ninth exception to Section 499, IPC. Only to protect the interest of the Association, as office bearer he has taken a contention and neither the statement is defamatory nor he made such a statement with an intention to defame the respondents. In the usual course written statement was filed to protect the interest of the Association and it is done in good faith. It is also his submission that the affidavit filed during August 2006 by the 2nd petitioner the then President, per se was not defamatory and similarly, it falls within the ninth exception to Section 499, IPC. The order of taking cognizance by the learned Magistrate is without application of mind and beyond the period of limitation which is in violation of Section 468 and 469, Cr.P.C. Contending that initiation of proceedings against the petitioners in the circumstances, is abuse of process of court, learned Counsel has sought for quashing the proceedings initiated against the petitioners at the instance of the respondents.

4. Per contra, counsel representing the respondents submitted that the knowledge of the defamatory statement to the respondents was only during 2006 and the date of knowledge is the period to be taken note of for the purpose of reckoning limitation. It is further submitted that the affidavit and the written statement in the suit -OS 7747/1999 filed by Varadaraju against the Association depicts the defamatory statement made by the petitioners who were office bearers.

5. Learned Counsel for the respondent has relied upon the decision of the Apex Court in the case of M.N. Damani Vs. S.K. Sinha and Others, to contend whether the statements made amounts to defamation or it was made in good faith or not is a matter for trial and the High Court cannot decide exercising power u/s 482, Cr.P.C.

6. In reply, petitioners' counsel submitted that respondents having suffered defeat in the election held for the Association during 2008, made grouse to implicate the petitioners who won in the election and the very respondents had the knowledge of the act of filing written statement as they were members of the Association. The filing of the case that too after lapse of seven years of the alleged written statement filed and also the affidavit filed by the 1st petitioner to withdraw the statement/affidavit made by the 2nd petitioner as the 2nd petitioner was unable to move as he was paralysed due to an accident, that itself depicts the fact that there is no defamatory statement being made and the very act does not amount to defamation much less the cognizance taken by the learned Magistrate beyond the period of limitation is hit by Section 468, Cr.P.C. It is also submitted by the petitioners' counsel that the 2nd complainant was the Vice President during 2001.

7. Further, it is submitted by the petitioners' counsel that the 2nd complainant

was the Vice President during 2001 and had knowledge of the filing of the written statement and the contents thereon and, the 2nd complainant having contested in the elections and having lost the election against the 1st petitioner, in order to retail late, filed a frivolous complaint against the petitioners belatedly after seven years which is nothing but abuse of process of court and as an after thought.

8. What is not in dispute is the 2nd complainant was an office bearer during 2001 holding the post of Vice President of the Association. Also, complaint is filed by the 2nd respondent complainant along with five more persons. As regards the allegation made in the written statement that too in the civil suit filed by the contractor to recover money alleging non payment of part of the amount, according to the petitioners herein, when they have filed the written statement, it is in order to protect the interest of the association and since, there was poor quality of work turned out by Varadaraju the contractor - plaintiff in the said suit, as per the submission of the petitioners' counsel, such a stand was taken only in good faith for having not got the work executed properly by the then office bearers of the Association.

9. As it transpires, according to the petitioners, what the complainants say is, they only came to know of the defamatory statement said to have been made in the written statement filed by the petitioners during 2006. But, when the 2nd complainant himself is said to be an officer bearer as Vice President of the Association during the relevant point of time i.e., 2001, knowledge could be very well attributed to him. In the circumstances, even if it is taken as there was a defamatory statement, the complaint could have been filed well within the period of limitation.

10. The offence u/s 500, IPC is punishable for two years and u/s 468, Cr.P.C., complainant ought to have been filed within three years. The complaint is filed almost beyond five years and also cognizance is taken beyond five years. In the circumstances, on that aspect, so far as the 1st petitioner is concerned, learned Magistrate ought not have taken cognizance as it was barred by limitation.

11. So far as the 2nd petitioner is concerned, to the statement said to have been made in the affidavit, he is the signatory. Although the said affidavit is filed by the 2nd petitioner, subsequently, 1st petitioner as per the submission made, immediately has taken steps to withdraw the said affidavit filed as the 2nd petitioner had become immobile due to an accident and was also paralysed, by making a prayer before the civil court to permit them to withdraw the earlier affidavit filed by the 2nd petitioner which allegedly contained some statements which according to the respondents, is also defamatory.

12. Even in the affidavit filed by the 2nd petitioner on 12.8.2006, what is stated is, there was collusion between the erstwhile Managing Committee and the plaintiff along with the Architect and lot of discrepancies have taken place. Per se on looking into this aspect, it is not shown to be intended to make any aspersions on the erstwhile Managing Committee members by taking out their

names nor such a statement is made with an intention to publicise or others would come to know of this due to which the complainants are defamed. In the circumstances even the so called statement made in the affidavit also does not per se amount to defamation.

13. In that view of the matter, taking of cognizance and issue of process against the petitioners is nothing but abuse of process of court. Accordingly, petition is allowed. Impugned proceedings pending against the petitioners based on the private complaint filed by the respondents is quashed.