

(2007) 11 KAR CK 0016
In the Karnataka High Court
Case No : Criminal Petition No. 3966 of 2007

B.S. Puttaswamy and Others

APPELLANT

Vs

M.C. Shyamala Kumari and The State Public Prosecutor, High
Court of Karnataka

RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156 (3), 198 (1)
Penal Code, 1860 (IPC) — Section 109, 34, 497, 506

Citation : (2007) ILR (Kar) 5319 : (2008) 1 KarLJ 327 : (2008) 1 KCCR 1

Hon'ble Judges : A.C. Kabbin, J

Bench : Single Bench

Advocate : H.M. Thimmarayappa, for the Appellant; Anand K. Navalgimath,
HCGP for R.2, for the Respondent

Final Decision : Allowed

Judgement

A.C. Kabbin, J.—The accused in C.C. No. 117/2007 on the file of the III Additional Civil Judge (Senior Division) and CJM, Mysore, has filed this petition u/s 482 of Cr. P.C., praying for an Order to quash the proceedings before the Trial Court.

2. The respondent No. 1 (complainant) is the wife of petitioner No. 1. The relation between them has been strained and presumably they are residing separately. For grant of maintenance the respondent No. 1 is stated to have filed C.Mis.198/2002 against petitioner No. 1 in Family Court, Mysore, which is pending adjudication. On 29.08.2005, she filed a complaint alleging that petitioner No. 1 by developing illicit intimacy with petitioner No. 2, committed adultery and when she (the complainant) questioned the petitioner No. 1 about his conduct, the petitioner No. 1 with other petitioners went to the house of the complainant on 17.08.2005, challenged her and threatened to kill her, in case she dared to come again with members of Women Association. It is further alleged that accused Nos. 2 to 5 also threatened the complainant.

3. The said complaint was referred u/s 156(3) of Cr. P.C., for investigation and report and after investigation, the police submitted "B" report. Thereafter, on the protest petition of the respondent, the learned Trial Judge directed for registration of the case against the petitioners for offences punishable under Sections 497, 506, 109 read with Section 34 of IPC. It is that Order, which has been challenged in this petition u/s 482 of Cr. P.C.

4. Sri. H.M. Thimmarayappa, learned Counsel for the petitioners points out that the allegation of the complainant regarding the offence of adultery u/s 497 of IPC., is only against accused No. 1 (petitioner No. 1) and registration of the case against other petitioners is per se illegal. He further points out that u/s 198 of the Cr. P.C., there is a bar on the Court in taking cognizance of an offence punishable u/s 497 of Cr. P.C., on a complaint by a person other than the husband of the woman with whom adultery is stated to have been committed, but that in the present case without any complaint by the husband of petitioner No. 2, cognizance of the offence has been taken by the learned Magistrate. He submits that the direction for registration of the case against the petitioners for the offence punishable u/s 497 of IPC., was without jurisdiction.

5. As regards the other offence, i.e., offence of criminal intimidation, it is his contention that it is inseparable from the allegation of adultery and the allegations being vague they are not sufficient to proceed against the petitioners.

6. Though served with the notice, the respondent did not choose to appear before this Court.

7. The offence of adultery cannot be termed as "inseparable" from the alleged act of criminal intimidation. In the present complaint, criminal intimidation alleged is to deter the complainant going along with the members of women's organisation to the accused No. 1. A perusal of the complaint shows that the alleged act of the accused No. 1 was only a challenge. It falls short an act of criminal intimidation. Therefore, it would be an abuse of the process of the Court, if the proceedings are continued in the Trial Court for the offence of Criminal intimidation.

8. The main allegation of the complainant/respondent is that the accused No. 1 committed adultery with the accused No 2. The offence of adultery punishable u/s 497 makes only the person who commits adultery liable for punishment. Even the adulteress is not liable for punishment. The Supreme Court in the case of V. Revathi Vs. Union of India (UOI) and Others, , cited by the learned Counsel for the petitioners, upheld the validity of exclusion of the adulteress from prosecution. The registration of the case against the accused Nos. 2 to 5 (Petitioner Nos. 2 to 5) for the offence punishable u/s 497 of the IPC with the aid of either Section 34 or 109 was clearly illegal.

9. The order of the learned Magistrate in directing registration of the case against accused No. 1 for the offence punishable u/s 497 of the IPC overlooked the bar u/s 198 (1) of the Cr. P.C. Section 198(1) of Cr. P.C. stipulates that no Court shall

take cognizance of an offence punishable under Chapter XX of the IPC except upon a complaint made by some person aggrieved by the offence. The offence punishable u/s 497 of the IPC is one of the offences listed under Chapter XX. As to who can be considered as aggrieved person is spelt out in Sub-section (2) of Section 198, which reads as follows:

198(2) - For the purposes of Sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable u/s 497 or Section 498 of the said Code:

PROVIDED that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint, on his behalf.

No complaint had been filed by the husband of accused No. 2 alleging adultery of accused No. 1 with his wife. Therefore cognizance of the offence punishable u/s 497 of the IPC was clearly ignoring the bar u/s 198(1) of the IPC.

10. For the above said reasons, the petition is allowed and the proceedings against the petitioners in C.C. No. 117/2007 on the file of III Additional Civil Judge (Senior Division) and CJM., Mysore, are hereby quashed. The bail bonds of the accused shall stand cancelled.