

(2015) 02 KAR CK 0407
In the Karnataka High Court
Case No : Criminal R.P. No. 95/2015

Cyril Joseph

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(2), 401, 438, 482
Penal Code, 1860 (IPC) — Section 354, 376, 384, 506

Citation : (2015) 02 KAR CK 0407

Hon'ble Judges : G. Narendra, J.

Bench : Single Bench

Advocate : M. Vinod Kumar, for the Appellant; K.R. Keshava Murthy, SPP,
Advocates for the Respondent

Final Decision : Allowed

Judgement

G. Narendra, J.—Petitioner is impugning the order passed by the Court of Spl. Judge, XXXV Addl. City Civil and Sessions Judge, at Bengaluru in Crl.Misc.5012/2014 dated 08.12.2014 on the ground that the same has caused gross injustice and is unsustainable in law.

2. The case of the petitioner is that, he was working with a private entity namely M/s. Emphasis, Bangalore as a Senior Customer Service Officer and in the course of his employment he developed acquaintance with one Smt. Subhashini who is also working in the very same company. Further, it is said that the said Smt. Subhashini is married and had a child out of the marriage with one Mr. Shyam of Chennai. It is further stated that, a matrimonial dispute had arisen between the said Subhashini and her husband and due to which, she approached the petitioner to help her to secure accommodation in JP Nagar as she was not conversant with the local Kannada language.

Thereafter, the said Subhasini started insisting upon him, to marry her, which the petitioner declined, in view of the fact that she was already married and had a

child out of her marriage. Annoyed by his refusal the complainant started to threaten the petitioner that she will file a false complaint and in furtherance of her threat she lodged a complaint on 06.07.2014 with the jurisdictional police alleging that the petitioner has taken her photos and had physical relationship with her and also availed money from her. The FIR came to be registered in Crime No. 469/2014 where the petitioner was arrayed as accused and was charged with the offences punishable under Sections 506, 384 and 354 of India Penal Code. The parents of petitioner were also arrayed as accused as they also refused her demand to convince them to the marriage. In this background, the petitioner approached the Hon''ble Court of Sessions under Section 438 of Cr.P.C. by way of Crl.Misc.4138/2014. He was granted the relief of anticipatory bail by its order dated 18.08.2014. While so disposing of the petition under Section 438, the Court below had imposed a condition that the petitioner shall cooperate with the Investigating Authorities.

As the matter stood thus, the petitioner after obtaining certified copy of the order dated 18.08.2014 visited the jurisdictional police, where he was shocked and surprised to see that the police had called over the complainant, and both, the complainant and the police started threatening him to marry the complainant otherwise he would be arrested for the offence punishable under Section 376 of Indian Penal Code. Agitated by the threat, the petitioner again approached the Court of Sessions again by way of Crl. Misc.5012/2014, the order against which, he has preferred the present revision petition.

3. It is seen from the order-sheet that the office has raised objection regarding maintainability of the petition.

4. The petitioners'' counsel has relied on the judgment rendered by the Hon''ble Apex Court reported in Mohit alias Sonu and Another Vs. State of U.P. and Another, wherein in Para No. 16 it has held as under:

"But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court." 5. Petitioners'' counsel has also relied upon another judgment of the Hon''ble Apex Court reported in Amit Kapoor Vs. Ramesh Chander and Another, , wherein, the Hon''ble Apex Court regarding scope of the revisional jurisdiction of High Court under Sections 397 and 401 and 482 of Cr.P.C. has held in Para Nos. 18 and 20 as under:

"18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is

required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused."

6. In view of the above, I am of the view that in the situations as described by the Apex Court in the above noted judgments this Court can exercise inherent powers and also the powers vested under Section 397 to examine the correctness and legality of the order passed by the trial Court or inferior Court in order to prevent the abuse of process of Court or otherwise to secure the ends of justice, or where the judicial discretion is exercised arbitrarily.

7. Accordingly, office objections are over ruled and the above petition is heard on merit.

8. It was contended by the petitioner before the Court below that the police have joined the complainant and threatened him either to marry the complainant, or otherwise they would apprehend him by filing a case of rape. Thereafter he did not attempt to visit the police station. The Court below has construed this as violating the conditions imposed by it in the earlier order dated 18.08.2013 in Crl. Misc. and proceeded to pass a detailed order not only dismissing the petition filed under Section 438 but also latched the petitioner with costs of Rs. 50,000/- on the ground that the petitioner has misused the liberty given by the Court and he failed to co-operate with the Investigating Authorities.

9. A perusal of the complaint shows that some of the ingredients could be used to constitute the allegations under Section 376 of IPC. The Court on the earlier occasion taking note of the contents has been pleased to grant relief under Section 438 of Cr.P.C. While granting relief, the Court below had imposed a condition that the petitioner shall co-operate with the Investigating Authority meaning thereby that, as and when required or directed the accused shall visit

the police station or report to the Investigating Officer. That being the order, the present order by the Court below by misconstruing and mis-reading the conditions imposed in the order dated 18.08.2014 is per say erroneous and is liable to be set aside and accordingly it is set aside. The Court below has failed to appreciate the background facts and circumstances under which, the petitioner was constrained to approach the Court below again. Instead of condemning the illegal acts it has thought it fit to impose extraordinary costs on a person who under misconception had approached the Court for 2nd time. Where a simple order of dismissal would have been suffice to meet the situation, the Court below not only wasted the precious time in setting out for a detailed order, but has also imposed costs of Rs. 50,000/- which is fully unjustified. As a layman the petitioner has thought it necessary to approach the Court for relief in the wake of alleged fresh threats by the complainant and the jurisdictional police.

10. In view of the above, petition is allowed. The order of the Court below is set aside.

In the facts and circumstance there shall be no order as to costs.