

(1967) 12 KAR CK 0013
In the Karnataka High Court

Ghouse Mohiuddin

APPELLANT

Vs

Nagoji and Others (Accused 1 to 3)

RESPONDENT

Date of Decision : 07-12-1967

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203
Penal Code, 1860 (IPC) — Section 107, 325

Citation : (1968) CriLJ 1089

Hon'ble Judges : H. Hombe Gowda, C.J

Bench : Single Bench

Judgement

H. Hombe Gowda, C.J.—This revision petition is directed against the order passed by the Munsiff-Magistrate, Raichur, in case No. 12/1 of 1967, dismissing the complaint petition filed by the petitioner against the respondents for charges under Sections 325 and 107 of the Indian Penal Code.

2. The petitioner filed a private complaint on 1.2.65 against the respondents. Respondent 1 was a typist in the Sadar Bazar Police Station at Raichur and respondent 2, a police constable at the same police station. Respondent 3 is a resident of Raichur Town. The petitioner in his complaint petition alleged that respondents 1 and 2 who were working in the Sadar Bazar Police Station sent for him at the instance of respondent 3, Parwatamma and assaulted him, caused bleeding injury to his nose by giving blows and that when he approached the doctor for treatment, he was directed by the Doctor to come through the police for treatment that the petitioner thereafter went to the Court for filing a complaint, that he was directed in the Court to approach the Superintendent of Police that when the petitioner approached the Superintendent of Police at Raichur, he directed the Circle Inspector to send the complainant to the Civil Hospital for treatment and that it was thereafter he was treated for the injuries suffered at the hands of Respondents 1 and 2 in the police station.

As the petitioner had made allegations against respondents 1 and 2 who were attached to the police station, the police are stated to have not evinced any

interest in investigating into the complaint lodged by the petitioner. The petitioner thereafter filed a private complaint against the three respondents before the Munsiff Magistrate, Raichur, on 1.2.1965.

3. The complaint filed by the petitioner was sent to the police for necessary investigation and report u/s 156 of the Code of Criminal Procedure. After obtaining a number of adjournments the police gave a report to the effect that the allegations made by the petitioner in his complaint petition were false, that the petitioner had sustained the injury to his nose on account of dashing against a stone pillar during a quarrel when the police attempted to separate him. Thereafter, the petitioner undertook to prove his complaint. He requested the Court to summon for the connected papers with the police before orders were passed. The learned Magistrate made some attempts to get at the papers from the police and after a protracted correspondence, it was submitted to the Court that the connected papers were all missing and were not traceable. Thereafter, the case was posted for recording of evidence.

4. The learned Magistrate did not proceed with the trial of the case by summoning and examining the witnesses for the petitioner. He thought, as the alleged occurrence had taken place in the year 1965 and the concerned papers were not available to him, no useful purpose would be served by proceeding with the trial of the case. He accordingly dismissed the complaint filed before him with the following observations:

?It is true that if evidence were to be recorded in the Court it is likely that the witnesses may depose against the accused. But in the context of the two police reports and the fact that the evidence which would be recorded hereafter would be recorded more than two years after the alleged incident. I do not think it useful to issue process in the hope that something might turn up against the accused if evidence were to be recorded. I am, therefore, of the opinion there is no sufficient ground to issue process against the accused at this distance of time and in view of the report of the two police officers. Hence the complaint is dismissed.

It is the legality and correctness of this order that is challenged before this Court now.

5. It was urged by Mr. Ron, learned Counsel for the petitioner that the learned Magistrate had acted arbitrarily in dismissing the petitioner's complaint which he had referred to the police for investigation u/s 156(3) of the Code, without permitting the petitioner to adduce evidence by examining witnesses to prove the Case and that the view taken by the learned Magistrate that if evidence was recorded it might turn against the petitioner for the reason that more than two years had passed after the date of the incident, is clearly erroneous. He further urged that the learned Magistrate had failed to take note of the fact that respondents 1 and 2 were officers attached to the police station and that therefore, the petitioner's complaint made against those officers was not

Investigated as the police were interested in screening them and for that purpose, stated that the relevant papers of investigation were missing when the Court called for the same. In these circumstances it was urged, in my opinion rightly, that the learned Magistrate was entirely wrong in dismissing the complaint filed by the petitioner solely on the ground that no useful purpose would be served by issuing processes to the respondent.

The learned Magistrate has dealt with the matter in a most callous manner. Serious allegations were made by the petitioner against a police constable and an official in the police station. The petitioner had admittedly sustained bleeding injuries. It was the duty of the learned Magistrate to have issued processes to the respondents and then proceeded with the trial of the case. The procedure adopted by the learned Magistrate dismissing the complaint of the petitioner solely on the ground that no useful purpose would be served by his issuing processes to respondents after a lapse of two years after the date of incident, for which the petitioner was in no way responsible, is really unsatisfactory. His order dismissing the complaint u/s 203 of the Code of Criminal Procedure cannot be sustained.

6. In the result, this revision petition is allowed; the order passed by the Magistrate in case No. 12/1 of 67 is set aside and he is now directed to take the case on his file under its original number; issue processes to the respondents; afford reasonable opportunity to the petitioner to adduce evidence in support of his case and proceed with the case according to law on its merits.