
(2014) 07 KAR CK 0107
In the Karnataka High Court
Case No : Criminal Petition No. 5314/2013

Gururaj Joshi

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 468

Citation : (2015) ILR 232 : (2014) 4 KCCR 3824

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : Keshava Murthy, Addl. SPP, S. Rajendra and D.R. Ravishankar,
Advocate for the Respondent

Judgement

S.N. Satyanarayana, J.—Accused No. 2 in Crime No. 77/2011 registered with Chikkanayakanahalli police within the jurisdiction of JMFC Court, Chikkanayakanahalli, has come up in this petition seeking quashing of the complaint registered against him and others for offences punishable under Sections 409, 420, 467, 468, 471, 120B of IPC. The prayer in the present petition is confined to the petitioner-second accused.

2. Admittedly, the complaint in Crime No. 77/2011 is registered at the instance of second respondent Sri V. Selvaraj, who is said to be the erstwhile client of petitioner Gururaj Joshi. It is stated by the petitioner that the complaint dated 10.4.2011 is filed against him alleging that petitioner herein, who was earlier an Advocate to second respondent has colluded with accused 1 and 3, who are complainants, business rivals and adversaries in various litigations, which were already pending in various courts, more particularly, in two suits which are in O.S. No. 138/2006 and 144/2006, both between complainant and first accused M/s. Fiza Developers. The sum and substance of the complaint is that the petitioner herein, who was the Advocate for second respondent has created certain documents utilising the blank green sheets bearing signature of complainant,

which were in the safe custody of the petitioner in confidence i.e., signed blank sheets available with him are utilised for withdrawal of the suit which were filed by the complainant to accommodate accused Nos. 1 and 3 and also in creating certain documents in the form of general power of attorney and other documents, thereby creating an advantage to accused 1 and 3 to the detriment of complainant.

3. With these accusations, the complaint is filed in the year 2011. It is seen that subsequently, this petition is filed seeking quashing of the said complaint on the ground that the complainant herein, who was earlier client of the petitioner had taken his services to appear in as many as 29 cases resulting in petitions being filed in the courts at Chikkanayakanahalli, Tiptur, Tumkur, High Court of Karnataka as well as before the Apex Court. That for the services rendered by him for the period from 2006 to 2011, he was required to pay a sum of Rs. 50,00,000/- towards professional fees to the petitioner. Hence, it is stated that two cheques were sent to him towards the said fees and as and when said cheques were deposited in to the bank, they were dishonoured for want of sufficient funds. Hence, petitioner initiated proceeding against second respondent in C.C. No. 22292/2011 and 22293/2011 on the file of XV ACMM Court, Bangalore. It is his specific contention that in retaliation to initiation of aforesaid proceedings, the present complaint is filed as a counter blast. Therefore, this criminal petition which is filed should be allowed and the proceeding initiated in Crime No. 77/2011 should be quashed, as against the petitioner.

4. Heard the petitioner, party-in-person as well as learned Additional SPP for the State and the learned counsel for second respondent.

5. The first and foremost ground on which petitioner is seeking quashing of the aforesaid criminal proceeding is that even after lapse of two years from the date of filing the complaint, the State has not taken any steps to either issue notice to him or to investigate in to the matter. In that view of the matter, since there being no serious allegation as against him in the complaint, which is lodged by the second respondent, allowing the complaint to be registered against him and kept in abeyance, would be detrimental to his interest. Hence, the same is required to be quashed as he has made out to the satisfaction of the court that the present complaint is nothing but counter blast to the litigations, which are already commenced by him under section 138 of Negotiable Instruments Act, 1881 in CC. Nos. 22292/2011 and 22293/2011.

6. Per contra, the learned counsel for second respondent would submit that initiation of proceedings in CC. No. 22292/2011 and 22293/2011 for alleged dishonour of cheque is subsequent to filing of the complaint by second respondent herein and according to him, the complaint was filed on 10.4.2011 and these petitions are initiated subsequently in the month of June 2011. In that view of the matter, to say that the complaint is counter blast to the proceedings initiated in CC. No. 22292/2011 and 22293/2011 is totally erroneous and contrary to facts on record. On the contrary, the petitioner herein has initiated

the proceedings against complainant herein as counter blast to complaint registered against petitioner herein and others in Crime No. 77/2011. It is further contended that the petitioner herein in colluding with accused Nos. 1 and 3 in Crime No. 77/2011 has not only sacrificed the interest of his client-the complainant by misusing the blank signed sheets available with him for dismissal of the suit, but has also misused his trust in utilizing his cheque to stake false claim for huge sum of fees without any basis, which is not only a criminal act, but professionally unethical conduct.

7. After considering the arguments of both the learned counsel for petitioner as well as learned counsel for respondents 1 and 2 this Court feel that in the light of serious allegations being made in the complaint, question of quashing the same without even investigation in to the matter would be contrary to the interest of petitioner as well as second respondent. Assuming for a moment that this proceeding is nothing but counter blast, the same would come out in the investigation that would be conducted by the police. Therefore, the right thing that could be adapted in this matter is, to allow the prosecution to complete the investigation in accordance with law with direction to file appropriate report in the matter at the earliest, which shall not be later than 90 days from this day. While doing so, the investigation officer shall make sure that all the documents, which are furnished by both the parties are looked in to and after proper evaluation of the same to file the appropriate report.

Accordingly, this criminal petition is dismissed.

A copy of this order shall be made available to the learned Additional SPP.