

(2018) 04 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition Nos.200466-470 of 2018

**H. Padmavathi Bai and Ors @APPELLANT@Hash The State of Karnataka
and Ors**

Date of Decision : 05-04-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Code of Criminal Procedure, 1973 — Section 482, 156(3)
Indian Penal Code, 1860 — Section 34, 384, 403, 406, 418, 420

Citation : (2018) 04 KAR CK 0005

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

Bench : Single Bench

Final Decision : allowed

Judgement

1. These writ petitions are filed under Articles 226 and 227 of Constitution of India r/w Section 482 of Cr.P.C. seeking quashing of order dated

07.11.2017 passed by learned Civil Judge (Sr.Dn.) & CJM, Raichur in PCR No.12/2017 vide Annexure-D and also for quashing of FIR dated

27.11.2017 registered in Crime No.295/2017 vide Annexure-E and consequently for issue of a writ in the nature of mandamus, directing Bar Council

of Karnataka to remove 3rd respondent from the role of advocate by withdrawing his Sannad and for other consequential reliefs.

2. The brief facts leading to filing these petitions are as under;

The petitioner Nos.1 to 5 in these petitions are accused Nos.1, 3 to 6 in PCR No.12/2017 on the file of JMFC-I Court, Raichuru. The said complaint is

filed by 2nd respondent-Mahantesh Patil against petitioner Nos.1 to 5 herein and another person by name Thimmappa who is arraigned as 4th

respondent in this proceedings.

3. The sum and substance of the complaint in PCR No.12/2017 is that the

petitioner Nos.1 to 5 herein are accused Nos.1, 3 to 6 in the said complaint, which is filed seeking to punish them along with 4th respondent herein for the offences punishable under Sections 384, 403, 406, 418 and 420 r/w

Section 34 of IPC with reference to the offences said to have committed by them within the limits of Yargera village, Taluka and district Raichur and

within the jurisdiction of Yargera Police Station.

4. According to the complainant, who is 2nd respondent in these petitions, 1st petitioner herein is widow of late. H. Srinivas Rao who was owner of

agricultural land bearing Sy.No.1204/1 measuring to an extent of 08 acres 15 guntas and Sy.No.1205/1 measuring to an extent of 12 acres 12 guntas

of Kallur-2 village, Tq. Manavi, District Raichur. The petitioner Nos.2 to 4 herein are daughters of 1st petitioner and her husband late H. Srinivas Rao

- 5th petitioner is the husband of 4th petitioner, a practicing advocate at Bangalore. According to the complainant, the aforesaid landed properties of

late H. Srinivas Rao was subject matter of litigation with some third party by name Bhimaraya staking claim to said properties. In this behalf, it is

stated that 1st petitioner was trying to sell the properties on as is where is, basis. According to complainant, the 1st petitioner approached him through

4th respondent herein to sell the said properties for valuable consideration of Rs.46,50,000/-, which he agreed and in that behalf an agreement of sale

was entered into between them, that he has paid a sum of Rs.2,00,000/- towards advance and agreed to purchase the same. He also contend that in

terms of the agreement of sale he has done various things with reference to improvement of the said land, including getting change of Khata of said

land to the name of 1st petitioner and also trying to solve the dispute between the third party namely Bhimaraya and 1st petitioner herein and in the

process he has spent huge amount of money.

5. When matter stood thus, according to him though he has spent several lakhs of rupees for the said purpose, the 1st petitioner with the help of

petitioner Nos.2 to 5 has clandestinely made arrangement to sell the properties to 4th respondent herein and another person by name Tayappa behind

the back of the complainant, who is 2nd respondent herein which has necessitated him to file a complaint in PCR No.12/2017 against petitioner Nos.1

to 5 and 4th respondent for the offences punishable under Sections 384, 403, 406, 418 and 402 r/w Section 34 of IPC.

6. It is on the basis of this complaint, the learned JMFC-I Court, Raichur is said to have passed an order on 07.11.2017 in directing the Yargera Police

to conduct an investigation under Section 156 (3) of Cr.P.C. and to file report by 30th December, 2017, which is registered in the said Police Station in

Crime No.295/2017 against petitioner Nos.1 to 5 and 4th respondent in this proceedings. The 1st petitioner herein is shown as accused No.1, 4th

respondent-Thimappa is shown as 2nd accused, petitioner Nos.2 to 5 herein are shown as accused Nos.3 to 6 for the very same offences and

thereafter it is seen that the police have commenced the investigation into the matter which is challenged by petitioner Nos.1 to 5 herein on the

following grounds;

6(a). That the properties as stated supra were absolute properties of 1st petitioner's husband namely late H. Srinivas Rao who is also father of

petitioner Nos.2 and 4 and father-in-law of petitioner No.5. That the 5th petitioner is a practicing Advocate in Bangalore is also correct. However, the

averment that the said properties were under serious threat of dispute with third party namely Bhimaraya, which necessiated the petitioners to

approach the 2nd respondent-complainant for his interference and assistance is false statement. The further statement that the petitioners have

approached the 2nd respondent through the 4th respondent for sale of aforesaid properties; that the entire transaction has taken place between the 1st

petitioner and 2nd respondent-complainant with the mediation of 4th respondent-Thimappa and that the 5th petitioner in this proceedings has taken role

either to mediate between the parties or tried to put into any kind of influence on the family members of late H. Srinivas Rao or that he has taken any

amount in between from the complainant or the 4th respondent-Thimappa or in the alternative another person referred to in the complaint namely

Tayappa at any point of time is absolutely false and concocted for the sake of the complaint. According to petitioners, the actual facts are as stated in

the present petitions which is as under;

6. (b). That the 1st petitioner herein was in possession, cultivation and in-charge of land bearing Sy.No.1024/1, measuring to an extent of 08 acres 15

guntas and Sy.No.1205/1, measuring to an extent of 12 acres 12 guntas of Kallur-2 village, Tq. Manavi, District Riachur, which was earlier owned by

her husband late. H. Srinivas Rao. It is stated that there are no male issues to

late H. Srinivas Rao and 1st petitioner and they had only three daughters, therefore the 1st petitioner was not inclined to keep the landed properties forever. In the meanwhile, there was pressure by some persons like Bhimaraya and others to knock of the properties by trying to create one or the other hurdle.

7. In this background, the 2nd respondent himself approached the petitioners and offered to purchase the said properties for valuable consideration of

Rs.46,50,000/-. To show his bonafide, he has paid a sum of Rs.2,00,000/- on the date of entering into agreement for purchase of the properties that

was on 05.08.2014. In the said agreement which got prepared by himself, he has inserted clause-3 which would suggest that he would be getting

properties registered either in his name or in the name of his nominee, thereby indicating that he was not a serious purchaser and that his intention is to

enter into an agreement for purchase of said properties and thereafter to scout for somebody for better value which was not known to the 1st

petitioner at the relevant point of time.

8. It is necessary to mention that the said agreements which are filed into this Court along with memo on 02.04.2018 would indicate that from

02.04.2018 till the date of filing into this Court, no additional payments are made by the 2nd respondent-complainant. The reading of the said

agreement clearly disclose that there is no reference to any third party claim by somebody by name Bhimaraya or in the alternative there is any

problem with reference to change of record of rights of aforesaid properties to the name of petitioners and that the said properties required leveling

and other work which is required to be done and that the said properties were not delivered to the 2nd respondent- complainant either for the purpose

of leveling the same at the cost of the 1st petitioner. The averments regarding the said things in the complaint is not seen in the agreement which is

entered into between the 1st petitioner and 2nd respondent on 05.08.2014. There is no reference to either Mr. Tayappa and Mr. Thimappa being

persons having mediated this. It is stated that according to the petitioners, the 2nd respondent-complainant namely Mahantesh Patil who is real estate

agent and a part time politician and that he is in the practice of entering into such kind of agreements and thereafter scouting for better offers to re-

sale the properties which was not known to the petitioners initially when the

agreement of sale dated 05.08.2014 was entered into. It is only after the agreement that they realized the intention of 2nd respondent-complainant in not being serious about completing the sale transaction.

9. When the matter stood thus, it is stated that the 2nd respondent brought two persons by name Tayappa and Thimappa. Out of that, Thimappa is shown as 2nd accused in the compliant. He suggested to the 1st petitioner that he is assigning his right to purchase the said properties in favour of these two persons whom he introduced to the 1st petitioner as his cousins and at his instance by 2nd respondent two agreements are entered into in favour of Thimappa and Tayappa and also received the money from Thimappa under two receipts. It is after this, all the problem started.

10. According to the petitioners, the escalation of the problem is with the entry of 3rd respondent-Avaneeshanath R. Taranath in these proceedings who is a practicing Advocate in Raichur District. According to the petitioners, he is not a man of good repute and he is already facing prosecution in a matter where he is alleged to be involved in extortion in respect of which a bunch of documents are produced this day by the counsel for the petitioners along with a memo as recorded in the order sheet this day, maintained in this proceedings.

11. It is the further grievance of the petitioners that the 3rd respondent who is the author of agreement of sale between the 1st petitioner-H.

Padmavathi Bai, 4th respondent- Thimappa and another person Tayappa, he has deliberately suppressed all that while preparing the compliant in PCR

No.12/2017, filed before the JMFC-I Court, Raichur. Pursuant to which crime No.295/2017 is registered. The further grievance of the petitioners is

that the reading of the compliant along with the agreements of sale entered into between the 1st petitioner, Thimappa and Tayappa which are signed

by 3rd respondent as a person who has drafted the said agreement and as well as he himself being the person who has drafted the complaint on behalf

of 2nd respondent-complainant who is earlier agreement holder with 1st petitioner clearly indicate that the criminal complaint is nothing but handy

work of 2nd respondent-Mahantesh Patil who is complainant in the Court below and his counsel respondent No.3-Avaneeshanath R. Taranath who is

the mastermind behind all these. According to them, if 3rd respondent is not the lawyer of 2nd respondent, there was no need for him to be the person

drafting agreement on behalf of the Thimappa and Tayappa with reference to the same properties as the 1st petitioner in agreeing to convey the same to them. That these documents have come into place with the involvement of 2nd respondent and 3rd respondent to project as if petitioners, Tayappa and Thimappa are cheating 2nd respondent-Mahantesh Patil. The complaint is drafted in such a manner that all the facts are twisted and turned while doing so it is stated that 3rd respondent has suppressed existence of many of the document for which he himself is the author. When such serious allegations are made against a practicing advocate, it is difficult for anybody to accept the same on its face value. Definitely, it will be doubted regarding the genuineness of the said allegation unless there is any material to substantiate the same.

12. In fact, in the instant case, the petitioners have filed certain documents which are with reference to reputation of 3rd respondent-Avaneeshnath R.

Taranath, a practicing Advocate who is involved in another case where there is allegation of extortion against him and another person. The learned

counsel for the petitioners who has produced in all five documents in support of that would indicate that one Ranganath Chitragara has made serious

allegation of extortion against the 3rd respondent herein in a complaint which is registered with Market Yard Police of Riachur. Incidentally, the said

complaint is with reference to extortion. The accusation made therein appears to be very serious. It is not only extortion but also forcibly taking away

the property belonging to somebody and trying to make extortion from the said person which is investigated by the police and the same has resulted in

a charge sheet being filed. Though no further discussion is required in respect of the said document, this Court would like to place on record certain

strange things which are seen in the complaint which was made against the 3rd respondent and another person by name Gururaj Hiremath. In the said

complaint in Crime No.150/2015 which has resulted in charge sheet being filed in Charge Sheet No.33/2016 of Market Yard Police subsequently,

registered in C.C.No.1061/2017 on the file of IV-Additional JMFC Court, Raichur, when the entire documents is seen, the complaint would indicate

not just threat to the life of the person but also refers to the extortion, collection of money from the complainant and trying to cheat the said person of

his properties and various other offences. Surprisingly, the police viz., Market Yard Police while registering the complaint have deliberately left out

many of the serious offences should have been considered in the said complaint against the 3rd respondent and another Gururaj Hiremath. They

conveniently reduced the application of provisions with reference to offence referred to in the complaint and tried to dilute the complaint itself while

registering the complaint in Crime No.150/2015 and subsequently, while filing charge sheet in Charge Sheet No.33/2016 which is registered in the

Court of IV-Additional JMFC, Raichur, in C.C.No.1061/2017. Be that as it may. It is open for the said Ranganath Chitragara to bring it to the notice

of the learned Magistrate to see that the same is rectified and proper charge sheet is filed with modified offences covering all the accusation made

against the said person.

13. Be that as it may. Coming to this, when the accusation against the 3rd respondent is seen in the said complaint and also accusation made against

him in this petition, as well as complaint which is drafted by him in PCR No.12/2017 on the file of Principal Civil Judge (Senior Division) CJM,

Raichur, in respect of which the first information is registered in Crime No.295/2017 with Yeregera Police clearly disclose that the contents of the

complaint is not supported by the documents which are relied upon by the complainant. On the other hand, it will disclose that author of the complaint

in PCR who is 3rd respondent has tried to make said complaint more colorful in adding things which are not on record i.e., the background of

transaction resulting in agreement of sale between the first petitioner and the complainant is manipulated to such an extent in the complaint, none of

the averments made in the complaint in PCR No.12/2017 are seen in the agreement dated 05.08.2014. Further, when agreements in favour of

Tayappa and Thimappa are looked into, again they do not give an impression that it is Thimappa who is instrumental in the agreement of sale dated

05.08.2014 being finalized between the 1st petitioner and 2nd respondent-complainant.

14. Per contra, entire material on record as placed by the petitioners herein would clearly indicate that 2nd respondent-complainant who is said to be a

Real Estate Agent and part-time Politician who entered into agreement of sale on 05.08.2014 agreeing to purchase property of the petitioners herein

for valuable consideration of Rs.46,50,000/- has only paid a sum of Rs.2,00,000/- in the month of August 2014 and thereafter, he has kept quiet till

today without paying any amount and trying to get the said property sold in favour of persons identified by himself. In the bargain, trying to show payments made by them as payments made by him and in addition to that, trying to create a story as if he was in possession of the property from the date of agreement of sale i.e., 05.08.2014 and that he has made lot of improvements on the said property by spending several lakhs of rupees which he has spent with an understanding with vendor that same would be paid by her. In fact, all this cock and bull story of the complainant which is woven with the assistance of 3rd respondent does not get credence inasmuch as, there is nothing on record which would support the said concocted theory of the complainant in PCR No.12/2017. On the contrary, conduct of 3rd respondent herein being Lawyer for Thimappa and as well as 1st petitioner in agreement of sale entered into between them at the behest of the 2nd respondent-complainant is trying to twist the whole thing in such a way as if Thimappa is the agent of 2nd respondent-complainant and Tayappa is another agent and as if all the moneys which are paid in the transaction are flown from coffer of 2nd respondent as asserted by the petitioners. In the bargain, he has also tried to unnecessarily drag the name of 5th petitioner, an advocate practicing at Bengaluru whose involvement is tried to be brought in this as if he is greedy of that property and the money which is generated out of its sale. All this clearly depicts criminal intention of 3rd respondent in converting what could at best be a civil litigation into criminal one. This shows intention of the 2nd and 3rd respondent as a team are out to extort money from the petitioners.

15. In the normal circumstance, this Court would not have jumped into such a conclusion, more particularly, against an advocate. Here what is to be seen is the reputation of the advocates. One of the advocate on the side of the petitioners is a practicing advocate at Bengaluru.

16. Sri Bahubali A. Dhanawade, learned counsel who is appearing for petitioners would bring to the notice of this Court that the 5th petitioner was appearing as counsel for Lokayukta of Karnataka and also for other various reputed institutions and he has conducted several cases in the High Court of Karnataka for and on behalf of the institution and saved reputation of Karnataka Lokayukta in several land marked judgments being rendered with his assistance in upholding the effort of Lokayukta Police. He would also try to bring to the notice of this Court that 5th petitioner in this proceeding is

a man of high repute and high standing counsel practicing as a private advocate and he is appointed as counsel for various institution of high repute

where the honesty and integrity of the advocate is more important for successful disposal of such petitions and in the case of 5th petitioner, he enjoys

highest reputation in that behalf which is also accepted by the learned High Court Government Pleader appearing in this proceeding.

17. As against that, what is seen with the reputation of 3rd respondent who has suppressed his own involvement in preparation of documents both for

the petitioners - accused and as well as respondent-complainant and as well as another respondent and preparing drafts for various persons in the

same transaction and suppressing all those documents while preparing false complaint against vendor for and on behalf of one of the parties to the

proceeding and converting a civil litigation giving it criminal flavour for the reasons best known to him. The said conduct of 3rd respondent is highly

disrespectful to the profession to which he is belonging and the one which calls to be deplored.

18. In any event, this Court would not go to the extent of making any such observation at this juncture and feel it is appropriate to send him before the

appropriate authority where his involvement in the aforesaid manner is required to be justified by him as just and proper or otherwise to be decided by

the said authority who would regulate the conduct of the people like him in the profession of advocacy.

19. In this background, when the entire record is looked into and the manner in which the learned Magistrate has looked into the complaint clearly

indicate that there is no application of mind on the part of the learned Magistrate of Raichur in ordering investigation into a false complaint which is

filed by the 2nd respondent with the assistance of 3rd respondent against petitioner Nos.1 to 5 and 4th respondent in a transaction of sale of property

which is purely in the nature of civil litigation being tried to be converted into criminal litigation is nothing but a dishonest attempt on the part of the 3rd

respondent which should not be allowed to be continued.

20. In that view of the matter, in the light of the aforesaid discussion, this Court would quash the order of Principal Civil Judge (Senior Division) and

CJM, Raichur, dated 07.11.2017 in PCR No.12/2017 in directing the Police-Sub-Inspector of Yeregera Police to register FIR and conduct

investigation under Section 156(3) of Cr.P.C., is hereby quashed. Consequently, the complaint which is registered by Yeregera Police of Raichur

District in Crime No.295/2017 for the offences punishable under Sections 420, 406, 403, 384, 418, 34 of IPC is hereby quashed.

21. While doing so, a copy of this order is marked to the Bar Council of Karnataka to look into the conduct of 3rd respondent-Sri Avaneeshnath R.

Taranath and to conduct an enquiry with reference to his conduct in the aforesaid matter. This Court would also mark a copy of this order to the IV-

Additional JMFC, Raichur, with a direction to keep this order in C.C.No.1061/2017 where the learned Magistrate shall look into the complaint which is

filed by Ranganath Chitragara and also provisions of law which is invoked by the Market Yard Police while registering complaint in Crime

No.150/2015 and as well as in the charge sheet which is filed in Charge Sheet No.33/2016. When those two documents with reference to complaint

referred to therein is looked into, there is deliberate act on the part of police to give up many of the offences which are seen in the complaint and they

have diluted that in such a way that though the complaint is registered against accused Nos.1 and 2 in said C.C.No.1061/2017, it is for a lesser offence

than the offence which are committed which appears to be more serious in nature. To take corrective measures in this behalf, a copy of this order is

sent to the said office.

22. With the aforesaid observations, these writ petitions are allowed in the aforesaid terms.