

(2012) 12 KAR CK 0001
In the Karnataka High Court
Case No : Criminal Petition No. 15940 of 2012

Hanamareddeppa and Channaveerappa	APPELLANT
Vs	
Syed Ghalib Hashimi and Others	RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 341, 342, 504, 506
Protection of Human Rights Act, 1993 — Section 2 (d)

Citation : (2012) 12 KAR CK 0001

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Bapurao Mangane, for the Appellant; Liyaqat Fareed Ustad, Advocate for R1 and Sri Sanjay A. Patil, Addl. Spp for R2, for the Respondent

Final Decision : Allowed

Judgement

Mohan Shantanagoudar

1. Heard.

This petition is filed praying for quashing the order dated 06.08.2012 passed by the Principal Sessions Court (Human Rights), Bidar in PHR No. 1/2012, by which the cognizance is taken against the petitioners and process is issued for the offences punishable under Sections 341, 342, 326, 504, 506, read with Section 34 of IPC and read with Section 2(d) of Human Rights Act.

The complaint is lodged by respondent No. 2 herein alleging that the complainant has suffered injuries and fracture of his hand which were caused by the petitioners while he was in illegal detention by petitioner No. 1.

Similar allegations were made earlier by the complainant in his complaint lodged before learned Additional Chief Judicial Magistrate Court, Bidar in P.C. No. 10/2011. In the said complaint also offences punishable under Sections 323, 324, 326, 504, 506, 341, 342 read with Section 34 of IPC were alleged. The Police after investigation filed "B" report in P.C. No. 10/2011. However, the

complainant did not file protest petition and consequently, "B" report was accepted by the Chief Judicial Magistrate on 23.05.2012 and P.C. No. 10/2011 was closed. Thereafter, the complainant filed one more complaint before the Sessions Court (Human Rights), Bidar in PHR No. 1/2012 alleging almost the very allegations. The said complaint was also referred to Superintendent of Police for investigation. The Superintendent of Police after investigation has laid "B" report. However, the Human Rights Court did not accept the "B" report and took the cognizance and issued process against the petitioners. The said order is impugned in this petition.

2. Learned advocates on both sides argued in respect of their case. Sri Baburao Mangane, learned counsel appearing on behalf of the petitioners drawing the attention of the Court to Rule 6 of Karnataka State Human Rights Court and Human Rights Commission Rules, 2005 submits that the sanction to prosecute the public servant is not obtained by the complainant and therefore, proceedings vitiate. He further argues that the second complaint based on the same allegations is not maintainable.

Sri Liyaqat Fareed Ustad, learned counsel appearing on behalf of respondent No. 1 relying upon the judgment of the Apex Court in the case of Mahesh Chand Vs. B. Janardhan Reddy and Another, submits that second complaint is not barred. Particularly, when first complaint is dismissed without assigning any reason. However, Sri Baburao Mangane, learned advocate for the petitioners has tried to distinguish the said judgment on certain grounds.

Be that as it may, the Sessions Court did not have an opportunity to look into the said aforementioned judgment as well as aforementioned rule. The Sessions Court should have taken into consideration all the necessary aspects of the matter before coming to the conclusion. Therefore, without observing anything on the merits of the matter, this Court prefers to remit the matter to the Sessions Court for fresh consideration. Accordingly, the impugned order dated 06.08.2012 passed by the Principal Sessions Court (Human Rights) stands set aside. The matter is remitted to the Sessions Court, Bidar for fresh consideration as per law, keeping in mind the aforementioned observations.

The criminal petition is allowed accordingly.