
(2013) 12 KAR CK 0481
In the Karnataka High Court
Case No : Criminal Petition No. 10303 of 2012

Holabasappa

APPELLANT

Vs

Shanta and The State of Karnataka

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 504, 506

Citation : (2013) 12 KAR CK 0481

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : S.B. Naik, for the Appellant;

Judgement

Jawad Rahim, J.—The petitioner who is arraigned as accused in P.C. No. 160/2005, on the file of the I Addl. Civil Judge (Sr.Dn.), Dharwad facing charge for offence punishable under sections 504, 506 r/w 34 of IPC, seeks quashing of the proceedings. Heard both sides. Perused records.

2. It reveals the respondent-Shanta presented a private complaint before the Magistrate against one V.S. Karamadi, retired Superintendent of Police alleging he is her brother. The family owns property bearing CTS No. 26/A/DA/D2A and B situated at Ramanagar, Dharwad, which is to be divided amongst them. Her brother - Karamadi in an attempt to usurp the property has created a Will and using that concocted document tried to dispossess her from the residential portion. When she resisted, he went to her house and tried to evict her forcibly causing threat of dire consequences. A suit in O.S. No. 126/2005 is also pending decision. She alleges he abused her in a filthy language and also threatened her of doing away with her life which threat is unbearable. She alleged that because he is retired Superintendent of Police, the local police officers are not receiving her complaint or giving any protection to her. She tendered her sworn statement, so also examined her sister Sharada as a witness. Meanwhile with the permission of the Court she has also brought into party arraigned the petitioner as second accused.

3. The learned jurisdictional Magistrate by the impugned order dated 12.1.2007 took cognizance for the offence punishable under Sections 504, 506 read with Section 34 of IPC and issued process against the petitioner also.

4. The petitioner's grievance is neither in the complaint nor in the sworn statement, there is any allegation against him of having indulged in any act coming within the mischief of Section 504 and 506 of the IPC. It is also urged that in the original complaint, his name is not mentioned. The learned Magistrate only permitted her to include his name subsequently.

5. As rightly urged by the petitioner's counsel, the substance of allegation in the complaint is the basis on which the Magistrate has to decide, whether cognizance could be taken for further action. The narration of facts in the complaint gives clear indication that it is the first accused, who has indulged in the act if any, and there is no statement against the present petitioner. The only allegation is the 2nd accused (petitioner) had abused her and obtained her signature on some papers. The feeble statements in the complaint without disclosing his overt acts or the role played by him makes out no prima facie case.

6. I am satisfied that the petitioner's grievance is justified. Since there is no allegation in the complaint against him, the question of requiring him to answer charge does not arise. Being of this view, the proceedings initiated against the petitioner in P.C. No. 160/2005, on the file of I Addl. Civil Judge (Sr.Dn.), Dharwad for the offence punishable u/s 504, 506 read with 34 of IPC is hereby quashed. It is made clear that this order shall not be construed as effecting the prosecution against the first accused.