

(2006) 07 KAR CK 0018
In the Karnataka High Court
Case No : C.R.L.P. No. 2295 of 2001

J.K. Panthaki

APPELLANT

Vs

Babu Verghese and Another

RESPONDENT

Date of Decision : 23-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2006) 07 KAR CK 0018

Hon'ble Judges : C.R. Kumaraswamy, J

Bench : Single Bench

Advocate : Holla and Holla, for the Appellant; M.T. Nanaiah and Associates, for the Respondent

Final Decision : Allowed

Judgement

C.R. Kumaraswamy, J.—This is an application filed u/s 482 CrPC praying for this Court to permit the petitioner to amend the petition as follows:

i) Add para as 15 (A): Subsequent to the grant of interim order dated 10.8.2001 by this Hon"ble Court staying all further proceedings before the Trial Court, the police have framed the charge sheet which has been taken on record by the learned Magistrate, The same is wholly illegal and contrary to the interim order passed by this Hon"ble Court. Further charge sheet also does not disclose any offence.

ii) Add in prayer column after the word "and", add the following:

quash the charge sheet filed in the said case and

2. It is contended in the petition that this Court by order dated 10.08.2001 was pleased to stay further proceedings in Crime No. 300/2001 on the file of the VI Addl. Chief Metropolitan Magistrate. The said order was communicated to the Trial Court. Inspite of that police have now filed a charge sheet before the Trial Court, which has been received by the Trial Court. The same is wholly illegal.

Under these circumstances, the petitioner is constrained to seek amendment of the petition. If this petition is not allowed prejudice and hardship will be caused to the petitioner.

3. The learned Counsel for respondent have filed the following objections;

The application filed by the petitioner is not maintainable in law. The respondents police have already charge sheeted the petitioner for having committed the offences and the case is pending before the Hon"ble VI Additional Chief Metropolitan Magistrate, Bangalore in C.C.No. 11094/2002. There is no progress on the said case on account of the stay granted on 10.8.2001. The petitioner cannot file an application for amending the petition and the provisions u/s 482 of Cr.P.C. cannot be used to amend the petition. The code does not empower to amend the petition, because filing of charge sheet does not become illegal, as there was no order of the Court to stay the investigation. Hence, the learned Counsel for the respondent prays this Court to dismiss this application.

4. Heard the learned Counsel for the petitioner as well as the respondent. The short question that arises for my consideration is that;

Whether the petitioner is entitled to amend the petition?

5. The contention of the petitioner is that this Court passed an order of stay of the proceedings in Crime No. 300/01 on the file of the VIAddl. Chief Metropolitan Magistrate, Bangalore. The said order was communicated to the Trial Court immediately. Despite the same police have filed Charge sheet before the Trial Court and the same has been received by the Trial Court. This is illegal. Hence, under these circumstances, the petitioner wants to amend the petition.

6. The contention of the learned Counsel for the respondent is that the application is not maintainable in law and since the investigation was not stayed, the charge sheet was filed which is not illegal. At this stage I do not express any opinion about the investigating agency laying the charge sheet before the Trial Court because that is not main point urged in this LA. The point that has been urged in this Interlocutory application is permission to amend the petition. It is undisputed fact that criminal petition was filed when crime was registered. Subsequently, the investigating agency completed the investigation and filed the charge sheet. After the charge sheet was filed, the petitioner has moved a petition to amend the prayer of the petition. The learned Counsel for petitioner submitted that the power u/s 482 Cr.P.C could be exercised when there was no provision to meet a particular situation as, in the instant case to amend the petition. In support of his contention the learned Counsel for the petitioner relied on the decision in the case of Income Tax Officer Vs. Balaji Chit Funds and Others, The Hon"ble Madras High Court in para 4 of the said decision has observed as follows:

What has been overlooked in this case is that it is only in respect of matters covered by specific provisions of the Code that the inherent powers of the High

Court cannot be invoked. The power u/s 482, Criminal Procedure Code, could well be exercised when there is no provision in the Code to meet a particular situation, as in this case. The firm which is an accused, has to be properly described as being represented by the managing partner. After all, these amendments in respect of (he description of the first accused cannot in any way affect the other accused who are partners of the firm. On the contrary, the omission to so describe may affect the result of the original proceedings against the first accused. In fact, it is the allegation of the petitioner that it is only during the arguments of the petitioner u/s 482, Criminal Procedure Code, to quash the Criminal Proceedings that the petitioner came to understand that there is no valid representation before the Court in respect of the first accused. As the case of the first respondent itself is that there is no provision in the Criminal Procedure Code to amend the complaint, this Court will undoubtedly have power u/s 482 of Criminal Procedure Code, to effect the amendment. Obviously, these petitions, though it is not stated in the petitions, must have been filed by way of abundant caution so that the charge against the first accused may not fail for failure to properly describe the first accused as being represented by the second accused, the managing partner. In the circumstances, the petitions are allowed and the amendment sought for is ordered.

7. The learned Counsel for petitioner has also produced the Case of Balaji Chit Funds v. ITO SLP Cri. 351-355 of 1987. Wherein the Hon"ble Supreme Court has dismissed the Special Leave Petitions against the judgment dated 13.1.1987 of Madras High Court in Cr.P.No. 12735-12739/1986.

8. The learned Counsel for the petitioner has also produced the case of Jayprasash Sumantrao Kale v. Chandrakala Jayprakash Kale and Ors. 1984 CRL. L.J. 1257 At Para 5. of the said decision reads as follows:

Since I am called upon to exercise the powers u/s 482 of the Code of Criminal Procedure, I may refer to the said provision, Section 482 of the Code of Criminal Procedure reads as under:

482, Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of process of any Court or otherwise to secure the ends of justice.

From the bare reading of this Section, it is clear that the provisions of Section 482 of the Code of Criminal Procedure can be invoked by an aggrieved party requesting this Court to pass such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. In the present case, having regard to the facts and Circumstances of the Case, the Courts below granted the amendment sought by the First Respondent and while granting such amendment also afforded an opportunity to the Petitioner to file his say to the said amendment. The Courts below were right in holding that no prejudice whatsoever would be

caused to the petitioner if the amendment sought by the First Respondent is granted. It is also material to note that the additional ground of second marriage of the petitioner with Pushpa has become available to the First Respondent after the filing of the Application. It would be too technical to direct the First Respondent to file another application taking up this ground sparely and then go for Trial in these applications. This would lead to multiplicity of proceedings. The orders passed by the Learned Judges of the Courts below are at the interlocutory stage and therefore, I would not be justified while exercising powers u/s 482 of the Code of Criminal Procedure to interfere with such discretionary orders. The petitioner may take up such contentions if permissible under the law at the time of final hearing.

9. In the instant case petitioner wants to amend the petition by adding para 15 (A) and also seeking relief to quash the charge sheet. The contention of the respondent is that the petitioner has not produced the charge sheet, before the Court and there is no provision in the Criminal Procedure Code to permit the petitioner to amend the petition. The learned Counsel for petitioner has produced the copy of the charge sheet during the course of arguments on this application. No doubt, under Code of Criminal Procedure, there is no specific provision for permitting the parties to amend the petition. Normally when there is no specific provision the Court will exercise the inherent jurisdiction to allow or disallow the prayer of the parties. In the instant case, if the prayer of the petitioner is rejected adhering strictly to the legal interpretation there will be multiplicity of proceedings. Further allowing the amendment does not affect the merits of the case and this will not go to the core of the matter. Therefore, considering the facts and circumstances of the case in my opinion the application filed for amendment deserves to be allowed.

10. In view of what has been stated above, I pass the following:

ORDER

The application filed u/s 482 seeking for amendment of the petition i.e., to add Para 15 (A) and additional prayer as sought for is allowing. Petitioner to carry out the amendments.