

(2015) 04 KAR CK 0193
In the Karnataka High Court
Case No : Criminal Petition No. 427 of 2014

K. Rajashekar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 420, 468, 471, 477-A

Citation : (2015) 04 KAR CK 0193

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : J.M. Umesha Murthy, for the Appellant; Anitha R., HCGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopal Gowda, J.—The petitioner, arraigned as accused No. 2, in C.C. No. 349/2013, on the file of Civil Judge (Jr. Dn.) and JMFC, Harapanahalli, filed this petition, under S. 482 of Cr.P.C., to quash the entire proceedings of the said case.

2. The second respondent, working as Inspector of Posts, Harapanahalli Sub Division, having lodged a complaint, was registered. Upon investigation, charge sheet having been submitted, cognizance was taken and C.C. No. 349/2013, for the offences punishable under Ss. 420, 468, 471, 477-A read with S. 34 of IPC was registered against the accused No. 1 - T. Jyothi Kumar and accused No. 2 - petitioner herein.

3. Sri J.M. Umesha Murthy, learned advocate, contended that the complaint filed by the second respondent being specific and the allegations being against T. Jyothi Kumar only, i.e., the then Sub Post Master, Haluvagalu Sub Post Office, without there being any material collected during the investigation, charge sheet submitted against the petitioner and the cognizance taken, resulting in registration of C.C. No. 349/2013 by the learned Magistrate being illegal, since

the essential ingredients of the offences under Ss. 420, 468, 471, 477-A read with S. 34 of IPC was not made out, prosecution of the petitioner being abuse of process, the impugned proceeding is liable to be quashed. He submitted that there is no basis to arraign the petitioner as accused No. 2, since, the petitioner was a bona fide SB Account holder in the Post Office and had nothing to do with the misappropriation allegedly committed by T. Jyothi Kumar. He contended that there being no criminal act on the part of the petitioner and essential ingredients of the offences not appearing against the petitioner, this petition is liable to be allowed.

4. Smt. R. Anitha and Sri H. Jayakara Shetty, learned advocates appearing for respondents, were unable to point out any material, filed along with the charge sheet, which would constitute any criminal offence having been committed by the petitioner.

5. Perused the materials on record.

6. Inherent power under S. 482 of Cr.P.C., to quash a criminal proceeding can be exercised in a case where complaint does not disclose any offence or is frivolous. The power can be exercised in order to see that the process of law is not abused.

7. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, AIR 1976 SC 1947 : (1976) CriLJ 1533 : (1976) 3 SCC 736 : (1976) SCC(Cri) 507 : (1976) SCR 123 Supp , Apex Court has enumerated the cases, where, an order of Magistrate, issuing process against the accused can be quashed. The same reads thus:

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

From the above, it is clear that a criminal proceeding can be quashed where allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case, alleged against the accused. While doing so, the complaint has to be examined as a whole, but without examining the merits of the allegations. No detailed enquiry or meticulous analysis of the material or assessment of the

reliability or genuineness of the allegations made in the complaint is permissible.

8. In the instant case, complaint was lodged by respondent No. 1, against T. Jyothi Kumar, the then Sub Post Master, Haluvagalu. The voluntary statement, allegedly made by T. Jyothi Kumar, before the first respondent, reads as follows:

9. Even in a statement dated 16.04.2008 given to the Inspector of Posts, Harapanahalli Sub Division, accused No. 1-T. Jyothi Kumar, has stated that he issued two pass books of SB account No. 192053 to the petitioner and having perused the SB withdrawal form dated 11.04.2008, tendered by the petitioner for withdrawal of Rs. 77,000/-, Jyothi Kumar has stated that balance in the petitioner's S.B. account No. 192053 as Rs. 77,843/-, but in the said account upto 20.07.2007, Rs. 34,923.25 only was shown and not credited the balance amount to the account.

10. It has been stated in the complaint, that T. Jyothi Kumar, admitted that Rs. 42,920/- being the deposit made in the pass book, was misappropriated by him i.e., misutilised for his personal purpose and that he had maintained one pass book as a parallel pass book of the account on 05.02.2008 for misappropriation of Rs. 34,923.25, in the said SB account. Misappropriated amount of Rs. 42,920/- has been credited by T. Jyothi Kumar, in instalments, on 03.05.2008, 09.05.2008 and 31.05.2008.

11. Despite the complaint being specific and against T. Jyothi Kumar only and the investigation record not showing commission of any criminal act by the petitioner, cognizance for the offence was taken mechanically and process issued against the petitioner.

12. When the allegations made in the complaint, the statements recorded by the Investigation Officer and the materials collected during investigation, produced along with the charge sheet, taken on their face value, are examined, they would not constitute the offences alleged against the petitioner, as none of the ingredients of Ss. 420, 468, 471, 477-A read with S. 34 of the IPC, has been made out.

13. Since from the examination of the complaint and the charge sheet materials, I find that no allegations are made out attracting the ingredients of the offences under Ss. 420, 468, 471, 477-A read with S. 34 of the IPC, prosecution of the petitioner for the said offences being abuse of process and as there is no material to proceed against the petitioner, the proceeding, as against accused No. 2, is liable to be quashed.

In the result, the petition is allowed and the proceeding in C.C. No. 349/2013 on the file of Civil Judge (Jr. Dn.) and JMFC, Harapanahalli, as against the accused No. 2 is quashed. However, learned Magistrate shall proceed against the accused No. 1, uninfluenced by any of the observations made herein and decide the case in accordance with law. The defence of the accused No. 1, to the allegations made against him is kept intact.