

**(1998) 02 KAR CK 0026**

**In the Karnataka High Court**

**Case No :** Criminal Petition No's. 2720 and 2789 of 1995

Kamalanjanamma and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

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**Date of Decision :** 26-02-1998

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 156 (3), 200, 258, 397, 482

Penal Code, 1860 (IPC) — Section 120 B, 177, 182, 201, 34

**Citation :** (1998) ILR (Kar) 1801 : (1998) 3 KarLJ 517

**Hon'ble Judges :** M.P. Chinnappa, J

**Bench :** Single Bench

**Advocate :** Sri B.R. Nanjundaiah, for the Appellant; Sri S.S. Koti, State Public Prosecutor and Sri M.V. Devaraju, for the Respondent

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## **Judgement**

1. The brief facts leading to the these petitions are that one Raja Satish who is the 2nd respondent filed a private complaint before the Additional Chief Metropolitan Magistrate, Bangalore, alleging that the petitioners 1 to 4 executed registered sale deeds in the office of the Sub-Registrar alienating certain shop premises in favour of the purchasers. It is also alleged that the owner Nagarathnamma w/o late Raja Chetty who is the grand-mother of this complainant was bed ridden prior to 1991. She was unable to execute any deed. It is also further alleged that these petitioners who are the accused before the Court somehow managed to get the sale deed with the help of a lady who is unknown to the complainant by paying certain amount who impersonated the said Nagarathnamma thereby they committed the offence punishable under Sections 474, 420, 511 read with Sections 120-B and 201, IPC. The said complaint was registered as PCR No. 1938 of 1993 on 23-11-1993. The learned Magistrate referred the case to the police and the Seshadripuram Police registered a case in Cr. No. 50 of 1993 and submitted FIR to the Court on 16-3-1994. The police filed charge-sheet for the offence punishable under Sections 468, 471, 419, 420, 120-B read with Section 34, IPC against 8 accused

persons. Thereafter, the Court has taken cognizance of the offence and directed to issue process. It appears on 13-11-1995 accused Nos. 7 and 8 filed application under Sections 317 and 70(2), Cr. P.C. and other accused remained absent. On 1-12-1995 all the accused persons filed an application u/s 482, Cr. P.C. which is registered as Cr. P. No. 2720 of 1995. Similarly, almost on identical grounds, the same complainant filed another complaint before the Magistrate u/s 200, Cr. P.C. which was registered in PCR 102 of 1995 and the case was referred to Basavanagudi Police Station u/s 156(3) for investigation as per order dated 10-3-1995. On 14-3-1995 the Basavanagudi Police registered a case in Cr. No. 87 of 1995 and submitted FIR on 14-3-1995. Subsequently, after investigation the police filed charge-sheet on 6-11-1995 for the offences punishable under Sections 465, 464, 468, 471, 420, 34 read with Section 120-B, IPC. The Magistrate has taken cognizance and directed issue of summons to the accused persons. In response to those summons, except A-4 all other accused persons appeared before the Trial Court and offered bail. Thereafter, all the 6 accused persons filed petitions u/s 482, Cr. P.C. in Cr. P. No. 2789 of 1995. Detailed facts are not necessary in these cases. Suffice it to add that on the basis of the investigation conducted by the police and on charge-sheet being filed by them, the learned Magistrate proceeded to issue process to the accused persons and the same is questioned in these two petitions. After hearing both sides, this common order is passed. Retain a copy of this order in each file.

2. Heard both sides.

3. The learned Counsel for the petitioners has vehemently argued that no offence is made out as against these petitioners. Further, even if offences are made out, those offences according to the allegations in the complaint would come under Sections 177 and 182 of the Indian Penal Code. Those offences as the allegations in the complaint would indicate that the sale deed was obtained by impersonating one Nagarathnamma by some lady and false sale deeds were obtained. No Court can take cognizance of the offence in respect of these offences on complaint filed by a private party as it is hit by Section 195, Cr. P.C. The police filed the charge-sheet against the aforesaid offences with a view to avoid the mischief of Section 195, Cr. P.C. which is impermissible and therefore, these petitions may be allowed and the entire proceedings may be quashed.

4. Per contra, the learned Counsel for the respondents submitted that the perusal of the complaints clearly discloses serious offences against the accused persons. The police have filed the charge-sheet after investigation and the learned magistrate has taken cognizance of the offence. All these offences are triable as warrant case. Therefore, it is not open to the petitioners to approach this Court directly u/s 482, Cr. P.C. as an effective and speedy remedy is available to them and they also will have full opportunity to argue the case before framing of charges. But these petitions have come to be filed only with a view to drag on the proceedings and to frustrate the complaint filed by the complainant which has actually been done in this case. There is no merit in these petitions and the

same may be dismissed.

5. Repelling this argument, the learned Counsel for the petitioner submitted that there is no need for the accused persons to go before the Magistrate when they can avail speedy and efficacious remedy before this Court. He also submitted that if the petitioners approached the Magistrate Court, they will have to suffer unnecessary humiliation in standing before the Court and therefore, these petitions may be allowed.

6. From these arguments and also the narration of facts, it is clear that the petitioners have not raised these contentions before the Court below. It is also not in dispute that the offences alleged against them are triable as a warrant case. In a warrant case, it is incumbent on the Magistrate to hear the accused persons before framing charge. It is only with a view to provide an opportunity to the accused persons, to seek their discharge on the ground that materials are not sufficient to frame charge or that the prosecution as launched is not maintainable is hit by certain provisions of law. In one case, accused persons appeared and they offered surety. In another case, they did not even appear before Court. On the other hand, they directly rushed to this Court invoking inherent jurisdiction of this Court. Needless to say that the police after thorough investigation filed the charge-sheet. That being the case, it was open to the accused persons to appear before the same Court and urge all the contentions that they have raised in these petitions. The Magistrate is also empowered and competent to decide those points. Instead of doing that, only on the ground that the accused will be humiliated and further proceedings will be delayed, they approached this Court. It is not out of place to mention that the complainant being aggrieved by certain act on the part of the accused persons filed a complaint before the Court to agitate the matter for the just decision of the case. By presenting these petitions, the very purpose of the complaint and the investigation conducted by the police are frustrated. One case was of 1993 and the criminal petition came to be filed in the year 1995. In other case, the complaint was filed in the year 1995 and the criminal petition also was filed in 1995. We are now in 1998. For the last 3 years, these two petitions are pending before this Court. That being the case, the first contention of the learned Counsel for the petitioners that by preferring these petitions, the delay can be curtailed is unacceptable. If these contentions were raised before the Magistrate, the prosecution as well as the accused would have had full opportunity to go into all aspects of the matter and probably the entire case would have been disposed of. On the other hand, obviously with a view to delay the proceedings, the petitioners approached this Court. Thus, the very purpose of the investigation is defeated.

7. The learned Counsel for the petitioners further submitted that if efficacious remedy is available only in this Court, hence the petitioners need not go to the Magistrate. He was very vociferous in his submission that if the accused were to appear before the Court, he will suffer humiliation. It is no doubt true that

appearing before the Court as accused itself is a humiliation but the Cr. P.C. provides that it is the duty of the accused persons to appear before the Court if summons/notice or warrant are issued against him. Thereafter, the offering of bail etc. would arise. To avoid all these procedures, the accused persons approach this Court directly by-passing the Trial Court. In other words, certain mandatory requirements of law are also not followed by the accused persons before approaching this Court. On the other hand, the complainant in a private complaint will have to appear before the Court on all hearing dates to prosecute his complaint failing which his complaint will be dismissed. However, it is not necessary in a case where police files a charge-sheet. Be that as it may, the complainant will be appearing and standing before the Court when the case is called but the persons against whom serious accusations are made will avail all the benefit and not appear before any Court; thereby the complainant who is the victim and has come to Court will be suffering all the humiliation. The matter which can be thrashed at the Trial Court itself, being carried to the High Court u/s 482, Cr. P.C. thereby 2 proceedings would be pending in 2 different forums invoking the inherent jurisdiction of the Court. Thus the delay would put the complainant in a disadvantageous position and he would not be able to establish his case due to lapse of time. That is not the object of the Cr. P.C. It is also necessary to mention here that if the accused approaches the Court where the proceedings are pending, the complainant also would be able to substantiate his case before the Magistrate and it is our experience that in the High Court, mostly the complainant will not be appearing as it may not be possible for him to come all the way from his place which is situated far away from the High Court, thereby the Court also would not get the proper assistance from the complainant's side. On the other hand, if these points are raised before the same Magistrate, the delay and other complications can be avoided. By filing petitions before this Court, unnecessary delay is caused and expenses are incurred by both the parties. For example in these two cases as indicated above, the Magistrate has merely taken cognizance of the case and directed to issue process to the accused after perusing the charge-sheet filed by the police but the accused persons came to this Court to quash the entire proceedings pending before the Court below urging certain grounds. These grounds could as well be urged before the Trial Court as the Trial Court is competent and has jurisdiction to decide the case.

8. Ultimately, if the Trial Court were to pass an order either in favour of the complainant holding that there is a prima facie case or discharge the accused or acquit him the aggrieved party can move the superior Court by way of revision or appeal or by a criminal petition as provided under the Act, thereby the superior Court will also have the advantage of going through the order passed by the Trial Court with the reasons assigned arriving at the conclusion relying on the materials placed before him, thereby one stage will have completed. Even the accused persons are allowed to file documents, if they so desire before the Trial Court to make out their case and also the Trial Court can consider the probable

defences available to the accused persons but while acting u/s 482, Cr. P.C. this Court cannot look into the documents to be produced by the accused in this Court directly. It also cannot go into the probable defences of the accused. These advantages will be lost to both the parties. If any order is passed by this Court, it can be questioned only before the Apex Court and the parties may be deprived of an opportunity to approach the Sessions Court or the High Court as the case may be, as against the order of the Trial Court.

9. The scope of Section 482, Cr. P.C. admittedly, is very limited. It can go into only certain limited questions which are enumerated by Their Lordships of the Supreme Court in a decision in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, , followed. In this case, order of discharge passed by the Sessions Judge, was confirmed by the High Court in its revisional jurisdiction. The scope of High Court's inherent jurisdiction to quash criminal proceedings was not an issue. It is settled law in view of the Judgment of the Supreme Court that the High Court should exercise its inherent power to quash the FIR/charge-sheet/complaint only in the rarest of rare cases. It should now weigh the pros and cons of the prosecution case or consider the effect of the non-compliance of a mandatory provision of law -- *State of Himachal Pradesh Vs. Shri Pirthi Chand and another*, .

10. The learned Counsel for the petitioner has however submitted that in this case, the remedy is available to the complainant before the Civil Court. Therefore, he has to work out his remedy only before the Civil Court and the criminal proceedings will have to be quashed. This argument is unsustainable in view of the Judgment rendered by Their Lordships in *Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta*, , wherein it is held that a particular act may constitute both civil wrong as well as criminal wrong and merely because civil action is also provided it does not render criminal action impermissible. It is also held that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power u/s 482, Cr. P.C. or under Articles 226 and 227 of the Constitution.

11. From the above discussions, it is abundantly clear that the Hon"ble Supreme Court is against the High Court in interfering with the proceedings at the initial stage. Despite all this, the accused persons approach this Court under one pretext or the other to thwart the proceedings as indicated above. It is also our experience while sitting in Criminal Bench, 95% of the cases regarding quashing of proceedings are dismissed mostly relying on the decisions of the Supreme Court. Despite this, criminal petitions are flooded in this Court.

12. It is held by their Lordships of the Supreme Court in *K.M. Mathew Vs. State of Kerala and another*, , wherein it is held:

"It is open to the accused to plead before the Magistrate that the process against

him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused".

13. The object and purpose of Section 482, Cr. P.C. is to prevent the abuse of process of Court and where there is no other alternative or efficacious remedy available it cannot be resorted to if they are to stifle a legitimate prosecution. It is held on facts, that the suo motu questioning of FIR and the investigation was improper and uncalled for. As stated above, the remedy can be provided by the Trial Court itself, The Trial Court is not barred from entertaining arguments in regard to the merits of the case or the bar contained under any provision of law, any further proceeding of the case or any other legal contention which the accused persons desire to raise at the preliminary stage itself. Therefore, this Court cannot go into the question directly by-passing the jurisdiction of the Trial Court. Further, by entertaining such petitions, instead of preventing the abuse of process of Court it is being encouraged leading to the abuse of process of Court as rightly pointed out by the learned Counsel for the respondent.

14. The learned Counsel for the petitioner argued that if such contentions are to be taken before the Trial Court, it will lead to unnecessary delay. This argument is without any substance. As indicated above, these two cases for example are pending for the last 3 years without any result. In actual fact, two proceedings have been pending in two different Courts. Instead of putting an end to the multiplicity of proceedings, the same is being encouraged by entertaining the proceedings u/s 482, Cr. P.C. though the same contentions could be urged before the Trial Court. Their Lordships have held that only in rarest of rare cases, the petition can be entertained. It is the experience of this Court that it has become a regular feature of approaching this Court directly without even appearing before the Trial Court. The complainant does not get equal treatment. On the other hand, I am of the considered view that he is dragged to the High Court for having approached the Trial Court for redressing his grievance.

15. It was brought to my notice by the learned Counsel for the respondents that in T.P.G. Nambiar and Others Vs. The Registrar of Companies, Karnataka, Bangalore, , this Court has held that the contention raised in those petitions could be urged before the Trial Court and directed the parties to approach the Trial Court. That order was questioned before the Supreme Court and their Lordships of the Supreme Court dismissed their petition summarily directing the petitioners to approach the Trial Court while confirming the direction issued by this Court.

16. The Division Bench of this Court in Y. Krishnamurthy Vs. Sharanappa, , has

held:

"We are of the opinion that under normal circumstances, an accused person should not be liberally permitted to approach this Court for exercise of jurisdiction either u/s 397 or 482 of the Cr. P.C. The aggrieved person be insisted upon to first approach the Magistrate or the Court where the proceedings are pending for discharging him u/s 245(2) or dropping the proceedings u/s 258 of the Cr. P.C. Such a course would be beneficial and convenient both to the accused and the complainant. In that event, this Court will also be in a better position to appreciate the rival contentions in the light of the adjudication made by the Magistrate or the Court. In this way, the object of the Code for minimising the litigation and avoiding the delay could also be achieved".

Despite this order it is observed that the accused persons approach this Court directly without appearing before the Trial Court. Under those circumstances, it is just and necessary that the Registry may be directed not to register the criminal proceedings to quash the proceedings unless they approach the Trial Court and all the contentions are raised and the Trial Court given a finding thereon.

In the result therefore, I proceed to pass the following:

#### ORDER

These petitions stand dismissed reserving liberty to the petitioners to raise all the contentions urged herein, before the Trial Court and the Trial Court is directed to consider the arguments in accordance with law, notwithstanding the fact that these petitions are dismissed by this Court.

However, with a view to achieve the object and purpose of the above discussions and also to provide speedy and efficacious remedy to both the parties, the Registry of this High Court is directed not to receive any petitions filed u/s 482, Cr. P.C.-for quashing of the proceedings pending before the Trial Court, unless the aggrieved person first approaches the Trial Court for discharging or dropping the proceedings on any of the grounds and such petition is accompanied by a copy of the order passed by the Court below.

Send a copy of this order to the Registrar (Judicial) to comply with the directions.