
(2013) 04 KAR CK 0182

In the Karnataka High Court

Case No : Criminal Petition No's. 5986, 4131, 4138 of 2006 and 2528 of 2009

K.R. Srinivasa and Another

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 415, 419, 468, 471, 474

Citation : (2013) 3 AKR 244

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Tomy Sebastian, C.M. Kempe Gowda, K. Diwakara and H.N. Ramachandra Rao, for the Appellant; P.M. Nawaz, Addl. State Public Prosecutor and C.V. Sudhindra, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—These petitions are heard and disposed of together as the petitioners are all accused of offences punishable under Sections 415, 419, 464, 468, 469, 471 and 474 read with Section 120-B of the Indian Penal Code, 1860 (Hereinafter referred to as the "IPC", for brevity) in case No. CC 13961/2006, before the court of the Chief Metropolitan Magistrate, Bangalore. The facts of the case are as follows:--

The petitioners were all employees of Prasara Bharathi. Some of them have attained the age of superannuation and have retired. However, while all of them were posted at Doordarshan Kendra, Bangalore, they were all said to be the members of the Programme Staff Association (Hereinafter referred to as the "PSA", for brevity), a body consisting of Doordarshan Kendra (Hereinafter referred to as the "DDK", for brevity) and All India Radio (Hereinafter referred to as the "AIR", for brevity) employees, of which petitioner No. 1 in Criminal Petition No. 4131/2006 was said to be the Unit Secretary.

It transpires that during the year 1998-1999, the complainant - Mahesh Joshi

was then the Director - Marketing, AIR and DDK, Bangalore. According to his complaint, several employees, including the petitioners, had published false and defamatory statements after passing a resolution at a meeting of the PSA, held at DDK, Bangalore in April, 1999. It was alleged that the decision was endorsed and signed by all the accused, who were cited in the First Information Report and the complainant had filed a private complaint numbered as PCR 364/1999, for the offences punishable under Sections 499 and 500 of the IPC before the Chief Metropolitan Magistrate, Bangalore. After the Magistrate took cognizance, the case was numbered as CC 185/2000. During the course of the trial, several of the accused persons compounded the offence with the complainant by tendering apology by way of affidavits insofar as the accusations were concerned and the complainant had withdrawn the complaint insofar as those accused persons were concerned. But the petitioners in these petitions, numbering 9, had contested the case and the Magistrate, by his judgment dated 5.7.2005, had acquitted the accused. It was during the pendency of that case, that the complainant filed the present case registered as Crime No. 191/2004 on 30.9.2004. The Police, having filed a charge-sheet against these petitioners, the petitioners are before this Court.

2. It is contended that when the petitioners have been acquitted of the offences in the first instance, the present complaint, which is an offshoot of the earlier complaint, is brought mala fide and only in order to cause harassment and hardship to the petitioners. The proceedings would have to be quashed as it would certainly amount to the petitioners suffering a double jeopardy. It is pointed out that the present complaint is nothing but a continuation of the earlier complaint, which is opposed to the established principles of law and would militate against justice and fair play.

It is well-settled that the criminal law being set in motion and the motive if tainted with mala fides and is instituted maliciously with an ulterior motive of wreaking vengeance against the petitioners, to appease a private and personal grudge through the medium of the Court, it is gross abuse of process and therefore, requires to be quashed.

The very complainant having brought an earlier case that has been decided on merits and an appeal filed against the acquittal of the present petitioners in Criminal Appeal No. 1388/2005, the same was also dismissed by a judgment dated 5.7.2011. It is pointed out that according to the complainant, the president of the PSA had filed an affidavit in the Court of the Chief Metropolitan Magistrate, along with his sworn statement stating that the letter, which was issued by the first petitioner in Crl. P. 4131/2006, K.R. Srinivas, the Secretary of the local unit of PSA, on the letterhead of PSA, was unauthorized and an unofficial one and he had further stated that at the relevant period of time, there was no legally constituted unit of PSA at DDK, Bangalore. He has further stated that neither K.R. Srinivas was the Secretary nor a Member of the said association during 1999. He had also stated that the letter head of PSA has been fabricated

and all the 26 members of the PSA, who had signed the minutes even as members of the PSA, were not at all the members of the PSA, duly recognized by the Central body and that the said President had also filed a criminal petition in Crl. P. 39/2004 before this Court and in the said petition, he had again stated that at the relevant point of time, the PSA had no longer a unit of DDK, Bangalore and the accused were never its members and he had also stated that the letterhead that the accused had used was a forged and fabricated one. But, he had withdrawn that petition as on 3.6.2004. Hence, it was alleged that the named persons in the complaint numbering 25, were not members of the PSA, had entered into criminal conspiracy and falsely claimed to be the members of the PSA and held a false proceedings in the name of PSA at its local unit at DDK, Bangalore and passed a false resolution, calculated to make it appear as genuine and enclosed the same along with a, false representation to the higher authorities of the Prasara Bharathi to damage the career of the complainant as well as his reputation and integrity and had used the false and forged documents as genuine and forwarded the same to the higher authorities in Doordarshan intending to cause harm and injury to the complainant. The direct effect of which was that the complainant was immediately transferred to another station. It is on the basis of that complaint that the proceedings had been initiated and therefore, it is pointed out that the findings in the earlier complaint clearly did not enable the complainant to file the present complaint, on the basis of the material that was negated by the very court, as not having been proved.

It is pointed out that the earlier proceedings required the court to consider whether the accused, namely, the petitioners herein had, in pursuance of their common intention, to malign the reputation of the complainant and in order to lower the image of the complainant in the estimation and in the eyes of the public, had prepared a note containing defamatory statements against the complainant and had circulated the letter amongst various authorities and had also got it published in an informative weekly and thereby committed offences punishable u/s 500 read with Section 34 of the IPC. In this regard, the trial court had addressed Exhibit P. 1, which was the alleged document containing the defamatory remarks.

The court below has categorically held that taking into account the entire evidence produced, it was not established that the petitioners herein had committed any offence, as it was not at all proved that Exhibit P. 1 had been published to the knowledge of any third-parties. It is contended that on the basis of the alleged statement made by the president, PSA to the effect that Exhibit P. 1 was a forged document and that the petitioners were not members of the PSA and that therefore the petitioners had committed an offence punishable u/s 469 of the IPC would not be tenable, for the reason that Exhibit-P. 1, which has not been proved at all, in the earlier proceedings. Secondly, the stand of the complainant is inconsistent in having accepted the apology of the other accused, all of whom were arraigned as the accused, on the footing that they were all members of the said association along with the petitioners. Such an inconsistent

stand would demonstrate that the complainant only seeks to pursue the criminal proceedings with mala fide intentions and therefore, the learned counsel seeks that the proceedings be quashed.

3. While the learned counsel appearing for the complainant - respondent vehemently seeks to justify the institution of the proceedings, as the cause of action for the earlier proceedings is entirely different from the cause of action for the present proceedings.

It is on the complainant becoming aware that not only was the publication of Exhibit P. 1 in the earlier case, grossly defamatory, but had been forged and falsely presented, as coming from an association of which the petitioners were not members nor office-bearers, the same is established on the face of it. The petitioners seeking to contend otherwise, are at best, claiming the defence available to them, which they are entitled to set up at the trial. On the principle that if the allegations in the complaint supported by material on record is left uncontroverted, it will certainly result in the conviction of the petitioners and it is on that guideline that the proceedings would require to run their course and there is no warrant to prematurely quash the proceedings, even before the complaint is tested at the trial. It is in this vein that the learned counsel would seek to justify the pending proceedings before the trial court.

In the above facts and circumstances, it is not in dispute that the acquittal of the petitioners in the earlier proceedings has attained finality. A significant finding by this Court insofar as Exhibit P. 1, which was a copy of the alleged document containing the defamatory statements, as exhibited in the earlier proceedings, is to the following effect:--

9. It is from the above evidence of the complainant, the learned Magistrate has held that the accused has not proved that Ex. P. 1 was issued by the accused nor he has proved that Ex. P. 1 was signed by any of the accused and therefore, acquitted the accused.

10. On a careful consideration of the entire materials on record, it is seen that at the very outset the complainant has not produced any evidence to show that Ex. P. 1 was produced before him by any person much less the accused and also the writing and signature found in Ex. P. 1 is not proved to belong to any of the accused. There was a signature found in Ex. P. 1, which according to the complainant belongs to one of the accused. Nothing prevented the complainant from sending the said document to the hand writing expert and from getting it compared with the signatures of the accused so as to fix the liability on the accused.

Therefore, when the primary document, on which the complainant rested his case, has been negated, it would be futile to attribute the said document to the petitioners herein, in further alleging that they had forged the said document and had falsely claimed to be the secretary, PSA, and that they were members of the PSA etc., which is wholly irrelevant, as the grievance of the complainant was

regards the injury that he had sustained by virtue of the defamatory statements contained in that document. Therefore, when the primary grievance of the complainant and the basic act attributed to the petitioners has not been proved, it is no longer tenable for the court to examine a peripheral issue, whether the petitioners had committed forgery of that very document and had falsely claimed to be the members of the association etc. Therefore, the only presumption that could be drawn is that the complainant has brought the proceedings with a view to wreak vengeance against the petitioners. Though the court having taken cognizance in the first instance, was on account of the fact that the earlier proceedings had not culminated in a judgment and there were no findings as regards the proof of Exhibit P. 1. But however, with the findings having been arrived at categorically, as to the complainant not having proved the basic document, on which his entire case was based, no purpose is served in re-examining the same, albeit with a different purpose of ascertaining whether the petitioners were involved in forging the document and whether or not they were really the members of any employees' association. The complainant, in any event, is not an office bearer of the association, who is aggrieved by any such forgery or impersonation. That is the other aspect, which would also render the further proceedings ineffectual.

Hence, for all these reasons, the petitions are allowed. The proceedings on the file of the VIII Additional Chief Metropolitan Magistrate, Bangalore in C.C. No. 13961/2006 are quashed.