
(2014) 08 KAR CK 0080

In the Karnataka High Court

Case No : Criminal Petition No. 2539/2012

Renold Praveen Kumar

APPELLANT

Vs

Jalaja Suvarna

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Penal Code, 1860 (IPC) — Section 323, 34, 506

Citation : (2014) 08 KAR CK 0080

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : S.N. Bhat, Advocate for the Appellant; Nasrullah Khan, HCGP for Cuckoo Delhi, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dr. Jawad Rahim, J.—The petitioner seeks quashing of the proceedings against him in C.C. No. 980/2012 on the file of Addl. Civil Judge & JMFC, Udupi registered for the offences punishable under Sections 323 and 506 r/w. Section 34 of IPC.

2. Heard Sri S.N. Bhat, learned counsel for the petitioner and the learned Government Advocate.

3. Learned counsel for the first respondent, who had taken notice had commenced arguments but is not present today. The case was passed over and called again. The petition is admitted and taken up for final disposal by consent.

4. The contextual facts to which learned counsel for the petitioner has adverted to shows that the petitioner is a practicing advocate and claims that he had been engaged by Smt. Sheethal to obtain an order of injunction to protect her possession in respect of immovable property. Under instructions, he has filed a suit as O.S. No. 447/2011 and an interim order was granted by the Court. His client took summons to be served on the respondent namely, one Sadananda

Suvarna. Later, a complaint came to be lodged before the jurisdictional police by jalaja Suvarna, sister of Sadananda Suvarna. With ameena of the Court, the police officials have visited the place of complainant along with the petitioner. They indulged in the act of violence and the petitioner assaulted her causing injuries. He also held threat and criminally intimidated her. She lodged a report against three persons namely, Smt. Sheetal, Denzil and Arther alleging they had acted in consort to commit such offence. The Investigating Officer, took up the investigation and recorded the statement of two ameens sent by the Court and the police officer Gowri Shankar and during course of investigation also examined complainant. Charge sheet is filed indicting the petitioner as 4th accused along with three others.

5. The petitioner has sought quashing on the ground that he had only filed a suit and obtained order of injunction against the complainant's brother. He has not gone to the spot and indulged in any act to subdue his client and to defame and humiliate him, a false report his lodged.

6. Learned counsel for the petitioner would submit, no doubt, F.I.R. is based on the complaint, the statement in complaint alleged, the petitioner has gone to the spot and indulged in assault and criminal intimidation, it finds no support from the official witnesses and independent witnesses, who were present at the spot. He has appended to this petition, the statement of witnesses recorded by the Investigating Officer.

7. The statement of Narayan, the ameen shows, he has spoken of going to the spot and serving the summons along with another court official along with the Sub Inspector Ganesh. In his statement, he speaks only of going to the spot only on 25.11.2011 and serving summons and ordering injunction in O.S. No. 447/2011. He does not refer to any incident of violence or presence of the petitioner.

Similarly, he read out to me, the statement of Suresh Naik, another amen, who had accompanied Narayan. He has spoken to similar facts and does not refer to the presence of petitioner or attributes any overt act to him.

The third statement is of the police officer Gowri Shakar, who has also spoken of having given police protection to the Court officials, who had gone to the spot for serving the Court summons. He has also not referred to the presence of petitioner but states that there were some commotion or galata.

8. From the statement of these witnesses, it is evident that no material is brought out to show that petitioner had gone to the spot with Court officials and secondly, he had indulged in any act of violence. Material concluded during investigation undoubtedly has to be taken into consideration to decide the overt acts of the persons arraigned, to decide prima facie case. It is one such case, where the Investigating Officer despite recording the statement of witnesses, who did not indict the petitioner, has indicted him as fourth accused and the learned jurisdictional Magistrate has then proceeded to entertain the charge.

9. Needless to say that Section 173 of Cr. P.C. requires examination of material compiled in the form of charge sheet and then to submit to the Court with the summary of it in sub-Section (2).

Needless also to emphasise that the aspects incriminating or otherwise spoken, each witness has to be examined, analysed and understood by the Investigating Officer to decide whether a case is made out against the persons named in the F.I.R. to put them to trial before the Court.

10. In the instant case, from the statement of witnesses referred to, we find not even a sentence about the presence of the petitioner or any overt act. Therefore, a mere mention of his name in the F.I.R. could not be a basis to show him as the fourth accused in the charge sheet. The material is insufficient and the conclusion of the Investigating Officer finds no support from his own investigation.

11. In the circumstances, I cannot ignore the submission of learned counsel for the petitioner that this is a case where the advocate has been implicated by the opponent in civil proceedings for certain reasons un-understandable. Hence, the petition is allowed. The proceedings in C.C. No. 980/2012 against the petitioner is quashed.