
(2021) 05 KAR CK 0012
In the Karnataka High Court
Case No : Criminal Petition No. 1096 Of 2020

Shabna Yousuf & Others

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 24-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 482
Indian Penal Code, 1860 — Section 34, 323, 341, 453, 458, 504, 506, 509
Guardian and Wards Act, 1890 — Section 7

Citation : (2021) 05 KAR CK 0012

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Prajith C, Namitha Mahesh, S.N. Sameer

Final Decision : Allowed

Judgement

H.P. Sandesh, J

1. This petition is filed under Section 482 of Cr.P.C, praying this Court to quash the entire proceedings against the petitioners in Crime No.199/2019

filed by the police of Electronic City Police Station, Bengaluru for the offences punishable under Sections 506, 509, 458, 453, 504 read with Section 34

of IPC pending on the file of the Chief Judicial Magistrate, Bengaluru Rural, Bengaluru.

2. The factual matrix of the case is that respondent Nos.2 to 4 have filed a complaint against the petitioners herein before the Additional Chief Judicial

Magistrate at Bengaluru Rural which is numbered as PCR No.392/2019 wherein an allegation is made against the petitioners that on 19.11.2017

petitioner No.1 came along with her family members/relatives to the complainant's house at 9.20 p.m. when it was time for the child to sleep and

created havoc outside the apartment by ringing the bell continuously for 20 minutes and threatening the complainant to take complainant No.3 against his wishes. In order to safeguard and protect complainant No.3, intimidated the police and the police arrived in 20 minutes and then the complainant No.1 opened the door and requested the police to protect complainant Nos.2 and 3. It is also an allegation in the complaint that on 20.11.2017 they came along with lawyer and barged into Candor school where the complainant No.3 was studying at that time. Accused Nos.1 to 3 and 5 had an evil motive of kidnapping the complainant No.3 from the school. It is also an allegation that on 01.06.2018 at around 7.30 p.m. complainant Nos.1 to 3 were going out in the car and outside the gate of the society, accused No.1 was standing on the footpath. When the car entered the road in front of the society, suddenly accused No.1 created huge drama. The car was stationed on the road as there was traffic jam at that time and accused No.1 came to the road and jumped in front of the complainant's car and started screaming and trying to create negative scene in front of the public. Similar allegations are also made in the complaint referring the date 22.06.2018 and 31.08.2018 and stated that the complainant and their family were unable to bear the mental torture and hence requested to initiate the proceedings against the petitioners herein. The learned Magistrate after receiving the complaint referred the matter under Section 156(3) of Cr.P.C. for investigation. Hence, the present petition is filed before this Court for quashing of the FIR.

3. The learned counsel for the petitioners would vehemently contend that the marriage of petitioner No.1 was solemnized with respondent No.2 on 28.01.2007 and in the wedlock a child was born on 24.09.2008 i.e., respondent No.4 Master Rehaan. The differences were arisen between the parties and in 2017 G & WC No.26/2017 was filed seeking for appointment of guardian for respondent No.4. The matter was settled between the parties on 03.01.2018. In terms of the settlement in G & WC that on 01.06.2018 petitioner No.1 went to SJR Apartment to see her son i.e., respondent No.4 and respondent No.2 i.e., the husband of petitioner No.1 assaulted her. As a result petitioner No.1 has suffered injuries and blood was oozing from her nose and she took treatment in Ramakrishna Hospital. Petitioner No.1 filed complaint on 02.06.2018 against respondent No.2 before the Electronic

City police i.e., respondent No.1 and NCR was registered bearing No.110/2018. That on 04.06.2018 a detailed email was written by petitioner No.1

with respect to the inhuman acts of respondent No.2 to the Karnataka State Commission for Women. That on 21.06.2018 petitioner No.1 again filed a

complaint and the police have registered the FIR in Crime 198/2018 for the offence punishable under Sections 341, 323 and 506 of IPC. The case in G

& WC No.26/2017 was re-opened and the learned Civil Judge had directed respondent No.2 to adhere to the terms which was agreed as per order

dated 03.01.2018. The police after the investigation have filed the charge-sheet against the respondent No.2. Respondent No.2 again filed G & WC

No.34/2018 invoking Section 7 of the Guardian and Wards Act, 1890. In the mean while, the present private complaint is filed before the learned Chief

Judicial Magistrate and the same is numbered as Crime No.199/2019. Hence, the petitioners without any other alternative have approached this Court.

4. The learned counsel for the petitioners would vehemently contend that the property was purchased in the name of petitioner No.1 and respondent

No.2 jointly and the question of trespassing and the ingredients of Sections 458 and 453 does not arise. The learned counsel would contend that under

clause 19 of the settlement arrived between the parties, visiting right is given to the petitioner No.1 herein. In terms of the settlement they have not

acted upon and petitioner No.1 has not seen the child from the last two years. The Court has not taken any decision in G & WC and no legal custody

was given and it is only a settlement arrived between the parties. In spite of they agreed to give visiting right to petitioner No.1, they are not allowing

petitioner No.1 to see her son. Petitioner No.4 is the advocate who represented the petitioner No.1 before the Trial Court and only with an intention to

harass the petitioners herein the present private complaint is filed not only against the petitioner but also against the advocate. The learned counsel

would contend that in paragraph No.22 of the objection statement, the respondents have admitted the purchasing of the property jointly and they were

staying in the very same house and the offences which have been invoked against the petitioners is nothing but an abuse of process and hence it

requires interference of this Court.

5. The learned counsel in support of his arguments, he relied upon the judgment of the Apex Court in the case of SUNDAR BABU AND OTHERS

v. STATE OF TAMIL NADU passed in CrI.A.No.773/2003 dated 19.02.2009, wherein the Apex Court discussed the scope for interference while exercising jurisdiction under Section 482 of Cr.P.C. taking note of the principles laid down in the case of Bajan Lal and also brought to the notice of this Court paragraph No.5 wherein illustrative examples are laid down and also brought to the notice of this Court paragraph Nos.6 to 8 wherein the Apex Court observed with regard to abuse of process. Hence, the learned counsel would contend that this judgment is aptly applicable to the case of hand.

6. The learned counsel also relied upon the judgment of the High Court of Punjab and Haryana in the case of A NITA KUMARI AND OTHERS v.

KISHAN KUMAR AND OTHER passed in CRM M No.34845/2013 decided on 07.08.2018 and brought to the notice of this Court paragraph

No.12 of the judgment wherein the High Court has discussed the judgment of the Apex Court in the case of M/s. Pepsi Foods Ltd. v. Special Judicial

Magistrate regarding summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course, it

is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The

order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The

learned counsel referring this judgment would contend that the learned Judge has not applied his mind while referring the matter under Section 156(3)

of Cr.P.C.

7. The learned counsel also relied upon the Delhi High Court judgment in the case of KAVITA DASS v. NCT OF DELHI AND OTHER decided

on 17.04.2012 in Criminal M.A.No.19672/2011, wherein the Court held that the Court shall not remove wife of person from her matrimonial house,

whether owned by his ancestral or rented house, if she entered into house with no intention of committing the offence and the Delhi High Court also

quashed the proceedings initiated against the wife.

8. The learned counsel also relied upon the Madras High Court judgment passed in CrI.O.P.No.28720/2009 and M.P.No. 1/2009 dated 18.04.2017 and

brought to the notice of this Court paragraph No.10 wherein the Madras High Court observed that the present criminal original petition is intended to

harass the petitioner and settle the issue in his favour by respondent No.1. The learned counsel referring the above judgment would contend that it is a clear case of abuse of process and after thought only the present complaint is filed. Though several allegations are made from 2017, the complaint was filed in 2019 belatedly taking the advantage that the child is in their custody in view of the settlement arrived between the parties and now they are not allowing the mother i.e., petitioner No.1 to see the child. Hence, it requires interference of this Court.

9. Per contra, the learned counsel for respondent Nos.2 to 4 would vehemently contend that the marriage was solemnized on 28.01.2007. In the private complaint the incidents have been set out and the learned Magistrate looking into the complaint averments invoked Section 156(3) of Cr.P.C.

and a detailed order has been passed while referring the matter under Section 156(3) of Cr.P.C. The learned counsel would contend that the child is not going with the mother and the petitioners are trespassing the house of the complainant and causing threat and abusing the complainant and hence without any other alternative they have approached the Court by filing private complaint and no grounds are invoked to quash the proceedings initiated against the petitioners.

10. The learned High Court Government Pleader appearing for respondent No.1 - State would contend that the matter is under investigation and the same has to be investigated by the police and the petitioners have not made out any case to quash the proceedings invoking Section 482 of Cr.P.C.

11. In reply to the arguments of the learned counsel for respondent Nos.2 to 4 and the learned High Court Government Pleader, the learned counsel for the petitioners would contend that writ which has been filed by the respondent is not against any order of the Trial Court and document of assault is also produced before the Court and the police have investigated the matter and filed the charge-sheet against the respondent. The learned counsel also brought to the notice of this Court the sale deed which is standing in the name of petitioner No.1 and respondent No.2 jointly for having purchased the property and referring the said document, the learned counsel would contend that the ingredients of the offence under Sections 453 and 458 does not attract.

12. Having heard the learned counsel for the petitioners, the learned counsel for

respondent Nos.2 to 4 and the learned High Court Government

Pleader, this Court has to analyze the material available on record. It is not in dispute that the marriage of petitioner No.1 was solemnized in 2007 with

respondent No.2 and it is also not in dispute that the child was born on 24.09.2008 i.e., respondent No.4 Master Rehaan. It has to be noted that the

dispute between the parties was arisen and as a result G & WC was filed in 2017. The learned counsel for the petitioners brought to the notice of this

Court that the matter was settled between the parties in G & WC No.26/2017. On perusal of the settlement arrived between the parties in terms of

Annexure-Q in paragraph No.3 terms and conditions have been set out. It is clear that the custody of the child Master Rehaan shall be with

petitioner/father but respondent/mother shall have interim custody of the minor child between Friday evening 7.00 p.m. to Sunday evening 7.00 p.m. on

1st and 3rd weekends and 2nd and 4th weekends with the petitioner/father every month, based on the mutual consent of both parents and

convenience, weekends can be swapped if required. The third condition is also clear that the respondent agrees to pick up the child from outside the

petitioner's society, Electronic City on two weeks of every month at 7.00 p.m. The respondent also agrees to drop the child at Friday evening at 7.00

p.m. at common place which is mid way between Whitefield and Electronic City on two weekends of every month.

13. Having taken note of Annexure-Q, it is clear that G & WC No.26/2017 was disposed of in terms of the settlement. It has to be noted that

petitioner No.1 herein went near the place of respondent No.2 in order to pick up the child. It is important to note that the present complaint is filed in

2019 and I have already pointed out that different date of incident was set up from 2017. It is important to note that the police have registered the case

against respondent No.2 based on the complaint of petitioner No.1 herein in Crime No.198/2018 on account of the incident dated 01.06.2018 for the

offences punishable under Sections 341, 323 and 506 of IPC. It is also not in dispute that the police have investigated the matter and filed the charge-

sheet and the same is numbered as C.C.No.10582/2018 i.e., on 15.09.2018. It is important to note that the settlement was arrived between the parties

on 03.01.2018 and dispute started in the month of June 2018 after both of them settled the matter in G & WC. It is also not in dispute that

subsequently respondent No.2 also filed fresh petition G & WC No.34/2018 subsequent to the registration of the case against the respondent No.2

herein. Respondent No.2 to 4 have kept quiet from 2017 to 2019 though several allegations are made in between two years. When the case has been

registered against respondent Nos.2 to 4, they have thought to file private complaint against the petitioners herein.

14. Having taken note of the factual aspects of the case, it is clear that only after thought the present private complaint is filed by respondent Nos.2 to

4 against the petitioners herein. Though several allegations are made that these petitioners have caused life threat and abused from 2017 onwards, no

complaints are filed. Hence, it is clear that only after thought the private complaint is filed. It is nothing but an abuse of process. It is important to note

that in terms of the settlement, respondent No.2 has to allow petitioner No.1 to take the child from his house and instead of sending the child along

with petitioner No.1 in terms of the settlement, now they have given the criminal colour to a civil dispute with regard to handing over of the child to the

custody of petitioner No.1 and invoked the offences punishable under Sections 453 and 458 of IPC. It is rightly pointed by the learned counsel for the

petitioners that the sale deed came into existence in the name of petitioner No.1 and respondent No.2 in the year 2010 and they have jointly purchased

the property. It is important to note that when the property is purchased in the joint name, there is a force in the contention of the learned counsel for

the petitioners that the ingredients of the said offence does not attract. The learned counsel for the petitioners also brought to the notice of this Court

paragraph No.22 of the objection statement wherein the respondents have admitted sharing of the very same house by petitioner No.1 along with

respondent No.2 when they were living together and the said fact is also not disputed by respondent No.2. No doubt the respondent No.2 would

vehemently contend that the child is not going with the mother and the said contention cannot be accepted when the settlement was arrived between

the parties agreeing to send the child along with petitioner No.1 in terms of the order passed by the Court. I have already pointed out that private

complaint is filed after thought in 2019 after filing of the charge-sheet against respondent No.2 for assaulting petitioner No.1.

15. The other contention of the learned counsel for the petitioners is that the learned Magistrate has not applied his judicious mind while referring the

matter under Section 156(3) of Cr.P.C. Having taken note of the order passed by the learned Magistrate, the learned Magistrate vide his order dated

19.08.2019 mentioned that perused and heard and referred the matter for investigation. First of all, the learned Magistrate has not applied his judicious

mind and even there is no reference in the order that he has gone through the contents of the complaint and whether the complaint discloses

cognizable or non- cognizable offence, nothing has been mentioned in the order. The learned Magistrate has not referred to any documents produced

along with complaint and mechanically passed the impugned order referring the matter under Section 156(3) of Cr.P.C. The learned Magistrate has

not applied his mind and also even not formed any opinion whether the matter requires investigation invoking Section 156(3) of Cr.P.C. The order

impugned is also a mechanical order and without any application of mind, it has been passed.

16. Having taken note of the factual aspects of the case and the material on record, it is clear that private complaint is filed only with an intention to

harass the petitioners herein as contended by the learned counsel for the petitioners and I have already pointed out that the complaint is filed in 2019

after filing of the charge-sheet against respondent No.2. The learned Magistrate also failed to take note of the factual aspects and without application

of mind proceeded to refer the matter under Section 156(3) of Cr.P.C. Having taken note of the factual aspects, it is not a case for even remitting the

matter to the Trial Court to consider the matter afresh and if the private complaint is continued against the petitioners herein, it amounts to miscarriage

of justice and it is noting but an abuse of process. Hence, it requires interference of this Court invoking Section 482 of Cr.P.C. Respondent No.2

instead of complying with the order of the Trial Court passed in G & WC, invoked the criminal jurisdiction against his wife when she went and

requested to hand over the child in terms of the agreement arrived between the parties and also assaulted the petitioner No.1 herein and caused

injuries to her and case has been registered against respondent No.2 after the investigation.

17. In view of the discussions made above, I pass the following:

ORDER

(i) The petition is allowed.

(ii) The proceedings initiated against the petitioners herein in Crime No.199/2019 is hereby quashed.