

**(2015) 11 KAR CK 0070**  
**In the Karnataka High Court**  
**Case No : Criminal Petition No. 5319 of 2013**

S.M. Asha Parveen

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

**Date of Decision :** 03-11-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Penal Code, 1860 (IPC) — Section 141, 353, 427, 441, 442

**Citation :** (2015) 11 KAR CK 0070

**Hon'ble Judges :** Rathnakala, J.

**Bench :** Single Bench

**Advocate :** P.N. Hegde, Advocate, for the Appellant; B.J. Eshwarappa, HCGP, for the Respondent

**Final Decision :** Allowed

## Judgement

Rathnakala, J.—On the complaint of respondent No. 2, the petitioner herein has been charge sheeted for the offence punishable under Sections 448 , 427 , 353 , 504 of IPC. Interestingly, the petitioner and respondent No. 2, both belong to the cadre of Class-I officer from Karnataka Administrative Service.

2. The allegation of the prosecution is, on 17.10.2010, while the complainant/the Tahsildar of K.R. Puram, Bengaluru East Taluk, had been to the Deputy Commissioner, the accused came to the spot claiming that her transfer order is stayed by the orders of Karnataka Administrative Tribunal; she insulted the complainant in the presence of public and broke open the lock of chambers of Tahsildar with the assistance of a locksmith and trespassed into the chamber, thereby deterred the complainant from functioning his official duty.

3. Sri. P.N. Hegde, learned counsel for the petitioner submits that the petitioner was working as Tahsildar, K.R. Puram, Bengaluru East Taluk, since 01.03.2007. But, the Authority prematurely transferred her on 15.07.2010 and posted the complainant to her place in utter violation of the Rules 12 and 15 of the KCSR which necessitated her to approach the Karnataka Administrative Tribunal. The

Tribunal after examining the relevant documents and after giving audience to her ordered interim stay to the transfer order on 16.07.2010. The said order was officially communicated to respondent No. 2 and also jurisdictional Deputy Commissioner. Despite having the knowledge of interim stay, when the petitioner went to the office of the complainant on 17.07.2010 at 3.15 p.m., intentionally the complainant kept the chamber of the Tahsildar locked, so as to deter her from performing her duties. However, with the assistance of a locksmith who arrived there the lock was broke open under the mahazar in the presence of the police officer and she assumed charge of her office. From the acts alleged, no culpability would precipitate warranting prosecution. The entire charge sheet materials, even if accepted as true, no offence is made out. Petitioner being a Senior Officer, her implication in the criminal case would come in the way of her future prospects and career. Hence, the charge sheet is liable to be quashed.

Learned counsel further submits that the petitioner is not contemplating any action against the complainant for filing complaint against him.

4. Smt. Sunitha H Singh, learned counsel for respondent No. 2 submits that the petitioner without seeking for discharge before the Trial Court cannot invoke jurisdiction of this Court under Section 482 of the Code. The official chamber of the Tahsildar is a place where important records are preserved and cannot be kept open during the absence of the officer to have access to anybody. While the respondent No. 2 had been to the office of the Deputy Commissioner on official work, without taking charge officially the accused entered the office and broke open the lock and trespassed into the chamber. The evidence of the witnesses on record prima facie make out a case for the offence punishable under Sections 448 , 427 , 353 , 504 of IPC. The petition lacks merit and the same is liable to be dismissed.

5. Learned High Court Government Pleader submits that since there are sufficient materials in favour of the prosecution, the petition is liable to be rejected and if so advised, the petitioner may move before the trial Court to work out for remedy.

6. It is not in dispute between the parties that respondent No. 2/complainant was posted to the place of Tahsildar, K.R. Puram, Bengaluru East Taluk, where the accused was working since 01.03.2007. The transfer of the accused was in violation of the rules and norms contemplated under KCSR rules. Respondent No. 2 took over the charge of the post from the complainant on 15.07.2010. It is also not of much dispute that the order passed by the Karnataka Administrative Tribunal in staying the said transfer order was officially communicated to the Deputy Commissioner and also the complainant. Despite the same, the chamber was under lock when the complainant went to the office on the forenoon of 18.07.2010, to perform her duty.

7. Now, coming to the question of specific penal provisions invoked by the prosecution:

"Section 504 : Intentional insult with intent to provoke breach of the peace--whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

8. Except the complaint averments, there is no other corroborative piece of evidence from the statements of witnesses to the effect that the accused abused/intimidated the complainant in the presence of the public.

9. Section 353 of IPC:

"Section 353 : Assault or criminal force to deter public servant from discharge of his duty.--Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

10. The soul of the above provision is, assault or criminal force on public servant while in the execution of his duty. It is not the case of prosecution that there was overt act on the complainant during the alleged act. It is also not the case of the prosecution that the complainant was in anyway deterred during the course of his duty hours. As per the complaint averments itself, he was in the chambers of the Deputy Commissioner at the time the accused arrived at the office of the Tahsildar.

11. Section 427 of IPC:

"Section 427 . Mischief causing damage to the amount of fifty rupees.--Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The requirement is mischief which causes loss or damage to the concerned to an extent of fifty rupees or upwards. No evidence is forthcoming that any damage is caused to any article during the incident. The value of the lock that was broke open is not assessed. The complainant in his further statement has asserted that all the files in his office were later found intact.

From overall appreciation of the charge sheet materials, it probablises that the accused has over reacted to the situation. However, her demeanor has to be understood in reference to an ordinary human being placed in the particular circumstances. Before making effort to insert alleged act of hers within four brackets of the penal provisions, endeavor shall be to trace from the charge sheet material, whether there was mens rea on her part to commit particular

crime. She had every reason to believe that she had authority to enter into the chamber in view of interim stay granted in her favour by the Karnataka Administrative Tribunal.

12. Section 442 of IPC reads thus:--

"Section 442 . House trespass:-- Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house trespass"."

The centre part of the above provision being criminal trespass to prove an offence, the prosecution is required to prove criminal trespass as contemplated in Section 441 of IPC which reads thus:

"Section 441 . Criminal trespass: Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "Criminal trespass".

If a person enters on land to the possession of another in the exercise of a bonafide claim of right but without any intention to intimidate, insult, or annoy the person in possession, or to commit an offence, then although he may have no right to the land, he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitute the offence.

When a person enters lawfully and if his remaining is unlawful, but not with the requisite intention to commit an offence or to intimidate, insult or annoy the person in possession, then it will not amount to an offence under Section 441 ."

It is clear from the above provision, the entry and subsequent act of remaining at the spot shall be motivated with an intention to commit an offence contemplated above.

The Hon"ble Apex Court in the case of Kanwal Sood Vs. Nawal Kishore and Another, , has observed as under:

".....every trespass does not amount to criminal trespass within the meaning of Section 141 of the Indian Penal Code. In order to satisfy the conditions of Section 441 it must be established that the appellant entered in possession over the premises with intent to commit an offence....."

Admittedly, the accused has entered into the chamber with the authority of the stay order granted by the Karnataka Administrative Tribunal in her favour and stayed there to perform her legitimate duty. In that view of the matter, it cannot be said that her entry and staying in the chamber was motivated with any criminal intention.

13. Allowing the criminal proceedings to continue with the sketchy evidence is definitely futile exercise and abuse process of law. The complainant and the accused both are responsible officers of the State having future prospects in their career. As per the submission on behalf of the accused, she is not yet taking recourse to law against the complainant for launching criminal prosecution against her.

14. In the light of the above, ends of justice require that criminal proceedings against the accused is liable to be quashed in exercise of the jurisdiction under Section 482 of Cr.P.C.

15. The petition is allowed. The FIR in Crime No. 288/2010 registered by the 1st respondent and the charge sheet in CC No. 22194/2013, on the file of learned X Addl. Chief Metropolitan Magistrate, Mayo Hall, Bengaluru, for the offence punishable under Sections 353 , 427 , 448 and 504 of IPC, are hereby quashed.