

(2001) 09 KAR CK 0053
In the Karnataka High Court
Case No : Criminal Petition No. 232 of 2000

Smt. Tulasamma and Others

APPELLANT

Vs

G. Ravikumar and Others

RESPONDENT

Date of Decision : 11-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 500, 501, 502

Citation : (2002) 1 KCCR 96

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : M. Ram Bhat, for the Appellant; C.R. Goulay, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

S.R. Bannurmath, J.—Heard the learned Counsel for the Petitioners.

2. I have heard the Counsels on both the sides and perused the records made available.

3. Being aggrieved by the order of the learned Magistrate dated 14.9.1999, taking cognizance against the Petitioners for the offences under Sections 500, 501 and 502 of Indian Penal Code and issuing process against the Petitioners in PCR 14 of 1999 (in CC No. 3382 of 1999), the Petitioners have approached this Court in the present petition.

4. As per the complainant, he is a social worker of good repute being well-known figure in Chikmagalur District, a former Youth Congress President and at the relevant time was leader of BJP as well as officer bearer in Autorickshaw Driver's and Owner's Association, Chikmagalur and has no blemish in his social life. It is alleged that inspite of these circumstances known, the Petitioners who are arrayed as Accused Nos. 1 to 6 called a press meeting on 19.1.1999 and for have made a statement which is not only false, baseless and frivolous but also

defamatory in nature intending to harm the reputation and name of the complainant. According to the Complainant, this press report was published in a Newspaper-Jilla Suddi Madhyama, a daily Newspaper from Chikmagalur on 20.1.1999 of which the Accused Nos. 7 and 8 (Respondents 2 and 3 herein) are Editors and Publishers of the said Newspaper. As such, the present Private Complaint u/s 200 Code of Criminal Procedure for the offences under Sections 500, 501, 502 of Indian Penal Code has been filed. After receipt of complaint, cognizance was taken and after recording the sworn statements of the Complainant and the witness, by the impugned order, the learned Magistrate has ordered for issue of process against the Petitioners. Aggrieved by the order of issuing process, the present petition to quash the entire proceedings has been filed.

5. It is contended in the present petition before this Court that the act of taking cognizance and issuing process by the learned Magistrate without application of mind is illegal; that the act of filing the Complaint by Respondent No. 1 itself is with malafide intention and suppressing the true facts. That the complainant-Respondent No. 1, has filed the present complaint to wreak vengeance against the Petitioners who are none else than mother, brothers, sisters as well as brother-in-law of the complainant himself. In this regard the Petitioner has produced a press meeting called by the Complainant himself on 16.1.1999. It is submitted that because of the reckless allegations made by the complainant in the said meet on 16.1.1999, the Petitioners had to reply to the same and make know the true facts to the public so as to erase the wrong impression created by the Complainant's statement and hence they have issued the press statement dated 19.1.1999 published on 20th. This according to the Petitioners squarely falls under the 9th exception of Section 500 Indian Penal Code. Without considering these aspects, it is alleged that the trial Court has erroneously and without application of mind taken cognizance of the offences and issued process and hence the proceedings are liable to be quashed.

6. As noted, there appears to be some family dispute between the complainant on one hand and his close family members who are the Petitioners herein on the other hand regarding a Will said to have been left by the deceased father of the complainant by name Sri Govindaraj. In this regard the complainant himself has called a press conference on 16.1.1999 making imputation against the 2nd Respondent of creating a forged and fabricated Will. The said statement of the complainant as per the press conference has been published in the newspaper "Zilla Suddi Madhyama" dated 17.1.1999 which reads as follows:

-KANNADA MATTER-

7. Aggrieved by the same as it was throwing imputations, the present explanation has been offered by the Petitioners, which is also published on 20th January, 1999 in the same newspaper with title Obviously this is an explanation offered by the Petitioners in reply to the press publication given by the complainant himself. Suppressing the genesis of the entire incident, it is clear

that the complainant has lodged the present complaint u/s 200 Code of Criminal Procedure against the Petitioners alleging commission of offence under Sections 500, 501 and 502 Indian Penal Code. Section 499 Indian Penal Code defines what is defamation. Keeping in view the fact that all that is said may not be a defamatory matter, the Legislature in its wisdom has created 9 explanations or exceptions and if the alleged defamatory statement falls within one or any of these exceptions, it is to be held that it is not a defamatory. As rightly contended by the learned Counsel for the Petitioners, the case on hand and the publication squarely falls within the 9th exception which is the statement made in good faith by a person for protection of his or others interest. The scope of this exception and factors to be considered by the Court in deciding whether the accused had acted in good faith under this exception has been considered by the Apex Court in the case of Harbhajan Singh Vs. State of Punjab, . This exception as laid down relies to provide communication or even a publication that a person makes in good faith for protection of his own interest or of any others. The truth of the imputation need not be proved by the accused claiming the privilege of this exception. As laid down by the Apex Court, good faith requires not logical infallibility but due care and attention. But how far the erroneous statements or alleged imputations are to be taken as made in good faith, depends on facts and circumstances of each case.

8. As seen and stated above, the alleged contemptuous publication was the result of the complainant's own making. It was he who by the earlier publication dated 17.1.1999 made certain imputations of serious nature of involving his family members the Petitioners herein to an extent of creation of a forged Will by forging the signature of the deceased father. Though this was a family matter for which the remedy in the Civil Court for proving the genesis or otherwise of the Will was open to the complainant, instead of doing so only because of his alleged status and privileges in the Society he has arranged for a press conference and made the imputations public which was reported as a press item. Since these imputations by unnecessary press conference would naturally affect the name of the second Petitioner and his family including the mother, sisters and brother-in-law, who are the Petitioners herein, they too have by way of the second press conference refuted the allegations made. Nodoubt there is use of excess words but by that itself cannot be said that it was not made in good faith.

9. Though these facts are not much disputed by the learned Counsel for the Respondents what is mainly contended is that whether the case of the Petitioners falls under any exceptions etc., are to be considered during the trial and this Court while exercising the inherent jurisdiction should not resort to quash the proceedings at the initial stage itself.

10. The law regarding exercise of inherent jurisdiction and the cases in which such jurisdiction can be exercised by the Court is now well settled as in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . The Hon''ble Supreme Court after considering all the earlier decisions of the Apex Court itself

right from the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , State of Karnataka v. Muniswamy AIR 1977 SC 1490 has laid down clear guidelines reiterating the earlier decision that normally the High Court while exercising the inherent jurisdiction will not resort to the extreme step of quashing the proceedings at the initial stage itself thereby short circuiting the entire process but few exceptions like have been carved out which are as follows:

- i) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- ii) Where the allegations in the First Information Report and other materials, if any, accompanying the First Information Report do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated u/s 155(2) of the Code;
- v) Where the allegations made in the FIR on complaint are so absurd and inherently improbable on the basis on which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (Under which a criminal proceeding is constituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party;
- vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. On considering the facts and circumstances of the case, in my view, this case clearly falls within 7th exception namely where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. Keeping in view the peculiar facts and circumstances of the case as the imputing statements of the Petitioners dated 19.1.1999 what was invited by

complainant's own conduct by giving a press conference on 16.1.1999 and even suppressing the same, the way he has rushed to the Court by filing false complaint for the offences punishable under Sections 500, 501, 502 against the Petitioners, in my view, this is nothing but with a malafide intention to wreak vengeance against his own kith and kin including the mother, brothers and sisters. As such, in the light of the observations and guidelines of the Apex Court, I am of the view, that this is a fit case to quash the proceedings at the initial stage itself so as to prevent the abuse of process of law.

13. In the result, the petition is allowed. The initiation of proceedings in C.C. No. 3382 of 1999 (P.C.R. No. 14 of 1999) on the file of the learned Additional Civil Judge (Junior Division) and JMFC., Chikmagalur, are hereby quashed.