
(2013) 10 KAR CK 0115
In the Karnataka High Court
Case No : Criminal P. No. 688 of 2009

Sri. H.R. Ramesh

APPELLANT

Vs

State and Smt. B.A. Aruna Anand Saliyana

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190(1)(a)
Penal Code, 1860 (IPC) — Section 341, 354, 506

Citation : (2013) 10 KAR CK 0115

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : M.B. Naragund, for the Appellant; Nageshwarappa K. GP For R1 and Sri. K.S. Bheemaiah, for R2, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this petition the petitioner has prayed for quashing the order dated 6.12.2008 in P.C. No. 6/2008 and to quash the entire proceedings in C.C. No. 2157/2008 on the file of Prl. Civil Judge (Jr.Dn) and JMFC, Madikeri. Second respondent approached CMC, Madikeri through a registered plumber seeking water connection to her house property. At that time, the petitioner was working as Revenue Inspector in the CMC, Madikeri and he visited the spot and submitted a report stating that the house of second respondent is situated in a revenue site, khata is not made out in the municipal records and no taxes are paid to the municipality and as such the question of providing civic amenity like water will not arise. On coming to know the report submitted by the petitioner, the second respondent visited the office of CMC, threatened the petitioner that she will take steps to transfer the petitioner with the influence of local political leaders. Again the second respondent visited the CMC office, made galata against the petitioner and other staff members. Further the second respondent complained to the local police and also the Commissioner, CMC. Since no action was taken by the police she filed a private complaint on 10.01.2008, as per Annexure-A. The jurisdictional Magistrate registered the case

and directed the police to investigate the matter u/s 156(3) Cr.P.C. On investigation the police filed "B" report. Second respondent filed a protest memo. By considering the protest memo filed by the second respondent, the trial Court passed the impugned order on 6.12.2008 and the relevant portion reads as under:

In this case the police have filed B report. The complainant challenged the B report submitting that whatever alleged in the report is not true one. Under such circumstances, this court has taken cognizance of the offence u/s. 190(1)(a) of Cr.P.C., the case posted for the sworn statement of the complainant.

During the course of recording sworn statement of the complainant, the complainant herself has been examined as PW. 1.

Heard arguments.

On perusal of complaint, sworn statement of the complainant this court pass the following:

ORDER

There is prima-facie case to proceed against the accused for the offence p/u/s. 341, 354 and 506 of IPC. Hence, Register this case as CC for the above said offences and issue summons to the accused, if the complainant complies Section (2) to (4) of 204 of Cr.P.C.

Aggrieved by the above order, the petitioner is before this court.

2. Heard arguments on both the side and perused the entire petition papers.

3. It is brought on record that on 10.01.2008, the second respondent filed the private complaint as per Annexure-A.

Again the second respondent filed another complaint on 16.01.2008 against the petitioner and others in P.C. No. 17/2008. In this second complaint, the police filed B report. The second respondent filed objections opposing the B report and the trial Court rejected the B report and had taken cognizance of the offence in C.C. No. 1913/2008. This court in CrI.P.5223/2008 quashed the proceedings relating to the second complaint lodged by the second respondent.

The first complaint as per Annexure-A dated 10.01.2008 is also similarly placed. When the police has filed B report in respect of the first complaint, the second respondent opposed the same by filing objections. Under the impugned order the trial Court has not assigned any reasons for rejecting the B report. After filing of B report, second respondent has not placed any evidence on record to show that she has made out a prima-facie case against the petitioner. In the absence of any such evidence and in the presence of B report, the impugned order passed by the trial Court is illegal and contrary to law. In identical circumstances, the Supreme Court in H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), it is held

as under:

The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. A magistrate who on receipt of a complaint, orders an investigation u/s 156(3) and receives a police report u/s 173(2), may, thereafter, do one of three things: (i) he may decide that there is no sufficient ground for proceeding further and drop action; (ii) he may take cognizance of the offence u/s 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (iii) he may take cognizance of the offence u/s 190(1)(a) on the basis of original complaint and proceed to examine upon oath the complainant and his witnesses u/s 200. If he adopts the third alternative, he may hold or direct an inquiry u/s 202 if he thinks fit. Thereafter, he may dismiss the complaint or issue process, as the case may be.

For the reasons stated above, the petition is hereby allowed. The proceedings in C.C. No. 2157/2008 are hereby quashed.