

(2023) 03 KAR CK 0039

In the Karnataka High Court

Case No : Criminal Petition No. 100103 Of 2018

Y.Chandrakanth Kamath

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 15-03-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 354, 354A(1), 504, 509

Citation : (2023) 03 KAR CK 0039

Hon'ble Judges : J.M. Khazi, J

Bench : Single Bench

Advocate : K.L. Patil, Girija S. Hiremath, V.M. Sheelvant, M.L.Vanti

Final Decision : Dismissed

Judgement

J.M. Khazi, J

1. In this petition filed under Section 482 Cr.P.C., petitioner who is arraigned as accused is seeking quashing of criminal proceedings in C.C.No.1565/2017 for the offences punishable under Sections 354, 354-A(1), 504 and 509 I.P.C.

2. Petitioner has contended that he is a Municipal Councilor of Ward No.28, wherein respondent No.2 who is the complainant working as Anganawadi Worker in Anganawadi Centre-01. In view of the irregularities committed by respondent No.2 and others and based on the complaints made by the local residents to him and in his capacity as the president of Bala Vikas Samithi, he has taken action. At his instance, the CDPO has issued show-cause notice to respondent No.2 with regard to the irregularities committed by her. Therefore, respondent No.2 has chosen to file a false complaint against the petitioner alleging that since three years petitioner is sexually harassing her.

2.1 There is inordinate delay of three years in filing the complaint with regard to the alleged sexual harassment. There are no specific allegations and perusal of the complaint makes it evident that respondent No.2 has misused the criminal

law to harass the petitioner and to stop him from unearthing the financial irregularities committed by the petitioner. It is a political motivated complaint. Respondent No.2 is trying to convert personal grudge into a criminal proceedings. On 01.12.2016, the Superintendent of Police summoned the petitioner and warned him. Through unofficial channels, respondent No.2 is trying to pressurize the petitioner. Continuation of the criminal proceedings would amount to abuse of process of the Court and prays to allow the petition.

3. Respondent No.1/State is represented by the learned High Court Government Pleader.

4. Respondent No.2 has appeared through Sri V.M.Sheelvant and Sri M.L.Vanti, learned counsel.

5. Vide order dated 26.06.2019, this petition came to be dismissed.

6. Against the same, petitioner approached the Hon'ble Supreme Court in Criminal Appeal No.1259 of 2022 (arising out of SLP (Crl.) No.8100 of 2019). The Hon'ble Supreme Court was pleased to allow the same and remanded the case for fresh disposal as per the observations made in the order.

7. During the course of arguments, learned counsel for petitioner reiterated the petition averments and submitted that being the councilor of Ward No.28, petitioner is the Chairman of the various sub-committees and while monitoring the affairs of the Anganawadi Centre-01 where respondent No.2 is the Anganawadi Worker, petitioner came across the irregularities committed by her and also that her relatives have manipulated the municipal records and got their name entered in the said records as owner of the municipal property. The TMC, Hosapete has passed orders canceling the khata made in respect of the said property. The irregularities committed by respondent No.2 in distribution of the benefits to the expecting mothers is also unearthed due to the efforts of the petitioner. In order to stop him, respondent No.2 has chosen to file a false complaint.

7. In support of the case of the petitioner, the following documents are produced.

i. Copy of complaint dated 07.01.2017 filed by respondent No.2/Complainant.

ii. Copy of FIR.

iii. Copy of charge sheet in C.C.No.1565/2017.

iv. Copy of order sheet in C.C.No.1565/2017.

v. Copy of W.P.No.100513/2017 filed by petitioner for a direction to conduct audit pertaining to Anganawadi Centre-01.

vi. Copy of letter dated 30.04.2014 written by petitioner to CDPO to direct respondent No.2 to appraise him about the execution of schemes (Document No.1).

- vii. Copy of notice dated 03.05.2014 issued by CDPO to the 2nd respondent based on letter dated 30.04.2014 by the petitioner (Document No.2).
- viii. Letter dated 19.12.2015 by CDPO to the Assistant Commissioner stating that steps are being taken for shifting the Anganawadi Centre-01 to some other premises (Document No.3).
- ix. Complaint dated 15.11.2016 said to be given by public to Deputy Commissioner alleging irregularities at Anganawadi Centre-01 (Document No.4).
- x. Letter dated 05.12.2016 by Commissioner, TMC, Hosapete to CDPO to ascertain the safety of the building where Anganawadi Centre-01 is run (Document No.5).
- xi. Letter dated 15.11.2016 said to be by general public to ACB, Bengaluru to take action against respondent No.2 for alleged irregularities (Document No.6).
- xii. Letter dated 15.11.2016 said to be by general public to S.P., Ballari to take action against respondent No.2 for alleged irregularities (Document No.7).
- xiii. Complaint dated 16.08.2015 by one V.Ramesh to Secretary, Urban Development, Bengaluru alleging illegal occupation of land belonging to TMC (Document No.8).
- xiv. Complaint dated 16.08.2015 by V.Ramesh to Regional Commissioner, Kalaburagi alleging illegal occupation of land belonging to TMC (Document No.9).
- xv. Letter dated 16.11.2016 by petitioner to CDPO to furnish information about maintenance of 28 registers (Document No.10).
- xvi. Letter dated 29.11.2017 by Regional Commissioner, Kalaburgi Division, Kalaburgi addressed to Commissioner, TMC, Hosapete to file civil suit to recover property belonging to TMC and also recover the rent paid to Anganawadi Centre-01 (Document No.11).
- xvii. Copy of notice dated 25.07.2017 issued by CDPO to the 2nd respondent to maintain the registers properly (Document No.12).
- xviii. Copy of the report dated 28.08.2017 regarding different matters including the vacant land adjoining the Anganawadi Centre-01 (Document No.13).
- xix. Copy of notice dated 29.12.2017 issued by the CDPO to Arshiya, a relative of petitioner to refund the rent of Rs.9,000/- paid to her (Document No.14).
- xx. Copy of the attendance register (Document No.15).
- xxi. Letter dated 20.11.2020 by CDPO addressed to Dadapeer stating that on 06.06.2014 no meeting of Bala Vikas Salaha Samiti was held (Document No.16).
- xxii. Copy of complaint dated 11.06.2020 by CDPO to PSI extension Police, Hosapete against the petitioner and her relatives, alleging illegal occupation of land belonging to TMC (Document No.17).

xxiii. Copy of letter dated 03.11.2022 by Joint Secretary, Women and Child Welfare Department addressed to the Director, Women and Child Development, to furnish all the documents to file suit (Document No.18).

xxiv. Report dated 05.11.2022 by Auditor regarding the allotment and spending of the grains and other articles supplied to Anganawadi Centre-01 (Document No.19).

9. The learned counsel for the petitioner has relied upon the following decisions in support of petitioner's contention.

a. Anand Kumar Mohatta and Another V/s State (NCT of Delhi), Department of Home and another (2019) 11 SCC 706

b. Dr.Karunakar Patra V/s State 2022 SCC Online Del 245

c. State of Haryana and others V/s Bhajan Lal and others 1992 Supp (1) SCC 335

d. M.N.Ojha and others V/s Alok Kumar Srivastav and another (2009) 9 SCC 682

e. Pepsi Foods Ltd. And another V/s Special Judicial Magistrate and others (1998)5 SCC 749

10. On the other hand, learned High Court Government Pleader representing respondent No.1-State and learned counsel representing respondent No.2 submits that complainant is a widow. She is working as Anganawadi Worker. Since three years prior to the filing of the complaint, accused being the councilor is sexually harassing her and when she did not respond to his advances, he started harassing her by filing repeated applications under RTI through others and he would not let go any opportunity to insult her. He address her in full public view and also privately singularly. He has initiated action not only against the complainant, but also against family members. Ultimately when it became unbearable, she chooses to file the complaint. After conducting detailed investigation, charge sheet is filed, which makes out a strong prima facie case. It is necessary to give opportunity to the prosecution to establish the guilt against the accused. Disputed facts cannot be decided in a petition under Section 482 Cr.P.C. and prays to dismiss the petition.

11. In support of the contention of respondent No.2, the following documents are marked.

i. Copy of proceedings of meeting dated 06.06.2014 conducted by Bala Vikas Samithi.

ii. Copy of letter dated 07.12.2016 issued by Child Development Officer, Hosapete addressed to Deputy Director, Women and Child Welfare Department to hold enquiry through committee for prevention of sexual harassment for women at place of work regarding the complaint given by respondent No.2 against the petitioner.

iii. Complaint dated 29.11.2016 by respondent No.2 addressed to CDPO, Women

and Child Welfare Department, Hosapete alleging sexual harassment by the petitioner.

iv. Report dated 07.02.2017 given by CDPO to the Investigating Officer regarding series of incidences pertaining to petitioner and respondent No.2.

v. Notice dated 02.11.2016 by Commissioner, TMC, Hosapete to the relatives of respondent No.2.

vi. Copy of general receipt register of TMC, Hosapete to show that Inward No.438 is a letter received from Deputy Commissioner, Ballari.

vii. Notice dated 22.03.2017 by Commissioner, TMC, Hosapete addressed to the relatives of petitioner to furnish details on the basis of which they have got the khata of property made out in their names.

viii. Copy of wedding invitation.

ix. Copy of judgment dated 10.01.2020 passed in O.S.No.241/2016 on the file of III Addl.Civil Judge and J.M.F.C., Hosapete filed by sister of complainant.

12. The learned counsel for respondent No.2 has relied upon the following decision.

a. Ajay Kumar Das V/s State of Jharkhand and another (2011) 12 SCC 319

13. Heard arguments and perused the records.

14. The undisputed facts are that respondent No.2 who is the complainant is working as Anganawadi Worker, whereas petitioner is the councilor of Ward No.28 under which the Anganawadi where respondent No.2 is working comes. It is also not in dispute that a small premise belonging to Sri Jilan Basha, the brother of respondent No.2 is taken on rent by the Child and Family Welfare Department and in the said premises the Anganawadi in question is being run.

15. While respondent No.2 alleges that when she did not yield to the sexual advances made by the petitioner, he started initiating action not only against her but also against her brother and other family members, alleging that land adjoining the premises rented out for Anganawadi belongs to TMC, Hosapete and they have illegally got khata of the said land made out in their name and alleging that respondent No.2 did not inform the petitioner about the meeting and also that she has failed to account for the distribution of benefits to the expecting mothers, initiated unnecessary proceedings against her etc. On the other hand, petitioner has alleged that when he brought the illegalities committed by respondent No.2 and her family members to the notice of the concerned and instrumental in initiating action against her, she has chosen to file a false complaint alleging sexual harassment.

16. Certainly the documents produced by petitioner indicate that based on the initiative taken by the petitioner, action is being taken not only against respondent No.2, but also against her family members including filing of charge

sheet alleging that they have got khata of municipal land made in their names. Petitioner has also given representation against respondent No.2 alleging that in respect of execution of the work of Anganawadi Centre, respondent No.2 has not taken him into confidence and he was not informed. On this aspect, a notice has been issued to respondent No.2. Petitioner has also produced number of complaints stated to have been given by general public alleging that the benefits under the various schemes have not reached the beneficiaries. He has also sought information regarding maintenance of 26 registers by the CDPO. Based on such initiative, the TMC, Hosapete has taken decision to file suit for cancellation of the sale deed and to recover possession and also for recovery of rent paid to the premises where Anganawadi Centre is being run.

17. At the same time, the documents produced on behalf of respondent No.2 indicates that on 29.11.2016, she has given a complaint to CDPO alleging sexual harassment by the petitioner. In turn, on 07.12.2016, based on the said complaint, the CDPO has written a letter to the Deputy Director, Women and Child Welfare Department, stating that when CDPO questioned the petitioner as to the allegations made by respondent No.2, petitioner questioned him as to what evidence he is having. Through the said letter, the CDPO has requested the Deputy Director to initiate enquiry through the Sexual Harassment (Prevention) Committee.

18. In respect of the complaint filed by respondent No.2, at the request of the Investigating Officer, the CDPO, Hosapete has given report dated 07.02.2017 giving series of incidences. It states that on 06.06.2014, during the meeting, petitioner made some complaints against respondent No.2 during which in a high pitch, he insulted respondent No.2 referring her in singular and the Secretary of the Taluk Association of Anganawadi Workers Smt.Shakuntala had to intervene and request him to be considerate while addressing respondent No.2. The report further states that after Smt.Shakuntala left the meeting and came to the office, petitioner abused respondent No.2 in filthy language.

18.1 The report further states that on 25.11.2014, respondent No.2 revealed that when she went to the house of petitioner to inform him about the meeting and invite him, she was told by his mother that he is not at home and when she called him over phone, he directed her to go to his office at 8.00 p.m. The report also gives the details of information sought under RTI by one Raghavendra, but when he was directed to deposit the amount, he refused to do so and subsequently though he gave a demand draft, and contacted the petitioner telephonically and in turn, petitioner in a very rude manner spoke to the CDPO demanding to receive the demand draft without covering letter containing the details and furnish the information sought and the said person refused to sign the application saying that he is not Raghavendra and left the premises.

18.2 The report further states that after 15 minutes, the Deputy Director called the CDPO and said that petitioner is alleging that CDPO refused to give the information sought in the RTI application and abused six persons referring to

their caste and that they are going to file criminal complaint against him. When CDPO made a conference call to petitioner, he reiterated the said fact and in this regard, CDPO has filed a complaint with the police.

18.3 The report further indicates that though a person by name Khasim Sab sought information through RTI, a letter dated 13.01.2017 addressed to him directing him to deposit Rs.2,988/- and the said letter has returned unserved. Similarly, the RTI application filed by the petitioner to furnish information with regard to 28 registers was rejected on the ground that in his capacity as the councilor he has right to inspect the said registers. Petitioner was directed to deposit the cost in respect of information sought by him and there is no provision for furnishing the same free of cost.

18.4 The report further state that on enquiry, the allegations that respondent No.2 has given the benefits meant for pregnant woman to others is also false. Finally the report states that petitioner repeatedly made request orally and telephonically to transfer respondent No.2 and also to change the premises for running the Anganawadi Centre. Infact, for her own safety and for administrative reasons, CDPO recommended respondent No.2 to be transferred to Ward No.11, Centre No.4 and respondent No.2 requested CDPO not do to so as she is not at fault.

18.5 The documents produced on behalf of respondent No.2 also disclose that the sister of respondent No.2 has filed O.S.No.241/2016 and secured a decree of permanent injunction in respect of the property which the petitioner claims as belonging to the TMC.

18.6 Respondent No.2 has also produced a letter dated 02.11.2016 from Municipal Commissioner, CMC, Hosapete addressed to the sister and brother of respondent No.2 stating that a complaint is received in inward No.438 alleging that they have got khata made out in their names in respect of property belonging to TMC and based on the said letter, the khata made out in their name is canceled. However, petitioner has produced inward register dated 26.10.2016 which shows that inward No.438 refers to a letter received from the Deputy Commissioner, Ballari and by falsely giving the said inward number, TMC has canceled the khata standing in the name of brother and sister of respondent No.2.

19. Certainly motive is a double edged weapon. If the contention of the petitioner that the complaint is filed against him because of the actions taken by him against respondent No.2 is accepted, then the contention of respondent No.2 that she was being sexually harassed and when she did not yield to sexual advancement by the petitioner, several actions are being taken against her and her family members is also to be accepted. These are matters to be decided at a full-fledged trial. It is necessary for the prosecution to establish these allegations at the trial and certainly the petitioner would get opportunity to prove that only because of the action initiated by him, he is being targeted. These disputed facts

cannot be decided in a petition under Section 482 Cr.P.C. At this stage, there is prima facie material to proceed against the petitioner and this is not a fit case to exercise the discretion under Section 482 Cr.P.C.

20. Having regard to the facts and circumstances of the case, the decisions relied upon by the petitioner are not applicable to the case on hand.

21. Thus, from the above discussion, this Court is of the considered opinion that petitioner is not entitled for the relief sought and accordingly, I proceed to pass the following:

ORDER

The criminal petition is dismissed.