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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 17TH DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.8922/2017

BETWEEN

SRI NAGARAJ RAO C.H.,
S/O C H RAO,
AGED ABOUT 49 YEARS,
PRESENT ADDRESS
R/A 1247, 2ND CROSS,
KRISHNAMURTHYPURAM,
MYSURU – 570 004.

... PETITIONER

(BY SRI K.N.NITISH, ADVOCATE (PHYSICAL HEARING))

AND

1. STATE BY ITS S.P.P. BANGALORE
POLICE SUB-INSPECTOR,
UDUPI TOWN POLICE STATION,
UDUPI - 576 101
REPRESENTD BY STATE
S.P.P. HIGH COURT BUILDING.

2. MANJUNATH B.P.,
AGED ABOUT 73 YEARS
S/O LATE BHATTA PARAMESHWARAIAH,
SRI DEVI, N.H-17,

BRAMHAVARA,UDUPI TALUK,
UDUPI DISTRICT – 576 213.

.. RESPONDENTS

(BY SMT.NAMITHA MAHESH B.G., HCGP FOR R1 (PHYSICAL HEARING)
R2 - SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE ORDER DATED 30.07.2016 PASSED BY THE LEARNED ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, UDUPI IN CR.NO.387/2009 AT ANNEXURE-G AND CONSEQUENTIAL PROCEEDINGS IN C.C.NO.2719/2016 ON THE FILE OF THE LEARNED ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, UDUPI.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question the order dated 30th July, 2016 passed by the I Additional Civil Judge and JMFC, Udupi in C.C.2719 of 2016, arising out of Cr.No.387 of 2009.

2. Facts in brief are as follows:-

The wife of the 2nd respondent/complainant had borrowed finance from the Karnataka State Finance Corporation (‘the Corporation’ for short), and had established Sri Durga Printers and

Sri Durga Printers Conventional Hall in the city of Brahmavar. Having defaulted in repayment of loan in terms of the conditions of loan, the property of the 2nd respondent and his wife, was brought to sale by way of public auction. The petitioner who was a participant in the said auction became the highest bidder of the property and the property was directed to be handed over to the successful auction purchaser i.e , the petitioner. The complainant claiming that the property was worth more than Rs.55/- lakhs had been sold at Rs.29/- lakhs by the Corporation, made a hue and cry and filed objections to the auction proceedings.

3. All the efforts of the 2nd respondent to stall auction process or even issuance of sale certificate in favour of the petitioner went in vain. Thereafter, according to the complainant on 10-11-2009, at about 4.30 p.m., when he had visited Udupi Branch of the Corporation, he saw the petitioner coming out after all the formalities being over and on the ground that the petitioner had threatened him not to interfere with the auction proceedings, which was already over and that he had given him life threat, registered a complaint two days after the issuance of sale certificate and all

further proceedings were over before the Corporation, by handing over the property in favour of the petitioner. The formalities before the Corporation had concluded on 11-11-2009, and the complaint is registered on 13-11-2009.

4. Based on the complaint for the alleging offence punishable under Section 506 of the IPC, investigation was ordered and the 1st respondent/Police after conduct of investigation, filed a 'B' report. The petitioner filed a protest petition against acceptance of 'B' report under Section 200 of the Cr.P.C. The learned Magistrate recorded the sworn statement of the complainant and on perusal of the report, directed registration of criminal case against the petitioner for offence punishable under Section 506 of the IPC and summons issued. It is at this stage, the petitioner approached this Court in the subject criminal petition.

5. Heard Sri K.N.Nitish, learned counsel appearing for the petitioner and Smt. Namitha Mahesh B.G., learned High Court Government Pleader appearing for the 1st respondent.

6. Sri K.N.Nitish, learned counsel appearing for the petitioner submits that the entire allegation against the petitioner would not make out an offence punishable under Section 506 of the IPC, the petitioner is innocent of the property that was put to auction and because the petitioner purchased the property belonging to the complainant, the complainant to harm the petitioner has registered the criminal case. It is his further submission that the learned Magistrate while rejecting 'B' report and directing registration of the criminal case, did not apply his mind with regard to the offence alleged or the 'B' report and has mechanically ordered registration of the criminal case.

7. On the other hand, Smt. B.G. Namitha Mahesh, learned High Court Government Pleader appearing for the 1st respondent would submit that since the Police have conducted investigation and the Court has not accepted the 'B' report, it is a matter for trial and the learned Magistrate at this stage need not apply his mind as everything would be at large in the trial. The petitioner can as well prove his innocence in the trial Court and this Court at this stage should not interfere or interject the criminal trial.

8. I have given my anxious consideration to the aforesaid submissions of the learned counsel appearing for both parties and perused the records.

9. The above narrated facts being not in dispute, they need not be reiterated all over again. The Corporation did put the property belonging to the 2nd respondent/complainant and his wife, to auction and the petitioner is the auction purchaser. The proceedings of auction culminated in the property being handed over to the petitioner after sale and according to the complainant, the property was auctioned by the Corporation at a very low price. The proceedings of the auction were also completed on 11-11-2009. The complainant's version is that, he met the petitioner, who was the successful auction purchaser, in the office of the Corporation and that meeting springs out an allegation that the petitioner had threatened the 2nd respondent not to interfere with the smooth transition of the property to his name. This happened on 10th or 11th November, 2009. The complaint is registered against the petitioner on 13-11-2009.

10. The sequence of events would clearly indicate that the property of the 2nd respondent was put to auction by the Corporation on account of his own default in making repayment of loan; the default may be for manifold reasons. The petitioner is the auction purchaser. The petitioner who participated in the auction became a successful bidder, pursuant to which he was handed over the property. The aforesaid sequence of events would clearly indicate that the 2nd respondent, a disgruntled owner of the property having lost the property in the auction, wanted to teach a lesson to the auction purchaser i.e., the petitioner and accordingly, registers a bald complaint alleging offence punishable under Section 506 of the IPC.

11. Offence punishable under Section 506 of the IPC is non-cognizable and it is an offence punishable for criminal intimidation, what is criminal intimidation is defined under Section 503 of the IPC. Therefore, Sections 503 and 506 of the IPC are germane to be noticed for a consideration of the issue at hand, they read as follows:

"Section 503 - Criminal intimidation:

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Section 506 - Punishment for criminal intimidation :

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. *- And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

Section 503 of the IPC, which defines '*criminal intimidation'* would direct that whoever threatens another person with any injury to his person, reputation or property by an act, he is not legally bound to

do and executes certain threats, commits criminal intimidation. Therefore, the intention of the petitioner ought to have been to do any injury to the complainant, his reputation or property. If the complaint is seen *qua* Section 506 of the IPC, it does not link any action of the petitioner to Section 503 of the IPC, for an offence punishable under Section 506 of the IPC. All that the complaint would narrate is that, the property of the complainant was sold by the Corporation for a very less price and the loan was adjusted to the auction money. It is only because the petitioner was the auction purchaser of the property, though, through legal means, the complaint is registered by the complainant. Therefore, there cannot be a better case of giving a criminal colour to a legal act of the Corporation, putting up the property of the 2nd respondent to sale and the petitioner buying the property, being the auction purchaser. In this view of the matter, it becomes necessary to consider the aftermath of the complaint that is registered.

12. Investigation was ordered by the learned Magistrate on registration of the complaint and after investigation, the Police filed a final report depicting that there was no evidence found in the

investigation for offence punishable under Section 506 of the IPC and filed a 'B' report before the learned Magistrate. The learned Magistrate rejecting the 'B' report, issued notice to the complainant on 08-11-2010. The complainant filed a protest petition after which, a sworn statement of the complainant was taken under Section 161 of the Cr.P.C. and the matter was set for orders. The order that is passed by the learned Magistrate, reads as follows:-

> "*On perusal of oral sworn statement of complainant and the documentary evidence coupled with complaint averments, in my opinion prima facie discloses a case against the accused for the offence punishable under Section 506 of I.P.C Hence, I proceed to pass the following:*
>
> ***ORDER***
>
> *Register a criminal case against accused for the offence punishable under Section 506 of I.P.C. and issue summons to the accused, if P.F. paid.*
>
> *Call on 27/08/2016*
>
> *Sd/-*
> *Addl. C.J. & JMFC, UDUPI.*
>
> ***Perused the chargesheet. Cognizance is taken under Sec. 190(1)(b) of Cr.P.C. for***

the offences punishable under Sec. 506 of IPC. Issue summons to accused.

Call on 27- 08- 2016.

Sd/
Addl. Civil Judge & JMFC, UDUPI."

(emphasis added)

A cursory perusal at the order would indicate, blatant non-application of mind on the part of the learned Magistrate. All that the learned Magistrate would indicate is that, on a perusal of oral sworn statement of the complainant and documentary evidence coupled with complaint averments, in the opinion of the learned Magistrate, because it *prima facie* disclosed a case against the accused for the offence punishable under Section 506 of the IPC, directs registration of a criminal case and issued summons, thereby the learned Magistrate takes cognizance, under Section 191(1)(b) of the Cr.P.C. and sets the criminal trial in motion.

13. The order that sets criminal trial in motion by taking cognizance under Section 191(1)(b) of the Cr.P.C. should bear the stamp of application of mind, more so, in the cases like the subject petition, where an investigation is ordered on the complaint

registered under Section 200 of the Cr.P.C. and a final report is filed by the Police after investigation. Once the final report is filed, if it is a 'B' report, it is in favour of the accused. The complainant who would file a protest petition against acceptance of such 'B' report, on registration of the protest petition against 'B' report, sworn statement of the complainant would be taken.

14. There are two materials available before the learned Magistrate – one being the 'B' report, the other being the protest petition and the evidence of the complainant. The learned Magistrate ought to have applied his mind and reasoned out in the order as to why he does not accept the 'B' report and only accepts the version of the complainant and issues summons setting the criminal trial in motion. Setting the criminal trial in motion cannot become a matter of course or done as a routine exercise. The order must bear application of mind as to why 'B' report is not acceptable to the learned Magistrate and why the evidence and the complaint of the complainant is overwhelming.

15. Application of judicious mind is demonstrable only in the order the learned Magistrate would make, for the order to

demonstrate application of mind it must contain reasons, as recording of reasons is the only way that one can construe such application of mind. Reasons are the live links between the mind of the decision taker, to the controversy in question and the decision arrived at. Reason and application of mind are impregnable for a judicial order to sustain the scrutiny of law. Reasons in every circumstances need not be elaborate, but nevertheless should bear application of mind.

16. Not for nothing an investigation is ordered and the Police would conduct investigation and file a 'B' report. There may be cases where a 'B' report would be filed without proper investigation, which would require trial on a protest petition being filed by the complainant or there may be cases where the complainant would be disgruntled and file a protest petition. Therefore, merely because a complainant files a protest petition and gives a statement with regard to his protest petition, the learned Magistrate ought not be swayed away by such protest petition. It is incumbent upon the learned Magistrate to consider 'B' report, protest petition and the

evidence on record and record his finding as to why he rejects the 'B' report and accepts the protest petition.

17. Application of judicious mind by the learned Magistrate while setting the criminal trial in motion, in cases particularly where protest petition is filed against the 'B' report by the complainant, becomes *sine qua non,* failing which, the order taking cognizance notwithstanding the 'B' report, becomes a routine exercise. Reasons to be recorded in such circumstances need not be elaborate but must bear application of mind.

18. The other procedural infirmity in the case at hand is with regard to acceptance of the complaint and registration of FIR by the Police being erroneous, as the alleged offence punishable under Section 506 of the IPC is non-cognizable offence and when information is received on a non-cognizable offence, the procedure as stipulated under Section 155 of the Cr.P.C. has to be followed. Sub-section (1) of Section 155 of the Cr.P.C., reads as follows:

"155. Information as to non- cognizable cases and investigation of such cases:

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> *(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate."*

In terms of sub-section (1) of Section 155 of the Cr.P.C., when information is given to an Officer in-charge of a Police Station, of cognizable offence, he shall enter or cause to enter the information and refer the informant to the Magistrate. In the case at hand, the allegation against the petitioner being a non- cognizable offence punishable under Section 506 of the IPC, the procedure under Section 155 of the Cr.P.C., ought to have been followed. The registration of FIR could not have been done by the Police without at the outset referring the matter to the learned Magistrate. This is yet another infirmity in the entire proceedings. Therefore, on the aforesaid reasons with regard to the application of mind on the part of the learned Magistrate and registration of FIR being violative of Section 155 of the Cr.P.C., the entire proceedings stand vitiated.

19. In the normal circumstance, when the order taking cognizance bears the stamp of non-application of mind, the matter could be remitted back to the learned Magistrate for consideration afresh. In the peculiar facts of this case, where there is an error even in the registration of FIR and the complaint itself not linking even to the remotest sense to the offence alleged, I deem it appropriate not to remit the matter back to the hands of the learned Magistrate for consideration afresh.

20. It is also germane to take note of mushrooming of registration of criminal cases by handiwork of certain disgruntled complainants as is found in the case at hand. The observations of the Apex Court in the case of ***CHANDRAPAL SINGH AND OTHERS v. MAHARAJ SINGH AND ANOTHER***[1], in the circumstances, is apposite. The Apex Court observes as follows:-

> *"14. That leaves for our consideration the alleged offence under Section 199. Section 199 provides punishment for making a false statement in a declaration which is by law receivable in evidence. We will assume that the*

[1] AIR 1982 SC 1238

affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are receivable as evidence. It is complained that certain averments in these affidavits are false though no specific averment is singled out for this purpose in the complaint. When it is alleged that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under Section 199, I.P.C. To illustrate the point, appellant 1 Chandrapal Singh alleged that he was in possession of one room forming part of premises No. 385/2. The learned Additional District Judge after scrutinising all rival affidavits did not accept this contention. It

thereby does not become false. The only inference is that the statement made by Chandrapal Singh did not inspire confidence looking to other relevant evidence in the case. Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out, in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under Section 199, I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court. ***The learned Counsel for the respondent told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their***

> ***frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482, Cr. P.C."***
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> *(emphasis supplied)*

Therefore, in the light of the observations of the Apex Court in the afore-extracted judgment, the 2nd respondent cannot but be held to be a frustrated litigant, who did want to settle his score against the petitioner, who was an innocent purchaser in an auction process. Merely because, the property belonged to the complainant and it having been sold in public auction, the criminal trial could not have been set in motion. It is in such cases, the learned Magistrate before whom the proceedings are instituted must have exercised

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care and caution while taking cognizance on the allegation of such offence.

21. For the aforesaid reasons, the following:

ORDER

i. The criminal petition is allowed.

ii. The order dated 30.07.2016, passed by the learned Additional Civil Jude and JMFC, Udupi in Crime No.387/2009 and consequential proceedings in C.C.No.2719/2016, stand quashed.

Sd/-
JUDGE

nvj
CT:MJ