
(2004) 06 KAR CK 0003

Karnataka High Court

Case No: Cr.RP. No. 746 of 2004

Laxmavva Bhimappa Kambali

APPELLANT

Vs

Siddroad and Others

RESPONDENT

Date of Decision: June 19, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156 (3), 200, 210
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 323

Citation: (2004) ILR (Kar) 4296 : (2004) 4 KCCR 457 SN

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

Bench: Single Bench

Advocate: Anand M. Sholapurmath, for the Appellant; P.M. Nawaz, HCGP for R-11, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.R. Bannurmath, J.

Though the matter is posted for admission, since the Trial Court has dismissed the complaint at the inception and respondent Nos. 1 to 10 are yet to come before the Court, notice to them is dispensed with.

2. Heard the learned Counsel for the petitioner and Sri Nawaz, learned High Court Government Pleader for respondent No. 11.

3. As the matter can be disposed of on the question of law, the same is taken for final disposal at the request on both sides.

4. The petitioner is the Complainant who has filed the Complaint u/s 200 Cr.P.C. before the jurisdictional police against the respondent for the offence under Sections 307, 326, 147, 148, 149 r/w 34 IPC. The grievance of the petitioner is that she is the wife of the victim and in regard to the incident dated 5.4.2004 at about 9 pm when he was assaulted by the accused, first information was lodged with the

jurisdictional police and though the police have registered a case only for the offences under Sections 342, 323, 324, 504 r/w 34 IPC and have in collusion with the accused failed to register a case u/s 307, 326 etc. When the Complaint of the petitioner was presented before the learned Magistrate, he has dismissed the Complaint on the ground that as already police investigation has been commenced, the present private complaint is not maintainable as according to the learned Magistrate, there is no scope to refer the Complaint u/s 156(3) of Cr.P.C.

5. On considering the peculiar facts and allegations of the Complainant petitioner herein, in my view, the learned Magistrate is not justified in holding that in respect of police cases, private complaint are not maintainable. If one looks into the provisions of Criminal Procedure Code, especially, Section 210 Cr.P.C., it is clear that in respect of criminal case there are possibilities of being investigated and tried in (1) police case; or (2) even it is open for the Complainant to approach the Trial Court by way of filing a Complaint u/s 200 Cr.P.C. As Section 210 Cr.P.C. clearly shows even there is possibility of both the type of cases being initiated as in the present case, in my view, the finding of the Trial Court that Complaint is not maintainable, is liable to be dismissed and set aside.

6. Accordingly, the order dated 16.4.2004, passed by the learned Magistrate, Gokak in P.C.R. No. 704 is set aside. The matter is remitted back to the trial Court to consider the Complaint holding that the Complaint is maintainable and proceed from the stage at which it is stopped and the learned Magistrate is directed to proceed in accordance with the procedure prescribed under Chapter XVI of the Criminal Procedure Code.