
(2010) 04 KAR CK 0023

Karnataka High Court

Case No: Criminal Petition No. 169 of 2010

C. Bheemaraju

APPELLANT

Vs

N. Nanjareddy

RESPONDENT

Date of Decision: April 9, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 417, 419, 420, 471, 506

Hon'ble Judges: Arali Nagaraj, J

Bench: Single Bench

Advocate: H.S. Chandramouli, for the Appellant; Shivraj, for V. Vishwanath, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Arali Nagaraj, J.

Accused No. 3 in C.C. No. 1063/2008 (PCR No. 115/2005, pending on the file of the learned Principal Civil Judge (Jr. Dn.) and JMFC Anekal, Bangalore Rural District ("Magistrate" for short) has sought for quashing of the entire proceedings in the said case.

2. Though this matter is listed today for admission, having regard to the nature of the relief sought for, it is taken for final disposal and heard the arguments of Sri. H.S. Chandramouli, the learned Counsel for the petitioner and Sri. Shivraj, the learned Counsel for the respondent.

3. The said private complaint was filed before the learned Magistrate by the respondent herein. It was referred to the police u/s 156(3) of Cr.P.C. on the basis of the same FIR was issued by the said police against as many as eight accused, of whom the present petitioner is accused No. 3. After investigation, the police submitted "B" Summary report. After the said report was submitted the learned Magistrate passed order dated 30.1.2006 directing issue of notice to the complainant and adjourned the case to 4.2.2006, on which

date, the complainant remained absent despite receipt of notice. Therefore, the learned Magistrate passed an order accepting the "B" Summary report. On the same day the complainant appeared before the learned Magistrate and submitted that he would file objections to "B" Summary report. On that submission, the learned Magistrate set aside his order passed on the same day morning accepting the "B" Summary report and adjourned the case to 1.3.2006, for filing objections to "B" Summary report by the complainant.

4. On 25.4.2006, objections to "B" report were filed. On 26.5.2006, the learned Magistrate accepted the affidavit of the complainant sworn to, as his sworn statement u/s 200 Cr.P.C. Thereafter, on 26.8.2008, he passed order directing registration of a criminal case against all the accused therein for the offences punishable under Sections 419, 420, 468, 417, 471, 506 and 120(B) of IPC and to issue summons to the accused fixing the date as 17.11.2008 their appearance.

5. As rightly submitted by Sri. H.S. Chandramouli, the learned Counsel for the petitioner (A3), the learned Magistrate committed serious error in setting aside his own order dated 4.2.2006, accepting "B" Summary report. The Impugned Order passed by the learned Magistrate on 4.2.2000 setting aside his order passed on the same day accepting "B" report cannot be sustained inasmuch as, the learned Magistrate has no power to set aside his own order.

6. On careful reading of the order dated 4.2.2006, it could be seen that the learned Magistrate mechanically accepted the "B" Summary report only on the ground that the complainant remained absent despite receipt of notice issued by the Court. The said order does not disclose that the learned Magistrate applied his mind to the contents of "B" Summary report in the light of the averments in the complaint, made by the complainant. Therefore, the said order also cannot be sustained in law.

7. Sri. H.S. Chandramouli, the learned Counsel for the petitioner, placing reliance on the decision of this Court in the case of [Sri K. Venkataramaiah and Others Vs. Sri Katterao](#), strongly contends that filing of affidavit sworn to by the complainant as substitute for his sworn statement which is to be recorded by the Magistrate himself u/s 200 Cr.P.C. is not permissible. The learned Counsel for the respondent-complainant concedes to the said proposition of law laid down by this Court.

8. For the reasons aforesaid, the present petition is allowed. Orders dated 4.2.2006, 26.5.2006 and 26.8.2008, passed in C.C. No. 1063/2008 (PCR No. 115/2005) are hereby set aside. Matter is remitted back to the Court of the learned Principal Civil Judge (Jr. Dn.) and JMFC. Anekal, with a direction that he shall apply his mind to the facts contained in the protest petition and if the said contents disclose any cognizable offence/offences, he shall take cognizance of such offence/offences and then record the sworn statement of the complainant and his witnesses, if any, and thereafter, apply his mind to the allegations in the protest petition, sworn statement of the complainant and his

witnesses, if any, and other documents relied upon by the complainant and then proceed with the matter in accordance with law.