
(2017) 12 KAR CK 0040
KARNATAKA HIGH COURT
Case No: 775 of 2017

SRI. L.
KRISHNAMURTHY
S/O LATE
LAKSHMANAPPA

APPELLANT

Vs

SMT.
SANNAERAMMA, W/O
SANNERAPPA,

RESPONDENT

Date of Decision: Dec. 12, 2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 200](#), [Section 156\(3\)](#), [Section 203](#), [Section 204](#) -
Examination of complainant - Police officers power to Invest

Citation: (2017) 12 KAR CK 0040

Hon'ble Judges: K. N. Phaneendra

Bench: SINGLE BENCH

Advocate: SHEKAR C. S., SACHIN B. S.

Final Decision: Allowed

Judgement

The learned counsel for the petitioners has filed IA No.2/2017 praying to permit the petitioners to add an additional prayer to the main petition as:

(ii)(a). Set aside the order dated 29.11.2016 passed by the leaned Principal District Judge, Chikkamagalur in CrI.RP No.177/2015.

Heard the learned counsel for the petitioners in this regard. For the reasons stated in the affidavit filed along with the application, petitioners are

permitted to add the additional prayer as (ii)(a) to the main prayer of the petition.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondent on the main petition. The petitioners have called in

question the order passed by the Senior Civil Judge & JMFC at Kadur in CC No.235/2013 dated 3.7.2013 in issuing process against the

petitioners. The petitioners have also sought for quashing of the order dated 29.11.2016 passed by the by the Principal District and Sessions

Judge, Chickmagalur in Crl.RP No.177/2016.

3. The records disclose that the respondent Smt.Sannaeramma, filed a private complaint u/s.200 Cr.P.C . for the alleged offence punishable

u/s.416, 463, 464, 419, 465, 471, 193 and 196 read with Section 34 of IPC. At the first instance, the trial Judge has referred the complaint for

investigation to the jurisdictional police u/s.156(3) of Cr.P.C .. The Jurisdictional Police have filed B-report before the court which has been

challenged by the complainant by filing a protest petition. The learned Magistrate after receiving the protest petition has directly jumped to record

the sworn statement of the complainant and thereafter issued summons to the accused. The said irregularity in following the procedure by the

Magistrate was called in question before the Principal District and Sessions Judge, Chickmagalur in Crl.RP No.177/2015. The learned Sessions

Judge without looking into these procedural irregularity has straight away considered the factual aspects of the matter and dismissed the Revision

Petition. Against the above said orders, the present petition is filed.

4. The learned counsel for the petitioners strenuously contends that the protest petition is bald and in the said protest petition, there are no

allegations which constitute any offence against the petitioners herein. Therefore, the learned Magistrate would not have proceeded on the basis of

the protest petition.

5. Be that as it may, now let me consider whether the learned Magistrate has followed the procedure as contemplated under the Cr.P.C . It is

evident from the provisions of Cr.P.C . that after filing of the B report by the Jurisdictional Police, it is the duty of the learned Magistrate to issue

notice on the B report to the complainant and after the said B report is contested, the option left open to the Magistrate is to look into the B report

contents and allegations made in the B report, to constitute any offence. In such an eventuality on the basis of the report of the police itself, the

Magistrate can take cognizance and issue process against the accused persons. If the Court is of the opinion that, the B report filed by the police

has to be rejected, in such an eventuality, he has to consider the objection filed or protest petition filed by the petitioner and reject the said B report

and thereafter, he can take cognizance on the basis of the contents of the original complaint coupled with the protest petition and if it takes

cognizance of the offence alleged in the private complaint and protest petition, then only he gets jurisdiction to record the sworn statement of the

complainant as per the provisions of Section 200 of Cr.P.C. where the opening words of Section 200 Cr.P.C. begins with -

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if

any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and

also by the Magistrate.

After taking the sworn statement, the Magistrate has to consider the allegations made in the complaint and the averments made in the sworn

statement and give a finding whether the complaint is liable to be dismissed u/s.203 of Cr.P.C .. If the Magistrate is of the opinion that there are

sufficient grounds to proceed against the accused on the basis of a private complaint contents and as well as the sworn statement, he should give

such finding about his opinion and thereafter issue process against the accused u/s.204 of Cr.P.C .

6. The above said procedures have not been looked into by the learned Magistrate. The learned counsel for the petitioners has relied upon various

number of rulings in this behalf and the statutory provisions which are existed in the Cr.P.C . This shows non application of the judicious mind by

the Judicial officer in not adhering to the procedure contemplated under the Cr.P.C . Even the learned Sessions Judge has not bestowed his

attention so far as these procedural irregularity which are incurable in nature while dismissing the Revision Petition.

7. Under the above said circumstances, the order passed by he learned Magistrate and the order passed in the Crl.RP as noted above deserves to

be quashed. Accordingly, I pass the following:

ORDER

The Petition is allowed. The order passed by the learned Magistrate in CC No.235/2013 dated 3.7.2013, in taking cognizance against the

petitioners and consequent order passed by the Principal Sessions Judge, Chikkamagalur in Crl.RP No.177/2015 are hereby quashed.

The matter is restored on to the file of the Senior Civil Judge, Kadur, with a direction that the Magistrate has to follow the procedure as noted in

the body of this order and then pass appropriate order either u/s.203 or 204 of Cr.P.C .