

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 2 OF 2018

BETWEEN:

MR. ANDO PAUL

...PETITIONER

(BY SRI. NITHIN R, ADVOCATE)

AND:

MR. G. ISMAIL MUSLIYAR

...RESPONDENT

(BY SRI. SACHIN B S, ADVOCATE)

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C
PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND
SENTENCE IN C.C.NO.3490/2008 DATED 30.12.2016 PASSED
BY THE JMFC (II COURT), MANGALORE AND ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN
HEARD AND RESERVED ON 19.02.2024, COMING ON FOR
PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE
THE FOLLOWING:

ORDER

1. This Criminal Revision Petition is filed by the petitioner, being aggrieved by the judgment of conviction and order of sentence dated 30.12.2016 in C.C.No.3490/2008 passed by the J.M.F.C. (II Court), Mangaluru and its confirmation judgment and order dated 18.12.2017 in Crl.A.No.20/2017 on the file of the IV Additional District and Sessions Judge, Dakshina Kannada, Mangaluru, seeking to set aside the concurrent findings recorded by the Courts below, wherein the petitioner / accused is convicted for the offences punishable under Sections 500, 501 and 502 of Indian Penal Code (for short 'IPC').

2. The rank of the parties in the Trial Court will be considered henceforth for convenience.

Brief facts of the case:

3. It is the case of the prosecution that, the complainant was an Arabic Teacher at various madarasas i.e., Malali, Kemmara of Uppinangady etc. He was working as a Qatib of various Jumma Masjids. The complainant hailed from a very respectable family and he did not have any criminal background and did not have any personal blemish in his life.

The accused being the Editor of a fortnightly magazine namely 'Pattanga' published a defamatory article against the complainant stating that the 'Satanic Chronicle of Mylar Ismail of Arkana'. It is further stated that the said statement published in the magazine which defamed the dignity of the complainant and his family members in the public view and people started enquiring him about the article published in the magazine which became ridiculous. Therefore, a complaint came to be registered by the complainant.

4. The Trial Court after taking cognizance, recorded the evidence of PWs.1 to 3 and got marked six documents as Exhibits P1 to P6 and recorded the conviction for the offences punishable under Sections 500, 501 and 502 of IPC. The Appellate Court on appeal being filed, after having re-appreciated the facts and evidence dismissed the appeal by confirming the judgment of conviction. Hence this revision petition.

5. Heard Shri Nithin R., learned counsel for the petitioner and Shri Sachin.B.S., learned counsel for the respondent.

6. It is the submission of learned counsel for the petitioner that the judgment of conviction and order of sentence passed by the Trial Court and its confirmation order passed by the Appellate Court are required to be set aside as the concurrent findings are perverse, illegal and opposed to facts and law.

7. It is further submitted that there is an inordinate delay in filing the PCR i.e., delay of 2 years 9 months which is fatal to the case of the complainant. However, the Trial Court did not consider the said delay and proceeded to take cognizance and recorded the conviction which is not proper.

8. It is further submitted that the cognizance taken after seven years from the date of institution of complaint which is contrary to the facts and also contrary to the settled principles of law declared by the Hon'ble Supreme Court in the case of *PRADEED S WODEYAR v. STATE OF KARNATAKA*¹.

9. It is further submitted that as per the order of the Press Council of India (Ex.P5), the accused published Ex.P6 in order to clarify the said publication, however, the complainant filed a complaint with an ulterior motive in order to harass the

¹ (2021) 19 SCC 62

accused. The evidence of PWs.1 to 3 ought not to have been considered for the reason that they are not only the interested witnesses, but also their statements are contrary to the documents on record.

10. It is further submitted that the Courts below ought to have considered the legal aspects which are required to be considered as mandatory while appreciating the evidence on record. Having failed to consider the same, resulted in passing the impugned judgments, which are required to be set aside. Making such submission, learned counsel for petitioner prays to allow the revision petition.

11. *Per contra*, learned counsel for the respondent vehemently justified the concurrent findings and submitted that the findings of the Courts below regarding defamation are appropriate. The respondent / complainant is a reputed person in the locality, without verifying the said aspect, the petitioner has published the defamatory article in his magazine which defamed the dignity of the respondent in the locality.

12. It is further submitted that the article which was published in the magazine of the accused, not only defamed the dignity but also caused irreparable loss to the personal life of

the complainant. The evidence of PWs.1 to 3 is consistent that the said article was false and baseless. The accused being an Editor of the magazine should have verified the veracity or authenticity before it was published.

13. It is further submitted that the averments of the said article clearly defamed the dignity of the individual in the Society. Therefore, the person who was responsible for publishing the article has to be punished. Accordingly, the Trial Court rightly recorded the conviction in respect of the defamation, hence, interference with the said concurrent findings may not be necessary. Making such submission, learned counsel for respondent prays to dismiss the petition.

14. After having heard the learned counsel for the respective parties, learned counsel for the petitioner has raised three grounds, firstly, there is delay in filing the complaint. Secondly, taking cognizance is bad in law as it was taken after 8 years from the date of filing of the complaint. Thirdly, convicting the petitioner / accused on the evidence of interested witnesses is bad in law.

15. As regards the delay in lodging the complaint is concerned, the evidence of PW.1 is seen which discloses that

on 31.05.1998, the accused published a defamatory article against the complainant. On 18.07.1998, a letter was written to the accused asking him to publish an apology in his magazine. However, again on 31.07.1998, the accused published a defamatory article against the complainant. Being aggrieved by the said article, the complainant approached the Press Council of India on 10.08.1999 sought for action to be initiated against the accused. The Press Council of India directed the accused to publish a version of refuting the allegations made in the magazine as per Ex.C4. Thereafter, the accused published an article as per Ex.C6 (Ex.P6) which also not refuting the defamatory article published against the accused. Therefore, on 21.04.2001, the complainant approached the Jurisdictional Magistrate by filing a private complaint. Since there is a clear explanation by PW.1 regarding delay in lodging the complaint, the said contention of the learned counsel for the accused cannot be accepted.

16. As regards taking cognizance is bad in law is concerned, learned counsel for the accused relied on the judgment of the Hon'ble Supreme Court in the case of *PRADEED S WODEYAR*, stated *supra*, the paragraph Nos.76, 84 and 91 referred by the learned counsel for the accused relating

to taking cognizance on the basis of the police report and not on the basis of the private complaint. In the present case, the matter relating to taking cognizance after 8 years from the date of lodging the complaint for the offences which are punishable with simple imprisonment for 2 years or a fine or both, especially in non-cognizable offences. To deal with the said aspect, it is necessary to refer to Section 468 of the Code of Criminal Procedure, which reads thus:

"468. Bar to taking cognizance after lapse of the period of limitation.—(1) Except as otherwise provided

elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

1. Provisions of this Chapter shall not apply to certain economic offences, see the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 and Sch.192

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]"

17. On careful reading of the above said provision, it makes it clear that cognizance should be taken within 3 years if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding 3 years. In the present case, a complaint is filed on 21.04.2001, cognizance taken on 12.08.2008. Therefore, the order of taking cognizance is bad in law and the Trial Court and the Appellate Court should have considered the said aspect and recorded the acquittal. In my considered opinion, taking cognizance is bad in law.

18. In the light of the observations made above, when the order of taking cognizance is bad in law, answering point No.3 is not necessary and the revision petition deserves to be allowed.

19. Hence, I proceed to pass the following:-

ORDER

- (i) The Criminal Revision Petition is *allowed*.
- (ii) The judgment of conviction and order of sentence dated 30.12.2016 in C.C.No.3490/2008 passed by the J.M.F.C. (II Court), Mangaluru and the judgment and order dated 18.12.2017 in Crl.A.No.20/2017 on the file of the IV Additional

District and Sessions Judge, Dakshina Kannada,
Mangaluru are hereby set aside.

- (iii) The petitioner is acquitted for the offences under
Sections 500, 501 and 502 of Indian Penal Code.
- (iv) Bail bonds executed, if any, stand cancelled.

**Sd/-
JUDGE**

Bss