

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.349 OF 2021

BETWEEN:

SRI PRASHANTH SAMBARGI

... PETITIONER

(BY SRI ADIT CHANDANGOUDAR, ADVOCATE FOR
SRI SHIVAPRASAD SHANTANAGOUDAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY SUBRAMANYAPURA POLICE STATION,
BENGALURU CITY
REPRESENTED BY:
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU.
2. SRI Y.K.DEVANATHA

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1;
SMT.ROOPA M.S., ADVOCATE FOR R2))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO A. QUASH THE PRIVATE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE THE I ACMM, NRUPATHUNGA ROAD, BANGALORE IN PCR.NO.15323/2019 AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.03.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner is before this Court calling in question proceedings in Crime No.286 of 2020 pending before the 1st Additional Chief Metropolitan Magistrate, Bangalore registered for offences punishable under Sections 499 and 500 of the IPC read with Section 67 of the Information Technology Act, 2008 ('the Act' for short).

2. Heard Sri Adit Chandangoudar, learned counsel appearing for the petitioner, Smt. K.P.Yashodha, learned High

Court Government appearing for respondent No.1 and Smt. M.S. Roopa, learned counsel appearing for respondent No.2.

3. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

The 2nd respondent is the complainant. The petitioner and the 2nd respondent have had certain transactions. It is the allegation in the complaint that the petitioner is a habitual money lender and the complainant comes in contact with him and also borrows money by way of hand loan. On such borrowings, the complainant had issued certain cheques in furtherance thereto, as security for the said loan. The complainant also appears to have deposited original property papers with the petitioner. The contention of the complainant in the complaint is that he had returned all the money. Notwithstanding return of money, the petitioner had registered two criminal cases against the complainant – one in Crime No.127 of 2018 on 28-03-2018 and the other in Crime No.165 of 2018 on 2-07-2018. Both the crimes were for offences

punishable under Sections 506, 504, 420 and 323 of the IPC. The registration of both the crimes was called in question before this Court by the 2nd respondent in Criminal Petition Nos.5292 of 2018 and 5293 of 2019. This Court by orders of the same date i.e., 11-07-2019 dismissed both the petitions on the score that the power under Section 482 of the Cr.P.C. cannot be exercised in the teeth of the allegations made in those complaints. Further, proceedings in terms of the dismissal order appear to be in progress against the complainant in those cases.

4. The subject case concern a private complaint registered by the complainant herein, at a later point in time, after the dismissal of the aforesaid cases by this Court. The allegation in the present complaint is that the petitioner after dismissal of the cases (*supra*) has circulated messages on WhatsApp group depicting the complainant to be a 420; not only 420 he should be labeled as 840 because he has filed two cases against him. After the complaint, the Police have registered a crime in Crime No.286 of 2020 against the petitioner for offences punishable

under Sections 499 and 500 of the IPC r/w Section 67 of the Act. It is the registration of the aforesaid crime against the petitioner that drives the petitioner to this Court in the subject petition.

5. The learned counsel appearing for the petitioner would vehemently argue and contend that the very complaint was not maintainable in the teeth of the Ninth exception to Section 499 of the IPC which takes away the effect of defamation to become punishable under Section 500 of the IPC and would submit that Section 67 of the Act also cannot be invoked as it is not even defamatory and circulated amongst a particular group.

6. On the other hand, the learned counsel representing the 2nd respondent/complainant would vehemently refute the submissions to contend that the statement made in WhatsApp group called 'Parivartane' against the complainant is on the face of it defamatory, as the complainant is yet to be guilty in any of the cases. Mere registration of crime against the complainant cannot mean that he could be defamed and his image be lowered

in the likeminded people of the society. She would submit that it is a matter for trial as Ninth exception to Section 499 of the IPC is always a question of fact.

7. The learned High Court Government Pleader would also toe the lines of the learned counsel appearing for the 2nd respondent and would submit that it is a matter for trial.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

9. The afore-narrated fact of registration of two criminal cases against the complainant is not in dispute. It is also not in dispute that the complainant had unsuccessfully approached this Court, in the aforesaid cases, calling in question FIRs so registered. The issue now is the message that was circulated in a group called 'Parivartane' by the petitioner. The circulation of message in the said group is also not in dispute. The message that is circulated reads as follows:

“THE BIGGEST CON ARTIST OF BANGALORE, DEVANATHA ALIAS APPU. ARRESTED BY CCB POLICE. 420 APPU. SMOOTH TALKER. GREAT STORY TELLER. MULTIPLE CASE REGISTERED IN DIFFERENT POLICE STATION. BEWARE OF THIS MAN. HE IS ON LOOK OUT TO CHEAT YOU.... IT SHOULD NOT BE LABELLED 420.... IT SHOULD BE LABELLED 840 BCOS I GOT CHEATED TWICE AND 2ND FIR IS FILED.”

The message depicts that the complainant is a con artist of Bangalore, smooth talker and a 420 and also narrates that multiple cases are registered against him in different police stations and the man is on a look out to cheat anyone. The afore-quoted statement is what drives the complainant to register the complaint against the petitioner invoking Section 200 of the Cr.P.C. for offences punishable under Sections 499 and 500 of the IPC and Section 67 of the Act. The learned Magistrate refers the matter for investigation under Section 156(3) of the Cr.P.C., pursuant to which, an FIR is registered against the petitioner for offence punishable under Sections 499 and 500 of the IPC and Section 67 of the Act in Crime No.286 of 2020.

10. The learned counsel appearing for the petitioner has raised several grounds, but what is required to be noticed is, whether the learned Magistrate could have referred the matter for investigation to the Police under Section 156(3) of the Cr.P.C. in a case of defamation which is an offence punishable under Section 500 of the IPC. The issue need not detain this Court for long or delve deep into the matter in view of the decisions of the Apex Court and the High Court of Kerala while considering the very issue. In the case of **SUBRAMANIAN SWAMY v. UNION OF INDIA**¹ the Apex Court has held as follows:

“207. Another aspect required to be addressed pertains to issue of summons. Section 199 Cr.P.C. envisages filing of a complaint in Court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) Cr.P.C. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in *Rajindra Nath Mahato v. T.Ganguly* [MANU/SC/0167/1971: (1972) 1 SCC 450], is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In *Punjab National Bank v. Surendra Prasad Sinha* [MANU/SC/0345/1992: (1993) SCC (Cri) 149] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistrate to find whether the accused concerned should be

¹ (2016) 7 SCC 221

legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means of wreak personal vengeance. In Pepsi Foods Ltd., v. Special Judicial Magistrate [MANU/SC/1090/1998: (1998) 5 SCC 749], a Two Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.”

(Emphasis supplied)

The Apex Court, in the aforesaid judgment, holds that where the complaint made by the complainant before the learned Magistrate involves offence punishable under Section 500 of the IPC, the learned Magistrate cannot exercise powers under Section 156(3) of the Cr.P.C. so as to direct Police to register a crime and then investigate into the offence, in view of the specific bar contained in Section 199 of the Cr.P.C. This would become applicable even in cases where offences are alleged of other provisions of law along with Section 500 of the IPC.

11. It is germane to notice the judgment of a learned single Judge of the High Court of Kerala considering the very issue in the case of **SURESH v. SUB-INSPECTOR OF POLICE**² wherein it has been held as follows:-

“4. It will be pertinent to refer to the provisions contained in Section 199 of the Cr.P.C. which reads as follows:-

“199. Prosecution for defamation.—(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

² 2019 (4) KLT 106

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.”

In this case we are not really concerned much with the applicability of sub-sections (3), (4) and (5) of Section 199, as nobody has a case that the alleged defamation has been made as against anyone of the public dignitaries mentioned therein, more particularly in sub-section (2) thereof. Sub-section (1) of Section 199 of the Cr.P.C. clearly and categorically mandates that no court shall take cognizance of an offence punishable

under chapter XXI of the IPC., except upon a complaint made by some person aggrieved by the offence. In this case, we are also not much concerned with the applicability of the proviso to sub-section (1) of Section 199 as nobody has got a case that the complainant concerned is below the age of 19 or comes within any of the categories mentioned in that proviso. Chapter XXI of the IPC is captioned with the heading "OF DEFAMATION" and the said Chapter XXI contains Sections 499, 500, 501 and 502 of the IPC. In the instant case it is beyond any dispute that the offence alleged is as per Section 499 (criminal defamation), which is punishable as per Section 500 (punishment for defamation) of the IPC and hence it is beyond the pale of any controversy that the sole offence alleged in the instant case comes under Chapter XXI of the IPC and therefore there cannot be any dispute about the applicability of sub-section (1) of Section 199 of the IPC which deals with the offences mentioned in Chapter XXI of the IPC. The legislature has specifically mandated as per Section 199(1) of the Cr.P.C. that no court shall take cognizance of an offence punishable under Chapter XXI of the IPC except upon a complaint made by some person aggrieved by the said offence. Therefore, the only manner on the basis of which, cognizance could be taken by the competent criminal court in respect of an offence alleged as per Section 500 of the IPC comes under Chapter XXI of the IPC is that the aggrieved complainant who has locus standi has to file a private criminal complaint as envisaged in Section 190(1)(a) of the Cr.P.C. and thereafter it is for the criminal trial Court concerned to take appropriate decision in the matter of taking cognizance and then to proceed thereafter in accordance with law. If on the other hand, the learned Magistrate before whom the petition/complaint is filed, does not treat it as a complaint under Sections 190 and 200 of the Cr.P.C. and then decides to direct the Police to register crime and then to investigate the offence as per Section 500 of the IPC in purported exercise of the powers conferred under Section 155(2) of the Cr.P.C., then the Police will have to register the crime and after conducting such investigation, if it is found that there is substance in the allegations, it is for the Police to file appropriate final report/charge sheet in the case in terms of Section 173 of the Cr.P.C. **Thereafter, the criminal trial court will be barred from taking cognizance in respect of an offence as**

per Section 500 of the IPC by following the latter course for the simple reason that the legislature permitted the sand court to take cognizance in respect of an offence under Chapter XXI of the IPC only on the basis of a complaint made by the person aggrieved of the said offence and not on the basis of a final report/charge sheet or Police report given by the Police authority concerned. Since the very taking of the cognizance in such a case is barred by virtue of the specific mandatory provision contained in Section 199(1) of the Cr.P.C. it is only to be held that the learned Magistrate has no jurisdiction under Section 155(2) to direct the Police to register a crime and conduct investigation in respect of a petition involving allegation in relation to Section 500 of the IPC. There could be cases, where the petition/complaint given by the complainant concerned would be making allegations, not only in respect of offence as per Section 500 of the IPC which is a non cognizable offence but in respect of certain other cognizable offences as well. The Apex Court has held in the case of Subramanian Swamy v. UOI & Ors. [MANU/SC/0621/2016: (2016) 7 SCC 221] has held, more particularly in paragraph 207 thereof that in such situation, the learned Magistrate cannot even exercise the powers under Section 156(3) of the Cr.P.C. so as to direct the Police to register a crime as far as the investigation of an offence as per Section 500 of the IPC. Para 207 of the judgment of the Apex Court in Subramanian Swamy v. UOI & Ors. [MANU/SC/0621/2016: (2016) 7 SCC 221], P.350-351 reads as follows:

“207. Another aspect required to be addressed pertains to issue of summons. Section 199 Cr.P.C. envisages filing of a complaint in Court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) Cr.P.C. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in Rajindra Nath Mahato v. T.Ganguly [MANU/SC/0167/1971: (1972) 1 SCC 450], is a matter of

judicial determination and before issuing a process, the Magistrate has to examine the complainant. In *Punjab National Bank v. Surendra Prasad Sinha* [MANU/SC/0345/1992: (1993) SCC (Cri) 149] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistrate to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means of wreak personal vengeance. In *Pepsi Foods Ltd., v. Special Judicial Magistrate* [MANU/SC/1090/1998: (1998) 5 SCC 749], a Two Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course."

5. Therefore, the Apex Court has clearly held that even in cases where the petitions/complaints made by the complainant before the learned Magistrate are in respect of allegations involving, not only offence under Section 500 of the IPC which is a non-cognizable offence, but also includes other cognizable offences, the learned Magistrate cannot exercise the powers under Section 156(3) of the Cr.P.C. so as to direct the Police to register a crime and then to investigate into the offence as per Section 500 of the IPC in view of the specific bar contained in Section 199 of the Cr.P.C. So the embargo under Section 199 of the Cr.P.C. would also bar the jurisdiction of the learned Magistrate under Section 156(3) of the Cr.P.C. to order the Police to register a crime and to investigate offence as per Section 500 of the IPC in a case where the allegations are, not only in respect

of offences as per Section 500 of the IPC, which is a non-cognizable offence, but also in respect of other offences which are cognizable offences, etc. it automatically flows there from that where the allegations are solely in respect of the offence as per Section 500 of the IPC which is under Chapter XXI of the IPC, then the jurisdiction under Section 155 (2) of the Cr.P.C. is not available to the learned Magistrate to direct the Police to register a crime and investigate the offence as per Section 500 of the IPC in view of the specific bar contained in Section 199 of the Cr.P.C. Thus, in view of the abovesaid legal position settled by the Apex Court in para 207 of the Subramanian Swamy's case supra, the embargo under Section 199 of the Cr.P.C. would also bar the learned Magistrate from taking resort to the provisions contained in Section 156(3) of the Cr.P.C. to direct the Police to register a crime and to investigate the offence as per Section 500 of the IPC in a case where the allegations involve, not only in respect of offence as per Section 500 of the IPC but also other offences which are cognizable offences. Needless to say, in respect of such offences, which are cognizable offences, for which there is no other statutory prohibition, the learned Magistrate can certainly exercise the power so as to direct the Police to register and to investigate into such aforementioned offences. Hence, it automatically flows therefrom that where the allegations of a complainant like the 3rd respondent which involves solely the offence as per Section 500 of the IPC which is under Chapter XXI of the IPC, then the statutory bar under Section 199 (1) of the Cr.P.C. would also prohibit the learned Magistrate from taking resort to the provisions contained in Section 155(2) of the Cr.P.C. so as to direct the Police to register a crime and to investigate the offence as per Section 500 of the IPC. This crucial aspect of the matter is all the more amplified by the legislature in engrafting the provision contained in the sub-section (6) of Section 199 of the Cr.P.C., wherein it is stipulated that nothing in Section 199 shall affect the right of the person against whom is offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint. Therefore, by the specific provision in Section 199(6) of the Cr.P.C. the legislature has made it clear that for offences under Chapter XXI of the IPC, the only remedy of the

complainant, who is aggrieved of the said offences, is to file a private criminal complaint as understood in Sections 190 and 200 of the IPC and then for the competent criminal court concerned to take appropriate decision in the matter of taking cognizance and then to proceed with the matter in accordance with law.

6. Accordingly, it is held that the impugned decision taken by the learned Magistrate as referred to in Anx.I(7), whereby the learned Magistrate has directed the Police to register and to investigate the offence as per Section 500 of the IPC in this case is illegal and ultra vires. Consequently, it is only to be held that further impugned action on the part of the 1st respondent SHO in registering Anx.I FIR in Crime No.900/2018 of Vadakkekara Police Station, for offence as per Section 500 of the IPC, wherein the petitioner has been arrayed as the sole accused therein, is also illegal and ultra vires. Accordingly, the abovesaid impugned proceedings in Anx.I will stand set aside. However, it is made clear that nothing in this order will in any manner preclude the 3rd respondent in filing an appropriate private criminal complaint in respect of the abovesaid offence and then to proceed with the matter in accordance with law. It is made clear that this Court has only held that the learned Magistrate has no jurisdiction to take resort to the provision contained in Section 155(2) of the Cr.P.C. so as to direct the Police to register a crime and then to investigate the offence as per Section 500 of the IPC, etc.”

(Emphasis supplied)

In the light of the judgment of the Apex court and that of the learned single Judge of the High Court of Kerala (*supra*) interpreting Sections 199, 499 and 500 of the IPC, the order of the learned Magistrate directing investigation and all

proceedings thereto would be a nullity in law. Therefore, the proceedings require to be obliterated and the matter remitted back to the learned Magistrate to take up such proceedings bearing in mind the observations made in the course of the order.

12. For the aforesaid reasons, I pass the following:

ORDER

- (i) The Criminal Petition is allowed in part.
- (ii) The impugned proceedings in Crime No.286 of 2020 pending before the 1st Additional Chief Metropolitan Magistrate, Bangalore from the stage of the learned Magistrate directing investigation under Section 156(3) Cr.P.C. stand quashed.
- (ii) The learned Magistrate is directed to take further proceedings in the case from the stage of registration of the complaint and take all appropriate action in accordance with law.
- (iii) All contentions on merits of the matter of both the parties remain open.

**Sd/-
JUDGE**

bkp
CT:MJ