

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.6027 OF 2022

BETWEEN

SHESHA KRISHNA
(SHESHA KRISHNA BHAT)

... PETITIONER

(BY SRI B.V. PINTO, ADVOCATE
FOR SRI RAJU C N , ADVOCATE)

AND

KISHAN HEGDE

... RESPONDENT

(BY SRI P. NATARAJU, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO SET ASIDE THE ORDER TAKING COGNIZANCE FOR THE OFFENCE BY THE ADDITIONAL CIVIL JUDGE AND JMFC UDUPI IN C.C.NO.888/2017 DATED 03.08.2017 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 500 AND 501 OF IPC BY ALLOWING THIS PETITION.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.01.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner-accused No.3 under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C.No.888/2017 pending on the file of Additional Civil Judge and JMFC, Udupi, for the offences punishable under Sections 500 and 501 of IPC.

2. Heard the arguments of learned counsel for the petitioner and learned counsel for the respondent.

3. The case of the petitioner is that on the private complaint filed by the respondent under Section 200 of Cr.P.C., the learned Magistrate took cognizance and issued summons to the accused Nos.1, 2 and accused No.3-petitioner herein, for the above said offences.

4. It is alleged by the complainant in the complaint that accused No.1 is said to be the owner of Kannada TV channel, accused No.2 is said to be local correspondent in Udupi and D.K. District, and accused No.3-petitioner herein made statement in express terms who is said to be news reader. Accused No.1-TV channel telecasted defamatory statements and false news against the complainant which was read out by the petitioner. Scandalous words were repeatedly uttered, which were defamatory and the false imputation has lowered the dignity of the complainant. After registering the private complaint, the trial Court took cognizance, which is under challenge.

5. The learned counsel for the petitioner has contended that the petitioner is only the news reader and while taking cognizance, the Magistrate has passed an order without application of mind. There is no enquiry made by the Magistrate under Section 202 of Cr.P.C. The complainant is from Udupi and the accused is from Bengaluru. Therefore, there is no case made for

proceeding against the petitioner. The learned counsel has also contended that there was a compact disc (CD) produced by the complainant, which was not opened by the Magistrate and no certificate is produced under Section 65 of Evidence Act. Therefore, prayed for quashing the criminal proceedings.

6. Per contra, learned counsel for respondent has objected the petition contending mainly on the ground that the petitioner and other accused already approached the High Court in criminal petition No.6098/2019 and the said petition came to be dismissed on 30.06.2021 wherein, this Court has not granted any liberty to approach the Court once again. Therefore, the petition is not maintainable. The learned counsel further contended that the Magistrate has already examined two witnesses and got marked documents, which is nothing but an enquiry under Section 202 of Cr.P.C. and after passing the detailed order, the Magistrate has taken cognizance against the petitioner. Therefore, there is no flaw in the order of the Magistrate.

The learned counsel also contended that as regards the certificate under Section 65 of the Evidence Act, it has to be produced at the time of examination-in-chief by the witness who trust the CD as electronic evidence. The learned Counsel further contended that the original news telecasted by the accused persons is with them, who is running the TV channel. Therefore, prayed for dismissing the petition.

7. Having heard the arguments of the learned counsel for the parties, perused the records.

8. The records reveal that the respondent-complainant has filed a private complaint against the petitioner for the offences punishable under Sections 500 and 501 of IPC, wherein accused No.1 is said to be published scandalous news by defaming the complainant. Admittedly, accused No.1 running the TV channel, accused No.2 is reporter and the petitioner is news reader. It is also an admitted fact that they filed a petition before this Court which came to be rejected and in the said petition,

no liberty was granted for approaching the Court once again. However, the main contention raised by the petitioner's counsel is that there is no enquiry under made Section 202 Cr.P.C. by the Magistrate. In this regard, perusal of the order sheet reveals that after filing of the private complaint, the Magistrate called the complainant and recorded the sworn statement and thereafter, recorded the statement of witness No.3 as C.W.2 and thereafter, by narrating the entire averments made in the complaint and referring various judgments of the Hon'ble Supreme Court in the case of **S.R. SUKUMAR Vs. S. SUNAAD RAGHURAM** reported in **(2015)9 SCC 609**, **NARSINGH DAS TAPADIA Vs. GOVERDHAN DAS PARTANI AND ANOTHER** reported in **AIR 2000 SC 2946**, **SUBRAMANIAN SWAMY Vs. MANMOHAN SINGH AND ANOTHER** reported in **(2012)3 SCC 64** and finally, passed an order on 03.08.2017 against the petitioner as per Section 204 of Cr.P.C. Recording the sworn statement of the witness belonging to the complainant is nothing but an enquiry under Section 202

of Cr.P.C. Thereafter, the Magistrate took cognizance by narrating the facts and reasons for taking cognizance.

Ex.C.1 was marked which is CD and it cannot be said that the Magistrate has not viewed the CD, but he has categorically stated that he has perused the CD and documents. Therefore, the first contention of the petitioner's counsel is not sustainable under law.

9. The second contention of the learned counsel for the petitioner is that there is no certificate under Sections 65 of Evidence Act was produced. The said certificate can be produced and marked, at the time of examination in chief of the witness, and the production the certificate at the time of sworn statement, is not necessary. The learned counsel for respondent contended that the original CD or clippings are with the accused and it can be summoned by the Magistrate on the application filed by the complainant during trial. Therefore, for non production of certificate under Section 65 of the Evidence Act, the criminal proceedings cannot be quashed. It comes only

after appreciation of evidence of the examination of the complainant's witness. Therefore, the second contention of the learned counsel for the petitioner is also not sustainable in law.

10. The allegation made against the accused persons cannot be bifurcated as the petitioner is the news reader acted on behalf of the accused Nos.1 and 2 which was telecasted by accused Nos.1 and 2. Therefore, without petitioner-accused No.3, the proceedings against accused Nos.1 and 2 cannot be sustainable. Therefore, the petitioner also requires to face trial.

11. On perusal of records which reveals that the cognizance was taken by the Magistrate in the year 2017. In spite of lapse of five years, the accused persons are dragging the matter for one or the other reasons and delaying the process, even though there is no merit in the petition. Therefore, using of delayed tactics by the accused persons cannot be allowed and it is necessary to issue direction to the trial Court for speedy disposal.

Accordingly, the criminal petition filed by petitioner-accused No.3 is dismissed.

The trial Court is directed to dispose of the matter as early as possible, but not later than three months from the date of receipt of copy of this order.

**Sd/-
JUDGE**

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