

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

THE HON'BLE MR. JUSTICE K.N.PHANEENDRA

Criminal Petition No.101996/2015 Dated:02-02-2017

Tuggeppa Hanumantappa Desai Vs. Lalitha Tammannavar, D/ o Manohar Tammannavar and Another

ORDER

Heard the learned counsel for the petitioner and the respondents. Perused the records. With consent of both the counsels, this petition is taken up for disposal at the stage of admission itself.

2. The petitioner has approached this Court seeking quashing of a criminal case in C.C. No.335/2015 on the file of the Principal Civil Judge and JMFC, Chikkodi, Belgaum District, for the offences under Sections 143, 147, 148, 323, 324, 506 read with Section 149 of IPC.

3. The brief factual matrix that emanate from the records are that, a lady, by name Lalitha Manohar, lodged a complaint against the petitioner herein stating that the accused-petitioner has developed friendship with her from 17.11.2013 and they started loving each other. On persuasion of the petitioner, the complainant had also permitted him to have sexual relationship with her. This particular aspect continued for a long. It appears that, in spite of petitioner marrying some other lady in 2004, the relationship had been continued. It is also stated in the complaint that, on coming to know the relationship of the petitioner and the complainant, in the year 2009, the petitioner's wife has filed a case against the petitioner and a lady (the complainant), consequently, he was removed from the job. At that time, the complainant had, in fact, financially assisted and helped the petitioner on the ground that he had assured to marry her since 2003 itself. Therefore, she lodged a complaint alleging that the petitioner committed cheating and he violated the promise given to her. On the basis of the said complaint, police have registered a case in Crime No.183/2014 for the offences under Sections 417 and 420 of the Indian Penal Code. After thorough investigation, the police have submitted a chargesheet for the offences under Sections 417 and 420 of IPC.

4. The real discrepancy occurred in the proceedings only after the police have filed the charge sheet before the Court. I feel it just and necessary to extract the order sheet of relevant dates of the Trial Court, before advertent to the real controversy, which is as under:

"Sr.No.	Date	Proceedings
	27-05-2015	Before Smt.Y.L.Ladkhan B.A.LLB.(Spl.) Prl.Civil Judge & JMFC, Chikodi,

The PSI Chikodi has filed charge sheet against the accused for the offence punishable U/Sec. 143, 147, 148, 148, 323, 324, 506 R/ w 149 IPC

The Original FIR and Complaint and PF are included in this file. On perused of the papers it is disclosed that accused is/are on Court bail.

Submitted for orders.

Sheristedar.

ORDER

Perused the prosecution papers. There are sufficient grounds and prima-facie case made out to proceed against the accused person. Accordingly cognizance taken for the offence punishable U/Sec. 143, 147, 148, 323, 324, 504 R/ W 149 IPC against the accused.

Hence, register the case against the accused as C.C. C.C. in Reg. No.III (Criminal) for the above said offences. Issue summons to the accused persons returnable by 27/5/2015.

Sd/-.....

28/4/15

Prl. Civil Judge & JMFC,

Chikodi.

5. The learned counsel for the petitioner has brought to the notice of this Court that by order dated 28.04.2015, the Magistrate has taken cognizance of the offences under Sections 143, 147, 148, 323, 324, 506 read with Section 149 of IPC and has issued summons to the accused, and accordingly, the accused has appeared before the Court. However, after the copies of the chargesheet were furnished to him, the petitioner came to know that no cognizance has been taken for the offences under Section 417 and 420 of IPC.

6. Though the learned counsel for the petitioner argued in detail with regard to the contents of the chargesheet and the offences alleged therein under Sections 417 and 420 of IPC, in view of the discrepancy and the illegality, and the procedural irregularity committed by the Trial Court, which is not curable in nature, at this stage, I do not want to express any opinion so far as the merits of the case is concerned.

7. Be that as it may. It is just and proper on the part of this Court to say that the Principal Civil Judge and JMFC, Chikkodi, has committed a serious error in not even looking to the chargesheet papers before taking cognizance and the offences alleged, in the charge sheet. It is nothing but a mechanical way of doing the judicial work by the jurisdictional Magistrate and it shows that the Magistrate has not applied her judicious mind. The Magistrate has not even looked into the charge sheet. But has taken the cognizance of those offences which are not enumerated in the FIR or in the chargesheet. When no cognizance has been taken for the offences under Sections 417 and 420 of IPC, the Court cannot proceed with the allegations made in the chargesheet against the accused.

8. The order sheet of the Trial Court shows that the Shrestedar of the said Court has put up the file for orders wherein the provisions of the offences are filled up in a blank computerised ordersheet and thereafter, it appears the same was placed before the Judge for signature. Even the ordersheet shows that, it does not bear the signature of the Shrestedar, who has put up the ordersheet for signature of the Judge. However, without looking to the same, the Judicial Officer has put his signature to the order, which is typographically prepared by the office mentioning some other offences in the blank column of the order sheet.

9. The dates mentioned in the ordersheet i.e., 27.05.2015, on which day the case was put up for orders also creates lot of confusion as to how the Magistrate could issue process on 28.04.2015 itself and posting the case once again on 27.05.2015. This also creates a doubt with regard to mentioning of the dates without applying the mind, which are not reconciling with each other.

10. The Judicial Magistrates, who are empowered to summon the accused under Section 204 of the Code of Criminal Procedure, should always keep in mind that order of summoning the accused is a serious matter and the criminal law cannot be set into motion as a matter of course. The summoning order must reflect that the Magistrate has applied his mind to the facts of the case and the law applicable thereto. The order of summoning the accused need not be a speaking order and a detailed order. But, on the other hand, it should not suffer from any infirmity or illegality. Reasons have to be assigned in the order, however short it may be for coming to a conclusion that it is a fit case for issuance of summons, and, if not, such summoning order would become bad in law. The Magistrate, while issuing process, is not required to meticulously examine and evaluate the materials on record. However, he is required to record reasons, however short or brief it may be, which indicate the application of mind by the Magistrate, that is all expected from him at that stage. The expression " opinion " and " sufficient ground " under Section 204 gives an indication that before issuing process, the Magistrate should indicate that on what material he has considered that, it is a fit case to issue process. Without applying the judicious mind, without even looking to the facts of the case, mechanically, issuing process only on the basis of the operative portion of the chargesheet or the complaint does not amount to application of mind by the Magistrates.

11. Looking to the above said facts and circumstances of the case, I am of the opinion that the said order passed by the learned Magistrate by taking cognizance is erroneous and illegal, and the said procedure followed is not authorised by law. Under the above circumstances, the following order is passed:

Order

The Petition is allowed. Consequently, the order dated 28.04.2015, whereby the Trial Court has taken cognizance for the offences under Sections 143, 147, 148, 323, 324, 506 read with Section 149 of IPC is hereby quashed. The matter stands remitted to the Trial Court with a direction that the Magistrate has to personally look into the charge sheet papers, so as to ascertain whether it is a fit case to take cognizance of the offences alleged against the accused person and after applying judicious mind, the Magistrate shall pass appropriate

orders with regard to taking of cognizance of particular offences or otherwise. If the Court finds that there are factual allegations which constitute any offence, then only the Court can proceed to take cognizance and issue process against the accused.

As this Court has found that the said irregularity has been committed by the Judicial Officer without applying his judicious mind, a copy of this order shall be sent to the Registrar General to take appropriate measures, to circulate this order to all the Judicial Magistrates to take utmost care while using the cyclo-styled or computerised order sheets with blank columns, which may result in happening of above observed defects.

The Registrar General is hereby directed to send a copy of this order to the Judicial Academy also, for appropriate action while imparting training to the Judicial Officers.