

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH

THE HON'BLE MR. JUSTICE V.SRISHANANDA

CRIMINAL PETITION No.200232/2019  
Dated:23-03-2021

K. Amaresh vs. K. Vittobha and Another

O R D E R

In this petition under Section 482 of Cr.P.C., the petitioner has made a following prayer:

"It is humbly prayed that, the Hon'ble Court be pleased to quash the order dated 17.07.2018 in O.S.No.106/2011 on I.A.No.XI filed under Section 340 of Cr.P.C. passed by the learned II Addl. Civil Judge and JMFC-IV Raichur and consequently allow the I.A.No.XI filed under Section 340 of Cr.P.C. in the interest of justice and equity."

2. Even though the office has not raised an objection with regard to maintainability of the petition, this Court while hearing the learned counsel for the petitioner, raised a doubt whether at all a petition would be maintainable under Section 482 of Cr.P.C.

3. Brief facts which necessary for disposal of this petitioner are as under:

Petitioner herein filed a original suit in

O.S.No.106/2011 on the file of II Additional Civil Judge and JMFC-IV, Raichur against APMC, Raichur and others for the relief of declaration that allotment of plots in Rajendra Gunj Market Yard, Raichur is illegal. Inter-alia, an application was filed under Section 340 of Cr.P.C. vide I.A.No.XI to initiate criminal proceedings against the first respondent - K. Vittobha S/o. K. Urukundayya as he has intentionally given a false evidence before the trial Court. The said application was contested by the first respondent and the learned trial judge after hearing the parties, dismissed the application by order dated 17.07.2018. Being aggrieved by the same, the petitioner is before this Court seeking quashing of the said order and allowing the petition.

4. Insofar as the maintainability of the petition is concerned, Sri Mahantesh Patil, learned counsel for the petitioner drew the attention of this Court to the provisions of the Sections 195, 340 and 341 of Cr.P.C. According to the learned counsel for the petitioner, the Court is required to refer the matter to the concerned Magistrate Court after prima facie noticing that there is a false evidence adduced by a party to a proceedings and direct the competent officer of that Court to initiate criminal complaint for the

offence of forgery before the jurisdictional Magistrate. According to him, for exercising such a power, the Court before which the false evidence has been adduced has got an inherent power and jurisdiction and for which purpose, every Court can be considered as a criminal Court. Non-exercise of such power by the trial Court in the case on hand in dismissing I.A.No.XI is therefore, amenable to the inherent jurisdiction of this court under Section 482 of Cr.P.C. as admittedly it is a wrong order that has been passed by the trial Court.

5. However, since this Court raised doubt about the maintainability of the proceedings, learned counsel for the petitioner took time to make a research in this regard and make appropriate submissions. Today, he was fair enough to submit before this Court that he is able to find out a judgment passed by the High Court of Kerala in the case of *Shibu George v. Jijimon and Another* in Criminal Miscellaneous Case No.8438/2018 dated 10.01.2019. The copy of the said judgment is made available by the learned counsel for the petitioner. The relevant portion of the said judgment reads as under:

"7. Section 340 Cr.P.C. prescribes the procedure to be followed in the cases mentioned in Section 195. The application

should be filed in the court in which the proceedings in relation to which the offence was committed were pending. Sub Section (4) in Section (340) provides that in this Section Court has the same meaning as in Section 195.

8. Section 341 of the Code reads as follows:—

“(1) Any person on whose application any Court other than a High Court has refused to make a complaint under Sub-Section (1) or Sub-Section (2) of Section 340, or against whom such a complaint has been made by such court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-Section (4) of the section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under Section 340, and if it makes such complaint, the provisions of that Section shall apply accordingly.

(2) An order under this Section, and subject to any such order, an order under Section 340, shall be final, and shall not be subject to revision.”

9. In *M.S. Sheriff v. State of Madras* [AIR 1954 SC 397] an application was filed under Section 475 CrPC (Code of 1898) requesting

the High Court to prosecute two Police Officers for perjury under Section 193 IPC. The facts of the case are irrelevant. The question raised before the Supreme Court was in which court an appeal should be filed against the order passed by the (Division Bench) High Court. The court took notice of the relevant portion of the provision (Section 476B of the Old Code) relating to appeal which read as follows:

"Any person ..... a complaint has been made" may appeal to the Court within the meaning of Section 195(3) (old Code)." Section 195(3) read thus: "For the purpose of this Section, Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decree or sentences of such former court .....". This is identical to the provision in Section 195(4) of the Code of 1973. The Supreme Court observed:- "Before we can apply the definition we have first to see whether there is a class of decrees or sentences in the Court under consideration which are at all open to appeal. If there are not, the matter ends and there is no right to appeal under Section 476B. If there are, then we have to see to which those appeals will "ordinarily" lie."

10. Kuldip Singh v. The State of Punjab [AIR 1956 SC 391] is a case which arose from an order passed by a Subordinate Judge (of

the First Class) in an application filed in a suit requesting him to file a complaint against a party who allegedly committed the offence under Section 193 IPC. Under the Punjab Courts Act Courts of District Judge and Additional District Judge were two classes of Courts. The question considered by the Supreme Court was which of those two Courts had the jurisdiction to entertain the appeal filed against the order passed by the Subordinate Judge. After referring to the provisions in the Criminal Procedure Code and the Punjab Courts Act the Court held:

“..... Court competent to exercise these powers is the Court to which appeals from the Original Court “ordinarily” lie. That Court in the present case was the Court of the District Judge and not the Court of the Additional Judge”.

11. The above two decisions were rendered by a five Judge Bench of the Supreme Court.

12. In *Harishankar v. Khyalichandra* [1991 CrL.L.J. 2153] the question whether the appeal provided under Section 341 CrPC challenging the decision of a Civil Court would lie to the court exercising appellate powers under the Criminal Procedure Code or to the Court exercising appellate power under the Civil Courts Act came up for consideration before the High Court of Madhya Pradesh. The

learned Judge referred to the decisions of the Madhya Pradesh High Court in Bishambhardas v. Mukta [AIR 1942 Nagpur 73], Ganpatlal v. Layakchand [1980 Jab LJ 146], the Full Bench of the Patna High Court in Deonandan Singh v. Ramlakhan Singh [AIR 1948 Patna 225] and the five judge bench decisions of the Supreme Court referred to above and held that an order passed by a civil court can be challenged only in an appellate Court established under the Civil Courts Act and not in a court exercising powers under the Criminal Procedure Code.

13. In Jose Joseph v. Syndicate Bank [1997 (1) KLT 320] the impugned order was passed by a Subordinate Judge. The question that fell for consideration was whether the District Court or the High Court had the jurisdiction to entertain the appeal. The Division Bench held that in view of the provisions in Sub Section (4) of Section 195 CrPC the appeal under Section 341 CrPC is maintainable in District Court.

14. The question arising for consideration in this proceedings was considered by High Court of Rajasthan in Subhash v. State of Rajasthan [2014 KHC 2125]. It held:

“When a Civil Court refuses to file any complaint under Section 340 CrPC read with Section 195 CrPC, an appeal by the aggrieved party can be filed only to the appellate court in

the civil side and not to the appellate court in the criminal side”.

15. A learned Single Judge of this court also has had the occasion to consider the question in Rocky v. Pavunni [2015 (1) KLT 547]. The order passed by a Munsiff Court was challenged in appeal filed in Sessions Court. The Sessions Court found that the appeal was not maintainable because in view of the provision contained in Sub Section (4) of Section 195 of the Code and was maintainable in the appellate court referred to in the Civil Courts Act. This finding was challenged in the Petition filed in this Court under Article 227 of the Constitution. The learned Judge confirmed the order of the learned Sessions Judge.

16. It is true that Rule 66 of the Criminal Rules of Practice provides that an application filed under Section 340 CrPC shall be registered as a Criminal Miscellaneous Petition. Shri. Vipin Narayan, learned counsel for the petitioner submits that this is applicable to an application filed under Section 340 CrPC also because it is a criminal proceeding. The Kerala Criminal Rules of Practice was made by the High Court with the previous approval of the Governor of Kerala mainly in exercise of the powers conferred on the High Court by Article 227 of the Constitution and Section 447 of the Criminal Procedure Code. It is made “for the guidance of all Criminal Courts in the State”. No provision in it is



applicable to a proceeding in a court other than a Criminal Court. Learned counsel submits that Sub-Section (4) of Section 195 CrPC is only to decide the Forum of Appeal and to clarify the Subordinate Court. He further submits that scheme of appellate jurisdiction is different for Criminal and Civil Courts.

17. In the proceedings under Section 340 CrPC the request to the Court is to file a complaint under Section 195 CrPC for one of the offences referred to in Clause (b) of Sub Section (1) of Section 195 of the Code. It is not a complaint. In it what the court considers is whether it is expedient in the interest of justice to conduct an enquiry. After the enquiry if it thinks it proper to file a complaint, it may do so. The Civil Court in which the application is filed does not become a Criminal Court and the proceedings A Criminal Proceedings.

18. Even if it is assumed that the proceedings under Section 340 of the Code is criminal in nature, that will not make it a proceedings in a criminal court. Section 345 of the Code empowers a civil court to convict and sentence an offender in certain cases of contempt. Section 351 provides that notwithstanding anything contained in the Code an appeal lies to the court to which appeals from the decrees or orders of the sentencing court ordinarily lie. This lends assurance to the conclusion that CrPC does not contemplate a situation where an appeal from

the order of a civil court may be filed under the provisions of CrPC.

19. I fully agree with the view taken by the learned Single Judge, Hon'ble Mr. Justice Ubaid, in Rocky v. Pavunni (Supra), the Madhya Pradesh High Court in Harishankar v. Khyalichandra (Supra) and the Rajasthan High Court in Subhash v. State of Rajasthan (Supra). An application filed in a Civil Court under Section 340 CrPC shall be registered as an interlocutory application. An appeal challenging the order of such court is maintainable only in the court in which appeals against the decrees or orders of such court may be filed under the provisions of the Civil Courts Act. The order of the Civil Appellate Court cannot be challenged under Section 482 of the Code. The objection raised by the Registry of this court is sustained."

6. Per contra, learned counsel Smt. Chandrakala representing the first respondent submitted that the petition before this Court is not maintainable. Learned High Court Government Pleader also is of the view that the petition under Section 482 of Cr.P.C. is not maintainable

7. In view of the factual aspects of the matter, the point that would arise for consideration before this Court is that:

"Whether an application seeking referring the matter to the jurisdictional Magistrate to take action for the offence punishable under Section 195 of Cr.P.C. by resorting to the power vested in this Court under Section 340 of Cr.P.C. if dismissed, is amenable to the jurisdiction of this Court under Section 482 of Cr.P.C.?"

8. The above point is answered in the negative for the following reasons.

9. Having heard the parties and having perused the judgment of Shibu George referred to supra wherein the Kerala High Court after referring to all most all judgments covering the field, has clearly held that whenever a Court considers that in a facts and circumstances of the case, if no case is made out for an offence punishable under Section 195 of Cr.P.C. and refuses to refer the matter to jurisdictional magistrate, such an order is not amenable to jurisdiction of the High Court under Section 482 of Cr.P.C. As could be seen from the rulings relied in Shibu George referred to supra, every court when it refers a matter to jurisdictional magistrate for taking action for perjury, such court would be deemed to be a criminal court and possess the powers of a criminal court to the extent of reference. But when a

court refuses to entertain petition filed under section 340.Cr.P.C seeking reference to jurisdictional magistrate to take action for perjury, such an order cannot be termed as an order passed under criminal jurisdiction.

10. In the background of legal principles enunciated in Shibu George's case (Supra), this Court is of the considered opinion that order of rejection of I.A.No.XI filed under section 340 Cr.P.C. by the trial Court in O.S.No.106/2011 cannot be challenged before this Court under Section 482 of Cr.P.C. inasmuch as there was no order passed by resorting to the powers vested in the Court under the provisions of the code of criminal procedure.

11. It is needless to emphasize that any order passed by a criminal Court would only be amenable to the jurisdiction of this Court under Section 482 of Cr.P.C. Accordingly, rejection of I.A.No.XI cannot be treated as an order which has been passed by exercising the criminal jurisdiction of the trial Court.

12. In view of the foregoing discussion, the point is answered in the negative and following order is passed:

ORDER

Petition is dismissed as not maintainable.

However, this would not disentitle the petitioner to work out other remedies available to him insofar as the correctness of the impugned order is concerned.

The office is directed to return the certified copies to the petitioner after keeping the photocopies.