

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2019

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL REVISION PETITION NO.836 OF 2015

BETWEEN:

B.K.Hampagol
S/o. Late Kashinath Rao,
Aged about 59 years,
Occupation: Deputy Director (Technical),
Karnataka Stage Fire & Emergency Service,
Bengaluru.
R/o. Qtr No.2, Fire Service Complex,
Bannerghatta Road, Jayanagar,
Bengaluru-560029.

... Petitioner

(By Sri. Chetan Desai, Advocate for
Smt. Rashmi Jadhav, Advocate)

AND:

1. State of Karnataka
By Bharthinagar Police Station,
Bengaluru City, Bengaluru,
Rep. by Special Public Prosecutor,
High Court Building,
Bengaluru-560001.
2. Sri. N. Shivakumar,
Inspector General of Police
& Additional Director,
Karnataka State Fire
& Emergency Service,

No.1, Annaswamy
Mudaliar Road,
Bengaluru-560042.

...Respondents

(By Sri. Thejesh P., HCGP for R1,
R2 – served - unrepresented)

This Criminal Revision Petition is filed under Section 397 read with 401 Cr.P.C. praying to set aside the order dated 29.08.2012 passed in C.C.No.24629/2012 by the learned XI Addl. C.M.M., Bengaluru.

This Criminal Revision Petition coming on for admission this day, the court made the following:

ORDER

Heard the learned counsel for the petitioner Sri Chethan Desai and learned HCGP for the State. Notice against respondent No.2 has been served but he is unrepresented.

2. A complaint was lodged by the second respondent which came to be registered as NCR No. 26/2012. Subsequently, respondent No.1/police registered a case in Crime No. 11/2012 against the petitioner being arrayed as accused for the offences

under Sections 506 and 504 of IPC. The case has been taken up for investigation by the Investigation Officer who laid the charge sheet against the accused in C.C. No. 24629/2012. The XI Additional CMM, Bengaluru, has taken cognizance against the accused by order dated 29.8.2012 and the same has been challenged in this petition by urging various grounds and seeking for setting aside the aforesaid order passed by the trial Court in C.C. No. 24629/2012.

3. Counsel for the petitioner has taken me through the contents of the complaint filed by the complainant so also the charge sheet laid against the accused in C.C. No. 24629/2012 for the offences under Sections 506 and 504 of IPC. The said offences are found to be non-cognizable in nature. But, the XI Additional CMM, Bengaluru, has taken cognizance. It is contrary to law and misled the proceedings. Therefore,

the same is to be interfered with by this Court by setting aside the order as the same appears to be vitiated.

4. Learned HCGP appearing for the State has taken me through the initiation of the proceedings in Crime No. 11/2012 which is based upon the complaint filed by the complainant who is arrayed as party to this proceedings. Subsequent to filing of the complaint, a case has been registered for the offences under Sections 506 and 504 of IPC. Then the matter has been taken for investigation by the investigation officer who has laid charge sheet against the accused in C.C. No. 24629/2012. Subsequently, the Court of XI Additional CMM, Bengaluru, has taken cognizance and the same has been challenged in this petition, the power of cognizance is vested with a concerned Court of law it cannot be challenged. The petitioner had to take recourse of law before the revisional Court by

challenging the initiation of the proceeding and for laying the charge sheet.

5. Keeping in view the contention as taken by the learned counsel for the petitioner, there is no dispute about the complaint came to be registered. It is based upon the complaint filed by second respondent herein crime came to be registered. Subsequent to the registration of the case, the investigation officer has taken up the matter for investigation and the charge sheet are laid in C.C. No. 24629/2012 for the offences under Sections 506 and 504 of IPC. Subsequent to the laying of the charge sheet, the Court of XI Additional CMM, Bengaluru, has taken cognizance on 28.8.2012. Cognizance is a power vested with the Court of law and the same is challenged in this revision petition on the ground that the offences are non-cognizable in nature. Despite the request, the same has been taken up the

Court below. However, in a peculiar facts and circumstances of the case it is appropriate to reserve liberty to the petitioner/accused to approach the revisional Court at first instance by making an application under Section 239 Cr.P.C seeking discharge from the offence in accordance with law.

**Sd/-
JUDGE**

ckl