

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2019

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.2890 OF 2012

C/W

CRIMINAL PETITION NO.2891 OF 2012

In Criminal Petition No.2890 of 2012:

BETWEEN:

Smt.Summa,
W/o.V.Chandrashekar,
Aged about 46 years,
Residing at Oniyadka House,
Yenmoor Village,
Sullia Taluk,
D.K.District.

...PETITIONER

(By Sri.G.Ravishankar Shastri, Advocate)

AND:

Shri.Deranna Gowda,
S/o.Somappa Gowda,
Major,
R/at Shringeri House,
Yenmoor Village,
Sullia Taluk, D.K.District.

...RESPONDENT

(By Sri. Mohith Kumar K., Advocate-Absent)

This CrI.P. is filed u/s.482 of Cr.P.C. praying to quash the entire proceedings in PCR No.146/2011 which is now numbered as C.C.No.171/2012 pending before the Court of the JMFC at Sullia, D.K., in the interest of justice and equity.

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W/o V.Chandrashekar,
Aged about 46 years,
Residing at Oniyadka House,
Yenmoor village,
Sullia Taluk, D.K.District.

...PETITIONER

(By Sri.Ravishankar Shastry G., Advocate)

AND

Shri.Deranna Gowda,
S/o.Somappa Gowda,
Major,
R/at Shringeri House,
Yenmoor village,
Sullia Taluk, D.K.District.

...RESPONDENT

(By Sri. Mohith Kumar K., Advocate –Absent)

This CrI.P is filed u/s.482 of Cr.P.C. praying to quash the entire proceedings in PCR no.145/2011 which is now numbered as C.C.No.170/2012 pending before the Court of the JMFC at Sullia, D.K., in the interest of justice and equity.

These Criminal Petitions coming on for hearing this day, the Court made the following:

ORDER

Petitioner has filed these petitions seeking to quash the proceedings in CC Nos.170 and 171 of 2012 arising out of PCR Nos.145 and 146 of 2011, on the file of JMFC at Sullia, Dakshina Kannada.

2. Heard learned counsel for petitioner. Learned counsel for respondent is absent. Perused the records.

3. The grievance of the complainant is that the petitioner herein (accused) intentionally made false allegations against him in the complaint / representation filed by her to his superior officers and with the revenue authorities. In his sworn statement, respondent – complainant alleged that in the complaint made to the superior officers of the respondent, the petitioner herein alleged that the respondent has intentionally given a false date of birth and that he was staying at home without attending duty. Further it is stated that the petitioner – accused made false allegations against the respondent

stating that he has obtained a false grant order from the revenue authorities, and thereby she has committed the offence punishable under S.499 of IPC.

4. Learned Magistrate on recording the sworn statement of the complainant issued summons to the petitioner to answer the charges for the offence punishable under S.500 of IPC.

5. Learned counsel for the petitioner submits that the allegations made in the complaint even if accepted uncontroverted would not fall within the ambit of S.499 of IPC. The complaint lodged with the superior officers of the respondent, seeking action in the matter and not with an intention to malign the name of the respondent and such allegations are covered under exception 'eighth' appended to S.499 of IPC. Learned Magistrate failed to note this essential aspect which has resulted in miscarriage of justice and thus sought to quash the impugned proceedings.

6. The respondent – complainant does not dispute the fact that based on the said representation/complaint, higher officers of the respondent had initiated enquiry against the respondent which therefore goes to show that there was substance in the allegations made against the respondent. Even otherwise, there is nothing on record to show that the said representation was submitted by the petitioner herein with an intent to harm the reputation of the respondent. No such averments are found in the complaint or in the sworn statement of the respondent. In that view of the matter, learned Magistrate was not justified in taking cognizance of the alleged offences and issuing summons to the petitioner.

7. The material available on record does not satisfy the basic ingredients of S.499 IPC. A complaint or representation made to the superior officers of an employee cannot be construed as a publication or circulation attracting the provisions of Sections 499 and

500 of IPC. It is also not shown that the contents of this representation was published or circulated by the petitioner to any other person other than the immediate superior officers of the respondent. In that view of the matter, the alleged representation cannot be construed as defamatory leading to prosecution of the petitioner for the alleged offences.

8. In so far as the allegations made in the said complaint pertaining to the grant obtained by the respondent from the revenue authorities is concerned, the communication at Annexure-E produced by the petitioner indicates that pursuant to the said complaint, enquiry was initiated and a recommendation was made for cancellation of the grant made in favour of the respondent. Therefore the said allegation cannot be said to be false or baseless as sought to be contended by the respondent.

9. The respondent in his sworn statement has not shown that the alleged complaint or representation was made with an intention to harm his reputation or to cause

damage to his reputation. In the absence of any such material, the learned Magistrate has erred in taking cognizance and issuing summons to the petitioner. The averments made in the complaint and the facts stated in the sworn statement of the complainant in my opinion, do not prima facie constitute the offence punishable under S.499 of IPC. Consequently the action initiated against the petitioner being illegal and opposed to the provisions of law is liable to be quashed.

Accordingly the petitions are allowed. The proceedings initiated against the petitioner in CC Nos.170 and 171 of 2012 (arising out of PCR Nos.145 and 146 of 2011), on the file of JMFC, Sullia, Dakshina Kannada are quashed.

Sd/-
JUDGE

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