

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.4359 OF 2022

CONNECTED WITH

CRIMINAL PETITION NO.4451 OF 2022

IN CRIMINAL PETITION NO.4359 OF 2022

BETWEEN

SRI. SANTHOSH KUMAR M
S/O THIMMAPPA KERKERA,
AGED ABOUT 41 YEARS,
R/AT 2ND FLOOR,
DAWOOD COMPLEX,
OPP. TO POST OFFICE
BANK ROAD, UPPINANGADY,
DAKSHINA KANNADA DISTRICT - 574 241 ... PETITIONER

(BY SRI K RAVISHNAKAR BHAT AND
SRI THIRIBHUVAN K, ADVOCATES)

AND

- 1 . SRI. A KESHAVA BHAT
S/O P SHANKARA BHAT,
AGED ABOUT 61 YEARS,
R/AT NO 16, 1ST FLOOR,
6TH MAIN, 14TH CROSS,
VYALIKAVAL,
BENGALURU 560003
- 2 . SRI P YOGISH
S/O DINAKARA POOJARI,
AGE MAJOR,

KADATHILA HOUSE,
MOGRU VILLAGE AND POST,
BELTHANGADY TALUK 574 241,
DAKSHINA KANNADA DISTRICT

- 3 . SRI PRASAD KADTHILA
S/O BABU POOJARY,
AGE MAJOR,
KADATHILA HOUSE,
MOGRU VILLAGE AND POST,
BELTHANGADY TALUK 574 241,
DAKSHINA KANNADA DISTRICT

... RESPONDENTS

(BY SRI S RAJASHEKAR, ADVOCATE FOR R1
SRI K RAMABHAT, ADVOCATE FOR R2 AND R3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO A. ALLOW THIS CRL.P AND THEREBY QUASH THE PROCEEDINGS IN PENDING C.C.NO.30741/2021 ON THE FILE OF THE VIII ACMM, BANGALORE AS PER ANNEXURE-A AGAINST THE PETITIONER. B. SET ASIDE THE ORDER DATED 02.09.2021 PASSED BY THE LVI ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGLAORE (CCH-57) AS AGAINST THE PETITIONER AS PER ANNEXURE-B.

IN CRIMINAL PETITION NO.4451 OF 2022

BETWEEN

- 1 . SRI P YOGISH
S/O DINAKARA POOJARY,
AGED ABOUT 57 YEARS,

2 . SRI PRASAD KADTHILA
S/O BABU POOJARY,
AGED ABOUT 47 YEARS,

BOTH ARE R/AT KADATHILA HOUSE
MOGRU VILLAGE AND POST,
BELTHANGADY TALUK 574241,
DAKSHINA KANNADA DISTRICT

... PETITIONERS

(BY SRI RAMA BHAT K, ADVOCATE)

AND

- 1 . SRI A KESHAVA BHAT
S/O P SHANKARA BHAT,
AGED ABOUT 61 YEARS,
ADVOCATE R/AT NO 16,
1ST FLOOR, 6TH MAIN,
14TH CROSS, VYALIKAVAl,
BENGALURU 560003

- 2 . SRI SANTHOSH KUMAR M
ADVOCATE,
S/O THIMMAPPA KERKERE,
AGED ABOUT 41 YEARS,
R/AT 2ND FLOOR
DAWOOD COMPLEX,
OPP TO POST OFFICE,
BANK ROAD,
UPPINANGADY 574241,
DAKSHINA KANNADA DISTRICT

... RESPONDENTS

(BY SRI RAJASHEKAR S., ADVOCATE FOR R1
SRI. THIRIBHUVAN K, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO a) QUASH THE PROCEEDINGS IN C.C.NO.30741/2021 ARISING OUT OF P.C.R NO.1445/2018 ON THE FILE OF VIII ADDL.C.M.M, BENGLAURU AS NOT MAINTAINABLE (ANNEXURE-A) AGAINST THE PETITIONERS) SET ASIDE THE ORDER DATED 02.09.2021 PASSED BY THE LVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-57) AS AGAINST THE PETITIONERS AS PER ANNEXURE-B.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.12.2022 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The CrI.P.No.4359/2022 is filed by the petitioner/accused No.3 and CrI.P.No.4451/2022 is filed by the petitioners/accused Nos.1 and 2 under section 482 of Cr.P.C for quashing the criminal proceedings against them in CC.No.30741/2021 pending on the file of VIII ACMM, Bengaluru, for the offence punishable under Sections 499 of IPC.

2. Heard the argument of learned counsel for both parties.

3. The case of the petitioners is that the respondent/complainant who is an advocate filed a complaint under section 200 of Cr.P.C before the Magistrate for the offence punishable under Section 499 of IPC and the learned Magistrate previously dismissed the complaint on 2.2.2019. Thereafter, the complainant approached the Sessions Court under section 397 of Cr.P.C by filing revision petition and the revisional Court had set aside the order of dismissal of the complaint and remanded the matter back to the Magistrate to take

cognizance against the petitioners. Subsequently, the learned Magistrate have taken the cognizance and issued the process, under section 204 of Cr.P.C which is under challenge before this court.

4. The complainant has averred in the complaint that the petitioner/accused No.3 is a practicing advocate at Dakshina Kannada. The accused Nos.1 and 2 (petitioners in CrI.P.No.4451/2022) have engaged the service of accused No.3 for filing objections/written statement before the Upalokayuktha in a complaint against the accused Nos.1 and 2, wherein the accused No.3 filed a statement of objections by making defamatory allegation against the complainant, with an intention to tarnish the image of the complainant. Therefore, he has filed the complaint before the Magistrate and also said to have filed a civil suit for claiming damages of Rs.1 crore which is pending in the Civil Court.

5. The learned counsel for the petitioner who is appearing for accused No.3, has contended that this

petitioner is an advocate practicing at Dakshina Kannada, he has filed statement of objection on behalf of his client, i.e., accused nos.1 and 2 and there is no personal interest or no intention to tarnish the image of the complainant. The accused Nos.1 and 2 were running the quarry business and the complainant had filed a public interest litigation and later withdrawn the same. Subsequently, complainant filed a complaint to the Lokayuktha and this petitioner appeared as an advocate. Therefore, there is no criminal intention to defame the complainant, he has only acted in a good faith for protecting his client, therefore, the advocate cannot be held for defamation. The entire documents should be looked into and it should not be pick and choose of Men's Rea or criminal intention to defame the complainant. Hence, prayed for quashing the complaint against the accused No.3.

6. The learned counsel for the petitioners/accused Nos.1 and 2 also taken similar contention that the complainant already filed civil suit for Rs.1 crore damages,

now the suit is in the stage for evidence. There is no allegation or statement made by these accused in order to attract Sections 499 or 500 of IPC. Exception of 5 and 9 of the Section 499 of IPC, there is protection available to these petitioners. Further contended the advocate filed objection, they have not obtained signatures of the accused Nos.1 and 2, therefore, the question of punishing the accused Nos.1 and 2 does not arise. Hence prayed for quashing the criminal proceedings against them.

7. Per contra, learned counsel for the respondent has contended, whether there is intention or Mens rea to defame the complainant, is matter of trial. The accused Nos.3 has acted as a counsel for the accused Nos.1 and 2 and accused No.3 alone signed the written statement. The complainant is an advocate and he has put in 41 years of practice. The complainant also has filed a public interest litigation and as per the direction of the High court he has withdrawn the writ petition and approached the Upalokayuktha. In the said proceedings the accused Nos.1

to 3 filed written statement by making damaging statement, which attracts defamation. The complainant being an advocate should have been very careful in preparing statement of objection while making defamatory allegation against the complainant, therefore the matter is required for trial and they can take defense in the cross examination independently. The accused No.3 whether he himself acted and mentioned the averments in the written statement of objection, or at the instruction of accused Nos.1 and 2 he has made such allegation, are all to be considered only after the trial. Therefore, at this stage, it is not fit case for quashing the criminal proceedings, hence prayed for dismissing the petition.

8. Heard the arguments of both parties and perused the records. The allegation against accused Nos.1 to 3 is that the complainant who is a practicing advocate filed a public interest litigation before the High Court of Karnataka, to stop the stone quarry/mining of the accused Nos.1 and 2. It is an admitted fact that the High Court of

Karnataka disposed of the matter by directing the petitioners to approach Upalokayuktha. Accordingly a complaint has been filed before Upalokayuktha and in that proceedings the accused No.3 who is an advocate appeared before the Upalokayuktha on behalf of the accused Nos.1 and 2. It is an admitted fact that the accused Nos.1 and 2 filed statement of objection through accused No.3, it is also an admitted fact that the accused No.3 filed statement of objection without obtaining signatures of the accused Nos.1 and 2. It is alleged by the accused No.3 in the statement of objection in Uplok/Mys/1720/2017 that a proceeding before Upalokayuktha in the statement of objection at Para 6 he has stated, where the complainant filed a writ petition before the High Court in WP No.39001/2015 and the complainant in the habit of filing the writ petitions against the accused Nos.1 and 2 by using the tactics to threaten the accused Nos.1 and 2 and used to get the money and thereafter withdraw the writ petitions. He has further contended, the complainant filed one more writ petition in

W.P.No.3221/2016 before the High Court with an intention to extort money from the accused Nos.1 and 2 and when the accused Nos.1 and 2 did not agree to pay any money therefore, through writ petition he has filed complaint before the Lokayuktha. Subsequently, the complainant also made a demand from the accused Nos.1 and 2 and not able to get money, hence he has filed the complaint before the Lokayuktha. On perusal of these statements, it categorically reveals it is a defamatory statement against the complainant by the accused Nos.1 to 3. Therefore, now it cannot be bifurcated whether the accused No.3 himself written those defamatory statement against the complainant or he has prepared objections only on instruction of accused Nos.1 and 2, since the statement of objections were not signed by the accused Nos.1 and 2. The accused No.3 alone filed these statement of objections by signing himself on behalf of accused Nos.1 and 2. Therefore, accused Nos.1 and 2 in one side and accused No.3 in another side cannot blame each other for making such a defamatory statement against complainant stating

that the complainant is in the habit of extorting money from the accused Nos.1 and 2 by filing the writ petitions and demanding money for withdrawing the PIL, thereafter he has filed another PIL and made a demand of money when the same was failed, he has used the tactics to file complaint before the Lokayuktha etc., It cannot be said there is no intention or Men's Rea to tarnish the image of complainant by the accused persons.

9. It is also seen from the order of the Sessions Judge, as the Sessions Judge categorically gone through the records and clearly come to the conclusion that there is a prima facie case made against the accused persons for framing of charge. The averments made by the accused or defamatory statement made by the accused will not fall under the exception of the section 499 of IPC as the statement made by the accused No.3 cannot be said to be in a good faith while conducting the trial or proceedings. The accused No.3 is a practicing advocate and he himself drafted the objection on behalf of the accused Nos.1 and 2

and he himself is aware about the consequences about the statement of objections filed before the public authority in a court of law. Therefore, without going to the trial, this Court cannot jump into the conclusion, there is no defamatory statement made by the accused persons or there is no criminal intention or Mens Rea to defame the complainant, therefore, matter is required for trial. I have gone through the judgments produced by the petitioners which will not be applicable to the case on hand.

In view of the above findings the judgment relied by the respondent is not required to be considered in detail at this stage.

Therefore, both the petitions are devoid of merits and is liable to dismissed.

Accordingly, both petitions filed by accused Nos.1 to 3 are hereby ***dismissed***.

**Sd/-
JUDGE**

AKV