

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 697 OF 2020

BETWEEN:

SRI SAMEER DINA KAR BHOLE
S/O SRI DINA KAR V. BHOLE
AGED ABOUT 36 YEARS
RESIDENT OF NO.505,
MAHAVEER TRISHALA APARTMENT
K G MAIN ROAD
RAJARAJESHWARI NAGAR
BENGALURU - 560 098.

PRESENTLY RESIDENT OF L-601
THE HYDE PARK SECTOR-78
NOIDA - 201 304
UTTAR PRADESH STATE.

...PETITIONER

(BY SRI.ANAND B.MUDDAPPA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY KENGERI POLICE
BENGALURU - 560 060

REPRESENTED BY THE
STATE PUBLIC PROSECUTOR

HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2. SMT.ANAGHA SONDE
AGED 31 YEARS
D/O SRI NIRANJAN MURTHI R SONDE
KAMADENU APARTMENT
RESIDENT OF NO. 100
FLAT NO. C1
DIAGANAL ROAD
V.V.PURAM
BENGALURU – 560 004.

...RESPONDENTS

(BY SMT. K.P. YASHODHA, HCGP FOR R1;
R2 - SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 19.06.2019 AND THE ENTIRE PROCEEDINGS IN C.C.NO.26612/2017 ON THE FILE OF LVI ADDL.C.M.M., BENGALURU AT ANNEXURE-A AND THEREBY ACQUIT THE PETITIONER AND ALLOW THIS PETITION.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question an order dated 19.06.2019 passed by the LVI Additional Chief Metropolitan Magistrate, Bengaluru rejecting the application of the petitioner seeking his discharge from the proceedings in C.C.No.26612 of

2017 for offences punishable under Sections 420 and 354(A) of the IPC.

2. The brief facts as projected by the prosecution are as follows:

The petitioner is the accused and the 2nd respondent is the complainant. The petitioner was working as a Delivery Center Manager of M/s Mindtree Company Limited. The 2nd respondent joins the Company under the accused on 26.04.2017 and leaves the Company on 11.08.2017. During the said period she was working under the accused. Just before the closure of the contract of the complainant with the Company which was to close on 11.08.2017, she registers a complaint on 08.08.2017 which becomes a crime in Crime No.311 of 2017 for offences punishable under Sections 354(A) and 420 of the IPC. Calling in question the said registration of crime, the petitioner had knocked at the doors of this Court in CrI.P.No.8172 of 2017 and during the pendency of the said petition, the police file a charge sheet. On filing of the charge sheet the petition was disposed as having become infructuous and reserving liberty to challenge the charge sheet.

Petitioner then files an application under Section 239 of the Cr.P.C. before the concerned Court seeking his discharge from the proceedings. The concerned Court in terms of its order dated 19.06.2019 declines to accept the contention and rejects the application seeking discharge. It is then the petitioner has knocked at the doors of this Court, yet again, now calling in question the order dated 19.06.2019 and the entire proceedings in C.C.No.26612 of 2017.

3. Heard Sri. Anand.B.Muddappa, learned counsel appearing for the petitioner and Smt. K.P.Yashodha, learned High Court Government Pleader appearing for respondent No.1.

4. The learned counsel appearing for the petitioner would contend that the order impugned rejecting the application seeking discharge bears no application of mind. He would further contend that the ingredients of Section 354(A) of the IPC are completely absent in the charge sheet so filed by the police. The petitioner has neither sexually abused nor harassed the complainant. The management did not wanted to extent the contract of the complainant. The complainant somehow wanted to pressurize the

petitioner in recommending extension of contract. Therefore, the allegations of 354(A) of the IPC are laid against the petitioner contending that they have happened in an open place in an office or in the mall which is highly improbable. He would seek quashment of the entire proceedings.

5. Learned High Court Government Pleader would however take this Court to the statement of witnesses to demonstrate that there are in fact allegations against the petitioner and would submit that it is a matter of trial for the petitioner to come out clean.

6. The 2nd respondent/complainant was not unrepresented despite serve of notice. The matter was dictated and the petition was allowed on 01.08.2022. Before the order could be signed, this Court thought it fit to give one more opportunity for the complainant to be represented and further, the petitioner to be heard. The matter was again posted for further hearing and the second respondent - complainant again remained unrepresented, though the matter was listed on several occasions, the petitioner was again heard and the matter was reserved for its judgment.

7. I have given my anxious consideration to the contentions of respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. The petitioner working in the post of Delivery Center Management at M/s Mindtree Company Limited is a matter of record. The complainant joins the said Company to work under the petitioner on a contract that was to be in subsistence between 26.04.2017 and 11.08.2017. The entire allegations are made during this period. Just before the contract of the complainant could come to an end, a complaint comes to be registered against the petitioner. Since the issue sprang from the complaint, it is germane to notice the complaint and it is quoted for the purpose of ready reference:

"To,
Police inspector
Kengeri police station
Bangalore city

From,
Anagha sonde
D/o niranjan murthy r sonde
Age : 29 years
Flat No, C1 Kamadhenu apartments
100, Diagonal Road, V.V. Puram
Bangalore - 560004

Sir,

Subject: cheating and sexual harassment.

Sameer Bhole has promised a lot of things to me. This has been going on from the past 3 months. Now he has got back on his word and broken the promise. This proves his cheating. He also got physical with me more than once. I joined Mindtree on 26th April 2017 and my contract is closing on 11th August 2017. He also promised to convert my job into a permanent Job if I gave in to his advances. He has also involved with me in a sexual manner several times in there past 3 months. Neither he is marrying me nor he is fulfilling the promise he made to me. He has cheated me for his selfish needs. I feel Used as a commodity for sexual pleasure.

*Place of sexual contact:- 1)Mindtree office
2) forum, kormangala
3)Barton center, M.G. Road*

Sameer Bhole is working as delivery center Manager in Mindtree. Please take legal action on Sameer Bhole."

The narration in the complaint is that she was working under the petitioner, the petitioner has used and sexually harassed her several times on the promise that he would get the contract extended and he is neither marrying her nor fulfilling the promise, is the allegation in the complaint. The places of sexual contact that is depicted in the complaint is what shocks. The places are at Mindtree office, Forum Mall-Koramangala, Barton Center-M.G.Road, all of which are open places. The petitioner sexually abusing the complainant in such open places cannot but be an allegation that is

highly improbable. The police, after investigation, file a charge sheet in the matter, based upon the statement recorded during the investigation. The summary of the charge sheet reads as follows:

"ಬೆಂಗಳೂರು ನಗರ, ಕೆಂಗೇರಿ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದು. ಗ್ಲೋಬಲ್ ವಿಲೇಜ್‌ನಲ್ಲಿರುವ ಮೈಂಡ್‌ಟ್ರಿ ಕಂಪನಿಯಲ್ಲಿ ಸಾಕ್ಷಿ:-01 ರವರು ಕಂಟ್ರಾಕ್ಟ್ ಬೇಸಿಸ್ ಮೇಲೆ ಈಗ್ಗೆ 01 ವರ್ಷದಿಂದ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿದ್ದು, ಅದೇ ಕಂಪನಿಯಲ್ಲಿ ಆರೋಪಿಯು ಡೆಲಿವರಿ ಮ್ಯಾನೇಜರ್ ಆಗಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿದ್ದು, ಸಾಕ್ಷಿ:-01 ರವರು ಮಾಡುತ್ತಿದ್ದ ಕೆಲಸವನ್ನು ಆರೋಪಿಯು ಪರ್ಮನೆಂಟ್ ಮಾಡಿಸಿಕೊಡುವುದಾಗಿ ನಂಬಿಸಿ ಸಾಕ್ಷಿ:-01 ರವರೊಂದಿಗೆ ಬೆಂಗಳೂರಿನ ಸುತ್ತ ಮುತ್ತ ಹೋಟೆಲ್ ಇತ್ಯಾದಿಗಳಿಗೆ ಸುತ್ತಾಡಿಸಿ, ನಂತರ ಮೇಲ್ಕಂಡ ಕಂಪನಿಯಲ್ಲಿಯೇ 2017 ರ ಮೇ ತಿಂಗಳಿನಿಂದ ಆಗಸ್ಟ್ ತಿಂಗಳ ನಡುವೆ ಸಾಕ್ಷಿ:-01 ರವರಿಗೆ ಮಾನಭಂಗ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಅವರ ಇಷ್ಟಕ್ಕೆ ವಿರುದ್ಧವಾಗಿ ಆರೋಪಿಯು ಸಾಕ್ಷಿ:-01 ರವರನ್ನು ತಬ್ಬಿಕೊಂಡು ಮೈ ಕೈ ಮುಟ್ಟಿ ಕೆನ್ನೆಗೆ ಕಿಸ್ ಕೊಟ್ಟು ಅವಮಾನಿಸಿರುತ್ತಾನೆ"

It is germane to notice the foundation of the chargesheet so laid i.e., the statement under Section 164 of the Cr.P.C. rendered by the complainant and it reads as follows:

"ದಂಡ ಪ್ರಕ್ರಿಯೆ ಸಂಹಿತೆ 164 ರ ಅಡಿಯಲ್ಲಿ ನೊಂದ ಮಹಿಳೆಯ ಹೇಳಿಕೆ:

ಸಮೀರ್ ಬೋಲೆ ಅವರು ನನಗೆ ವರ್ಕ್ ಫ್ಲೇಸ್ ನಲ್ಲಿ ಸೆಕ್ಯುಯಲ್ ಕಿರುಕುಳ ಕೊಟ್ಟಿದ್ದಾರೆ. ಅವರ ಹೆಡಂತಿಯು ಸಹ ನನಗೆ ತುಂಬಾ ಬೈದಿದ್ದಾರೆ. ಅವರ ವಕೀಲರಾದ ಜೀದೇಶ್ ಕುಮಾರ್ ನನಗೆ ಅಪ್ರೋಚ್ ಆಗಿ ಈ ಕೇಸಿನಲ್ಲಿ 75 ರಿಂದ 80 ಸಾವಿರ ರೂ ಕೊಡಿಸಿ ಅಂತ ಕೇಳಿದರು. ನಾನು ಬಹಳ ದಿವಸಗಳಿಂದ ಕಾಂಪ್ರಮೈಸ್‌ಗೆ ಪ್ರಯತ್ನ ಮಾಡಿದೆ. ಆದರೆ ಯಾರು ಮುಂದೆ ಬರಲಿಲ್ಲ. ಜೀದೇಶ್ ಕುಮಾರ್ ರವರು ವಾಟ್ಸ್ ಅಪ್ ನಲ್ಲಿ ಬೈದರು."

The statement records that the complainant had been approached by the advocate of the petitioner and she was waiting for a compromise to be arrived at and nobody has come forward for such compromise and also alleges that the wife of the petitioner and the petitioner have abused her over Whatsapp. Based upon this statement the aforesaid charge sheet is filed. A perusal at the charge sheet would indicate that the allegation against the petitioner is that he has tried to touch the complainant inappropriately wanting to kiss her. Neither the complaint nor the charge sheet would indicate any ingredient of offence under Section 354(A) of the IPC which deals with outraging the modesty of a women. Therefore, the said offence cannot be laid against the petitioner and requires to be obliterated.

9. The other offence alleged against the petitioner is the one punishable under Section 420 of the IPC. For an offence under Section 420 of the IPC, the ingredients as obtaining under Section 415 of the IPC must be present. The allegation of the complainant is that the petitioner has cheated and breached the promise of marriage and therefore, the offence under Section 420 of the IPC

would become maintainable. This is plainly contrary to law, as breach of promise of marriage cannot become an offence under Section 420 of the IPC is the law laid down by the Apex and that of this Court in plethora of cases. Therefore, the said offence also cannot be laid against the petitioner.

10. In the light of both the offences laying no foundation, either in the complaint or in the charge sheet, the concerned Court ought to have considered the application of the petitioner for discharge and passed appropriate orders, in accordance with law. Though at the relevant point in time i.e., when the application for discharge came to be rejected the law was not this lucid as it is at this point in time, finding no fault with the perfunctory order passed by the learned Magistrate in rejecting the application of the petitioner for discharge, I deem it appropriate to obliterate the proceedings in C.C.No.26612 of 2017 against the petitioner, failing which, it would become an abuse of the process of the law and result in miscarriage of justice and run foul of the judgment of the Apex Court in the case of **STATE OF HARYANA V. BHAJAN LAL**

(1992 Supp. 1 SCC 335) wherein the Apex Court holds as follows:

"102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable*

offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. *The principles laid down by this Court have consistently been followed, as well as in the recent judgment of three Judge judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra².*

(Emphasis supplied)

Two of the postulates laid down by the Apex Court hereinabove would enure to the benefit of the petitioner resulting in quashment of the proceedings.

11. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) The proceedings in C.C.No.26612/2017 pending on the file of the LVI Additional Chief Metropolitan Magistrate, Bengaluru stand quashed.

**Sd/-
JUDGE**

bkp