IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

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CRIMINAL PETITION NO. 1987 OF 2017 (482)

BETWEEN

JAGAN CHANDY
S/O LATE M.C. CHANDY,
AGED ABOUT 75 YEARS
NO.2, HAYES HALL, HAYES ROAD,
RICHMOND TOWN,
BENGALURU-560025.

...PETITIONER

(BY SRI: S.G. BHAGAVAN, ADVOCATE)

AND

JAGADISH K.A.
AGED ABOUT 71 YEARS,
S/O LATE MAJOR K.R.A.GOWDA,
RESIDING AT NO. 419, 9TH CROSS,
1ST BLOCK, JAYANAGAR,
BENGALURU-560011.

...RESPONDENT

(BY SRI. S.V. GIRIDHAR., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CRIMINAL PROCEDURE CODE PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.1524 OF 2017 IN THE COURT OF II ADDITIONAL CHIEF METROPOLITIAN MAGISTRATE, BENGALURU.

THIS CRIMINAL PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 06.03.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The respondent filed a private complaint under Section 200 of Cr.P.C. read with Section 499 IPC. Cognizance having been taken, criminal process having been issued in C.C.No.1524/2017 by the II Additional Chief Metropolitan Magistrate, Bengaluru, challenging the same the petitioner is before this Court seeking for the following reliefs:

> *To quash the entire proceedings in C.C.No.1524 of 2017 in the court of II Additional Chief Metropolitan Magistrate, Bengaluru, to meet the ends of justice.*

2. Sri.S.G.Bhagavan, learned counsel for the petitioner would submit that:

2.1. Firstly, that in terms of Rule 1 of Chapter VII of the Criminal Rules of Practice, a Magistrate is required to record the order sheet in his own handwriting. In the present case, the same having been typed, the order of cognizance is bad in law and is required to be quashed.

2.2. Secondly, that the initiation of criminal proceedings by way of issuance of summons is required to be exercised with circumspection and should not be resorted to unless there is *exfacie* criminal case made out. In this regard, he relies upon the decision of the Hon'ble Supreme Court in the case of ***Sunil Bharti Mittal vs. Central Bureau of Investigation***[1] more particularly Para 48 thereof, which is reproduced hereunder for easy reference:

> ***48.*** *Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.*

[1] 2015 4 SCC 609

2.3. He further relies on the decision of the Hon'ble Supreme Court in the case ***of Mr. Behram Bomanji Dubash and Others vs The State of Karnataka***[2] more particularly Para 28 thereof which is reproduced for easy reference:

> ***28.*** *On perusal of the certified copy of the order sheet maintained by the Magistrate in C.C. No. 20672/2003 indicates that after the IO submitted the fresh charge sheet, on 20.12.2003 the office placed the same before the Learned Magistrate with an office note and the Learned Magistrate passed the order thereon. The notings in the order sheet reads as under:*
>
> *"20.12.03. Charge sheet filed by the A.C.P. of police C.C.B.F. & M (J.P. Nagar P.S.) Through senior A.P.P. as against the accused for an offence punishable under Section. 418-420 r/w 34 IPC.*
>
> *Original F.I.R. in Cr. No. 633/99 and complaint, charge sheet and connected papers are hereby checked.*
>
> *A-1 is on anticipatory bail of Sessions Court-9th.*
>
> *A-2 is on bail of 5th ACMM.*
>
> *Accused 3 and 7 are on police bail.*
>
> *A.5, 6 and 8, 9 are absconding.*
>
> *Accused copy enclosed.*
>
> *For Order*

[2] 2010 Criminal Law Journal 3963

Perused the records. Cognizance of the offence is taken. Register the case and issue S.S. to A-1, 2, 3 and 7, and Issue N.B.W. to A-5, 6 and 8, 9. Call on 8.1.2004."

2.4. On merits of the matter, he submits that the only allegation which has been levelled against the petitioner is that the petitioner has called the respondent a rowdy sheeter in a general meeting of the Bangalore Club, the same being the truth of the matter cannot amount to defamation.

2.5. There is no statement made in the PCR that due to the statement made by the petitioner, the reputation of the respondent has suffered damage. There is no name of the witnesses mentioned in the PCR. Cognizance could therefore not have been taken, when there is no such statement made in the PCR. In this regard, he refers to and relies upon Explanation 4 to Section 499 of IPC. The said section 499 is reproduced hereunder for easy reference:

> ***499. Defamation***.—*Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.*
>
> ***Explanation 1***.—*It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the fellings of his family or other near relatives.*
>
> ***Explanation 2***.—*It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*
>
> ***Explanation 3***.—*An imputation in the form of an alternative or expressed ironically, may amount to defamation.*
>
> ***Explanation 4***.—*No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a lothsome state, or in a state generally considered as disgraceful.*

2.6. Lastly, it is submitted that the private complaint having been filed in the year 2011, cognisance was taken only on 17.12.2016, the incident having occurred on 27.06.2020, cognizance not

having been taken within three years from that date, no cognizance could be taken thereafter.

2.7. On all the above grounds, he submits that the petition is required to be allowed and the proceedings against the petitioner be quashed.

3. Sri.S.V.Giridhar, learned counsel for the respondent would submit:

3.1. Firstly, that the Magistrate has signed the typed order sheet. Therefore, the question of Magistrate recording the order in his own handwriting would not arise.

3.2. Secondly, he submits that the Magistrate has taken into consideration all the relevant aspects and thereafter issued process summoning the petitioner who resides within the jurisdiction of the Magistrate. Therefore, there is no infirmity in the same.

3.3. As regards the witnesses and the allegation, he submits that the allegation is not only that the respondent is a history sheeter, there being various other allegations which have been extracted in the PCR, all of them are defamatory, the petitioner has castigated the respondent alleging that the respondent has taken 100 bottles of hard liquor from the clerk, falsified statements, fabricated the bills, etc. There is a categorical statement made that the petitioner does not want a person like the respondent in the Committee. He has called the respondent a criminal, that the respondent has giving lot of favours to the employees of the UB and inturn has received favours from them etc.

3.4. His further submission is that one other member by name Jagadish Raja had clearly stated that the allegation being against

Mr.Jagadish, it is required to be clear and categorical and the full name be mentioned. In response to which the petitioner has indicated the name of Jagadish Gowda i.e., the respondent. The fact that Jagadish Raja had raised that issue would clearly indicate that there would be a confusion as to who he is and further that the statements made are defamatory in nature.

3.5. Even after the Enquiry Committee has submitted a report, the petitioner persisted in making allegations against the respondent. He found fault with the enquiry report. In that background, he submits that the friends, acquaintance, business associates, relatives form part of the social circle of the respondent - complainant and would presume that the allegation made against them to be true, thus, causing the offences of defamation.

3.6. As regards the delay, he submits that the statement of the complainant – respondent was recorded on 01.03.2012 and Ex.P1 and Ex.P2 were marked. The matter having been adjourned to 10.04.2012, he was further examined and Ex.P3 to Ex.P5 were marked and his side closed and the matter adjourned to hear on process. Thereafter, the matter was being adjourned from time to time since the sworn statement recorded was found missing in the file. It is only after a long period of time when the sworn statement was traced out that the matter was taken up for hearing and after arguments were heard, cognizance taken and summons issued on 17.12.2016.

3.7. The respondent is not to blame for the said delay. The respondent did not seek for any adjournment but led his evidence and marked the documents on the first two days itself.

Therefore, the delay cannot be attributed to the respondent depriving the respondent of the criminal proceedings initiated.

3.8. On the above grounds, he submits that the trial needs to be go on and the present petition is required to be dismissed.

4. Heard Sri.S.G.Bhagavan, learned counsel for the petitioner and Sri.S.V.Giridhar, learned counsel for the respondent and perused the papers.

5. The points that would arise for consideration are:

i) Whether the order of the Magistrate is required to be in his own handwriting or could it be typed and signed by the Magistrate?

ii) Whether in the present case, the order of cognizance is proper or not?

iii) Whether at the time of filing of a complaint, under Section 499 of IPC, the names of the witnesses are to be mentioned and statement of those witnesses be recorded before issuance of process?

iv) Whether in the present case, the order of cognizance taken on 17.12.2016 being beyond the period of three years from the date on which the offences alleged to have occurred on 27.06.2010 could not have been taken cognizance of by the Magistrate?

v) What order?

6. I answer above point as under:

7. **<u>Answer to point No.1:</u> Whether the order of the Magistrate is required to be in his own handwriting or could it be typed and signed by the Magistrate?**

7.1. Rule 1 of the Chapter VII of the Criminal Rules of Practice is reproduced hereunder for easy reference;

CHAPTER VII

ENQUIRY AND TRIAL BEFORE A MAGISTRATE OR A COURT OF SESSION- A-General

1 *(1) All Judges and Magistrates shall record in their own writing in the order sheet in Form No. 3 all proceedings and orders of the Court as and when the proceedings take place and the orders are pronounced and shall initial the same:*

(2) Whenever a judgment is pronounced, the result shall be noted in the hand of the Judge or the Magistrate

in the order sheet and the same shall be initialled and dated by him.

7.2. A perusal thereof would indicate that all judges and Magistrate shall record in their own writing in the order sheet in Form No.3 all proceedings and orders of the Court as and when the proceedings take place. When orders are pronounced, they shall be initialled. In terms of the proviso, the Magistrate may write out any order in the order sheet or may have same typed to the dictation on a separate sheet or sheets of paper and in such event the result thereof shall be recorded in the order sheet in writing of the Judge and/or Magistrate.

7.3. Sri.S.G.Bhagavan., learned counsel appearing for the petitioner by relying on this word "writing" occurring in the said provision seeks to contended that it has to be in handwriting of the judge.

7.4. In terms of sub-Section (65) of Section 3 of the General Clauses Act, 1897 writing shall be construed as including reference to printing, lithography, photography and other modes of representing or reproducing the words in a visible form. The said sub-Section (65) of Section 3 is reproduced hereunder for easy reference;

> *3(65) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form;*

7.5. In that view of the matter, Rule 1 of the Karnataka Criminal Rules of Practice, 1968 read in conjunction with sub-Section (65) of Section 3 of the General Clauses Act, 1897, the word "writing" would not only include handwriting but would also include printing, photography, lithography and other modes.

7.6. This other modes in present time and context would also include use of computers and printers for the purposes of typing and printing the order sheet and/or the orders which is a method and manner of the reproducing the words in a visible form. Of course, the said typed order is required to be signed by the concerned Magistrate.

7.7. Hence, I reject the contention of learned counsel for the petitioner that writing would be handwriting and hold that writing include typing, printing etc., by use of computers and printers which are now provided in almost all the Court across the country.

7.8. Considering that all the orders daily, on applications or final as also judgements, are being uploaded on the website as regards which a provision is also made for issuance of e-certified copies. In my considered opinion, it

would be required that all orders are typed by the concerned typist/stenographer or reduced to text using speech-to-text software, digi/e-signed by the concerned judge and uploaded on the website, taking advantage of all the resources provided and going forward handwritten orders are avoided.

7.9. In the present case the concerned Magistrate having signed the order it is in due compliance of Rule 1 of Chapter VII.

7.10. Hence, I answer point No.1 by holding that the Magistrate is not required to record the order in his own handwriting. The said order could be typed by using the computer-printer combination or a typewriter, electronic or otherwise and signed by the Magistrate.

8. **<u>Answer to point No.2:</u> Whether in the present case, the order of cognisance is proper or not?**

8.1. Much has been made out as regards non-application of mind by the Magistrate concerned, and it is contended that criminal process could not have been initiated without proper application of mind.

8.2. A perusal of the impugned order would indicate that the said order has been passed after recording of the sworn statement and the order runs into the nearly three pages. After recording various statements which have been made in the complaint and sworn statement, the Magistrate being of the opinion that complainant has made out sufficient ground to take cognizance and in that background the cognizance has been taken.

8.3. Thus, I answer point No.2 by holding that in the present case the order of cognizance is proper and correct.

9. **Answer to point No.3: Whether at the time of filing of a complaint, under Section 499 of IPC, the names the witnesses are to be mentioned and statement of those witnesses be recorded before issuance of process?**

9.1. The contention of the Sri.S.G.Bhagavan., learned counsel appearing for the petitioner is that not only is the sworn statement of the complainant required to be recorded but also the statement of witnesses, he loss of reputation in the opinion of others causing an act of defamation are required to be examined before taking cognisance.

9.2. In this regards he relies on Explanation 4 to Section 499 of IPC. Since it is required to be established that in the estimation of others the moral or intellectual characteristics of persons is lowered or lowers a character of that person or credit of that person etc.

9.3. Explanation 4 in my considered opinion would come into play and operation during the course

of trial and not at the time of taking cognizance. When cognizance is to be taken what the Magistrate is required to considered is whether *prima facie* an offence can be said to be made out or not since at that stage the Magistrate is not deciding whether the accused is guilty of the offence or not?

9.4. *Ex facie or prima facie* when the allegation made in the complaint discloses the commission of an offence and in this case an offence of defamation under Section 499 of the IPC, then cognizance would have to be taken. Merely, because of cognizance having taken does not mean the accused is guilty of the offence, process having been issued the Court concerned would have to consider all the aspects including the defences raised and thereafter render a finding as to whether the complainant has made out that the accused has

committed the offence beyond reasonable doubt or not.

9.5. The examination of witnesses is during the course of trial and not at the time of taking cognizance.

9.6. Thus, I answer point No.3 by holding that at the time of filing of a complaint under Section 499 of the IPC, the statement of the witnesses is not required to be recorded before issuance of the process. The complaint indicating the names of the persons who were present when the act of defamation occurred as done in the present case is sufficient.

10. **<u>Answer to point No.4:</u> Whether in the present case, the order of cognizance taken on 17.12.2016 being beyond the period of three years from the date on which the offences alleged to have occurred on 27.06.2010 could not have been taken cognizance of by the Magistrate?**

10.1. The contention of Sri.S.G.Bhagavan., learned counsel is that the private complaint having been filed in the year 2011, cognizance having been taken on 17.12.2016 is beyond the period of three years prescribed under Section 468 of the Code of Criminal Procedure and as such the order of cognizance is required to be set aside. Section 468 of Code of Criminal Procedure is reproduced hereunder for easy reference;

> ***468. Bar to taking cognizance after lapse of the period of limitation***.— *(1) Except as otherwise provided*
>
> *elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
>
> *(2) The period of limitation shall be—*
>
> *(a) six months, if the offence is punishable with fine only;*
>
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
>
> *(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*
>
> *(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.*

10.2. A perusal of the said provision would indicate that for an offence which is punishable with imprisonment for a term exceeding one year but not exceeding three years the period of limitations is three years.

10.3. On first blush, the submission made by Sri.S.G.Bhagavan., seems to be correct since the period between date of the offence and date of actual cognizance is more than three years. However, Section 470 of the Code of Criminal Procedure provides for exclusion of time. The said Section 470 of the Code of Criminal procedure is reproduced hereunder for easy reference;

> ***470. Exclusion of time in certain cases**.—(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:*
>
> *Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of*

jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender—

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

10.4. In terms of sub-Section (1) of Section 470 the time during which any person has been prosecuting with due diligence another prosecution whether in a court of first instance

or in a court of appeal or revision shall be excluded.

10.5. This in my considered opinion would have to be read in right perspective in as much as when the time spent prosecuting another prosecution is excluded, the time spent in prosecution of the same compliant would also have to be excluded. It is not that the petitioner did not file a complaint post the occurrence of the offence which is alleged to be in the year 2011. The sworn statement of the complainant was recorded on 1.3.2012 and thereafter the matter was adjourned. The submission made in this regard is that since the sworn statement was not found on the file the matter continued to be adjourned and only after the same was found cognizance was taken.

10.6. Be that as it may, a perusal of the order sheet would indicate that the complainant has not

sought for any time, complainant has diligently prosecuted the complaint. The cognizance was taken by the Court only on 17.12.2016 as regards which no fault can be found with the complainant.

10.7. Thus, the exclusionary period prescribed under sub-Section (1) Section 470 of the Code of Criminal Procedure in my considered opinion would also have to extend to the delay caused in taking cognizance after the complaint has been filed.

10.8. Hence, I answer point No.4 by firstly holding that the delay caused in taking cognizance by Court after a complaint is filed when there is no malafieds on part of the complainant is required to be excluded for purpose of the computation of the period of limitation under Section 468 of the Code of Criminal Procedure.

10.9. In view of my answer above the delay caused by the Court in taking cognizance is excluded under Section 470 of the Code of Criminal Procedure.

11. **Answer to point No.5: What Order?**

11.1. In view of my above discussion, no grounds having been made out in the above petition, the petition stands ***dismissed***.

11.2. The trial Court is directed to expeditiously dispose of the matter considering that the complaint is of the year 2011.

Sd/-
JUDGE

List No.: 1 Sl No.: 78