

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.4543 OF 2022

BETWEEN:

SRI CHETHAN BOJANNA
S/O N.M.SOMIAIAH
AGED ABOUT 40 YEARS
R/AT 159, WHYTE HOUSE
KAVADI VILLAGE
VIRAJPET TALUK
KODAGU PIN – 571 211.

... PETITIONER

(BY SRI CHETHAN BOJANNA, PETITIONER, PARTY-IN-PERSON)

AND:

SRI NELLAMAKKADA UTHAIAH ALIAS VITTALA
S/O LATE POOVAIAH
AGED ABOUT 64 YEARS
POLIBETTA ROAD, AMMATHI TOWN
VIRAJAPETE TALUK
KODAGU PIN – 571 211.

... RESPONDENT

(BY SRI AJAY PRABHU, ADVOCATE FOR
SRI SACHIN B.S., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO SET ASIDE THE ORDER PASSED BY CIVIL
JUDGE AND JMFC VIRAJPETE IN P.C. NO. 96/2021 FOR TAKING

COGNIZANCE AND REGISTERED THE CRIMINAL CASE ORDER DATED 25.03.2022 IN CC NO. 676/2022 UNDER SEC 499/500 AND SEC 66A IT ACT AND ISSUED NOTICE WERE PLEASED SET ASIDE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.09.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner in-person is before this Court calling in question an order dated 25.03.2022, passed in C.C.No.676 of 2022 for offences punishable under Sections 499 and 500 of the IPC and Section 66A of the Information Technology Act, 2000 ('the Act' for short).

2. Heard Sri Chethan Bojanna, petitioner in-person and Sri Ajay Prabhu, learned counsel appearing for the respondent.

3. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The respondent is the complainant. A complaint comes to be registered by the petitioner on 20-02-2021, before the jurisdictional Police at Virajpet on an allegation that 200 bags of coffee and 50 bags of pepper have been stolen from his coffee estate. He

suspected the respondent to have indulged in such act. The police appear to have called the respondent to enquire about the complaint and then registered a non-cognizable report in N.C.R.No.36 of 2021 on the very same day i.e., 20-02-2021. It is the averment in the petition that after closure of the complaint, the petitioner receives a what's app message and forwards the same to several others. Contending that what's app message contained derogatory remarks against the respondent, the respondent registers a private complaint invoking Section 200 of the Cr.P.C. for offences punishable under Sections 499 and 500 of the IPC r/w. Section 66A of the Act. The learned Magistrate takes cognizance of the offences punishable under Sections 499 and 500 of the IPC along with Section 66A of the Act and registers a criminal case in C.C.No.676 of 2022 for the aforesaid offences. It is the registration of the aforesaid crime that drives the petitioner to this Court in the subject petition.

4. The petitioner in-person would vehemently contend that Section 66A of the Act stood deleted by virtue of the judgment rendered by the Apex Court in the case of **SHREYA SINGHAL v.**

UNION OF INDIA¹ and therefore, the very registration of crime for offence punishable under Section 66A of the Act is erroneous. Insofar as the offences under Sections 499 and 500 of the IPC is concerned, the petitioner would further contend that there is nothing derogatory against the respondent as it is the message that he received from someone else and has only forwarded it to admin. of the group, which has created or generated such message and would seek quashment of entire proceedings.

5. On the other hand, the learned counsel representing the respondent - Sri Ajay Prabhu, would vehemently oppose the petition and contends that it is the petitioner who has created and circulated the message and therefore, it is for the petitioner to come out clean in a full blown trial. But, he would accept that invocation of Section 66A of the Act by the complainant and the order taking cognizance by the learned Magistrate for the said offence are erroneous. He would seek dismissal of the petition.

¹ AIR 2015 SC 1523

6. I have given my anxious consideration to the submissions made by the petitioner and the learned counsel for the respondent and perused the material on record.

7. The afore-narrated facts of the petitioner registering a crime against the respondent on a suspicion being generated of stealing of 200 bags of coffee and 50 bags of pepper from his coffee estate is a matter of record. After the complaint was closed by the Police on registering a non-cognizable report, certain messages got circulated in what's app. The message reads as follows:

“ಆಮ್ಮತ್ತಿ ಸುತ್ತಮುತ್ತಲಿನ ಹಳ್ಳಿಗಳಲ್ಲಿ 200 ಚೀಲ ಕಾಫೀ ಹಾಗೂ 50 ಚೀಲ ಕರಿಮೆಣಸು ಕಳವು ಪ್ರಕರಣ ಶಾಣಿಯಲ್ಲಿ ದಾಖಲಾಗಿದ್ದು ಪೊಲೀಸರಿಂದ ವಿಠಲ ಹೂತಾಯ್ತು ವಿರುದ್ಧ ಕಾರ್ಯ. ಹಲವು ವರ್ಷಗಳಿಂದ ನಡೆಯುತ್ತಿದ್ದ ಕಳ್ಳತನದ ಪ್ರಕರಣಗಳಿಗೆ ಮುಕ್ತಿ, ಇತರ ಸಹಚರರ ಮೇಲೆ ಕೂಡಲೇ ಕಾರ್ಯಾಚರಣೆ.”

A perusal at the printout of the message would indicate that it is a forwarded message to the petitioner, though the petitioner is alleged to have forwarded these messages to others. On the message being circulated, the paper publication comes to be issued by the respondent which reads as follows:

“ಆಮ್ಮತ್ತಿ ಸುತ್ತಮುತ್ತಲಿನ ಹಳ್ಳಿಗಳಲ್ಲಿ 200 ಚೀಲ ಕಾಫೀ ಹಾಗೂ 50 ಚೀಲ ಕರಿಮೆಣಸು ಕಳವು ಪ್ರಕರಣ ಶಾಣಿಯಲ್ಲಿ ದಾಖಲಾಗಿದ್ದು ಪೊಲೀಸರಿಂದ ವಿಠಲ ಹೂತಾಯ್ತು ವಿರುದ್ಧ ಕಾರ್ಯ. ಹಲವು

ವರ್ಷಗಳಿಂದ ನಡೆಯುತ್ತಿದ್ದ ಕಳ್ಳತನದ ಪ್ರಕರಣಗಳಿಗೆ ಮುಕ್ತಿ, ಇತರ ಸಹಚರರ ಮೇಲೆ ಕೂಡಲೇ ಕಾರ್ಯಾಚರಣೆ.”

The above message was created by Nellamakkada Chethan, son of Nellamakkada Somaiah and Renu. We are contemplating to initiate legal proceedings against Chetan for having published derogatory message. Please ignore the above text which is a false allegation.

*Regards,
Uthaiah.”*

The paper publication indicates that it is the petitioner who was responsible for the message and also states that the author is contemplating to initiate legal action against the petitioner for publishing such derogatory message. It is after the said acts, a complaint comes to be registered invoking Section 200 of the Cr.P.C., for offences punishable under Sections 499 and 500 of the IPC and Section 66A of the Act. The complaint insofar as it is germane reads as follows:

"3. *The complainant states that on 20-02-2021, the accused had lodged a criminal complaint against the complainant before the Sub-Inspector of Police, Virajpet Rural Police Station, Virajpet under the caption ".....". Further on 22-02-2021 the accused had created and transmitted What's app message from his mobile numbers 99456579595 and 9783991359 with complainant's photograph and an Article ".....". In the said*

Complaint and article the accused has made false and reckless imputation against the complainant knowing well that the same are false.

4. *The matter complained and circulated by the accused under said captions are totally false and baseless. There is no truth in the imputation made by the accused against the complainant. In the complaint and article, the Complainant has been depicted as a thief.*
5. *The complainant submits that the accused has made false imputation in the said article with a malicious motive to defame the complainant.*
6. *The said offensive complaint and messages have been made and transmitted by the accused with the purpose of causing annoyance, inconvenience, danger, insult, injury, criminal intimidation, enmity, hatred and ill-will to the complainant in the eye of relatives, well wishers, neighbours and general public."*

The allegation is, the message was derogatory and because of those derogatory remarks his reputation has taken a dent. On the complaint, what the learned Magistrate would do is further shocking. The learned Magistrate takes cognizance of the alleged offences, registers a criminal case and issues summons to the petitioner. The order taking cognizance insofar as it is germane reads as follows:

"5. Perusal of the above section shows that if any imputation is made to harm a person's reputation, in the estimation of other, it amounts to defamation.

6. Perusal of the documents produced and evidence of CW-1 to 3 shows that complainant is a person having reputation. Prima facie the complainant made out a case against the accused and placed sufficient material to proceed against the accused. Therefore, court is satisfied with the material placed to take the cognizance against the accused. The allegation is being the act of the accused on the basis of documentary evidence. Hence, the said documents are produced before this Court. Therefore, it is a fit case to take cognizance for the said offence. Under these circumstances, I proceed to pass the following:

ORDER

Cognizance is taken against the accused for the offence P/U/S 499, 500 of IPC R/W Sec.66A of the Information Technology Act.

Register this case as criminal case against accused in Register No.3 and Issue summons to accused."

(Emphasis added)

The taking of cognizance and issuing of summons is what drives the petitioner to this Court.

8. The order taking cognizance on the face of it, insofar as it concerns Section 66A of the Act is a reckless act on the part of the learned Magistrate. The Apex Court in its judgment rendered on

24-03-2015 in the case of **SHREYA SINGHAL** (*supra*) has struck down Section 66A of the Act to be violative of Article 19(1)(a) of the Constitution of India. Though the judgment is rendered on 24-03-2015, the order taking cognizance seven years thereafter by the learned Magistrate i.e., on 25-03-2022 for an offence that has already been struck down by the judgment of the Apex Court, cannot but be held to be reckless act on the part of the learned Magistrate, who neither applied his mind or has updated himself to be abreast with latest developments in law. It is for this reason and the kind of cases being still registered for the offence punishable under Section 66A of the Act, a three Judge Bench of the Apex Court, again in the case of **PEOPLES UNION FOR CIVIL LIBERTIES v. UNION OF INDIA AND OTHERS**² by its order dated 12-10-2022, issues the following directions:

".....Such criminal proceedings, in our view, are directly in the teeth of the direction issued by this Court in Shreya Singhal (supra). Consequently, we issue following directions:

- (a) *It needs no reiteration that Section 66A of the 2000 Act has been found by this Court in Shreya Singhal (supra) to be violative of the Constitution*

² in Miscellaneous Application No.901 of 2021 in Writ Petition (Criminal) No.199 of 2013

of India and as such no citizen can be prosecuted for alleged violation of offence under Section 66A of the 2000 Act.

- (b) *In all those cases where alleged violation of Section 66A of the 2000 Act has been projected and citizens are facing prosecution for such alleged violation, the reference to Section 66A of the 2000 Act from all these crimes or criminal proceedings shall stand deleted.***
- (c) *We direct all the Directors General of Police as well as Home Secretaries of the States and Competent Officers in Union Territories to instruct the entire police force in their respective States/Union Territories not to register any complaint or crime with respect to alleged violation of Section 66A of the 2000 Act.***
- (d) *It is clarified here that these directions shall apply with respect to offence punishable under Section 66A of the 2000 Act. However, if the crime in question has other facets, namely, other offences are also alleged, the matter with respect to offences other than Section 66A of the 2000 Act can be gone into in accordance with law.***
- (e) *Whenever any publication, whether Government, Semi Government or Private, about Information Technology Act is made and Section 66A is quoted, the readers must adequately be informed about the fact that the provisions of Section 66A of the 2000 Act have already been found by this Court to be violative of the Constitution of India.***

With these directions, the instant Miscellaneous Application and other pending applications are disposed of."

(Emphasis supplied)

The Apex Court directs that there needs no reiteration that the Apex Court has held Section 66A of the Act to be violative of Article 19(1)(a) of the Constitution and had struck down the said provision. Therefore, the provision stood deleted and all criminal proceedings also stood quashed. Later, the Apex Court directs the Home Secretary of all the States to instruct the entire Police Force not to register any complaint with regard to the violation of Section 66A of the Act. It is a direction to the Police, but in the case at hand, it is the learned Magistrate who has taken cognizance. Therefore, the learned Magistrate who dealt with the private complaint wherein invocation of Section 66A of the Act is made, should have borne in mind that the said section is held to be unconstitutional by the Apex Court. Therefore, any repetition of taking cognizance of the said offence or any iteration of the kind that is brought before this Court, would become contrary to the judgment and directions issued by the Apex Court (*supra*). Therefore, the cognizance being taken by the learned Magistrate

under Section 66A of the Act is rendered unsustainable and is to be obliterated.

9. Insofar as offences punishable under Sections 499 and 500 of the IPC, are concerned, there is no publication in the case at hand. But, it is a suspicion on the part of the respondent/complainant that the petitioner has generated the message. The very look at the documents appended would indicate that it is a forwarded message that has come into the inbox of the petitioner. Though the petitioner has forwarded the same to others, it nowhere mentions any harm that is caused to the reputation of the complainant. Therefore, unless it is a publication that would cause harm to the complainant, such complaints would not become maintainable. The Apex Court in a judgment rendered on 17-10-2022 in the case of **MANOJ KUMAR TIWARI v. MANISH SISODIA AND OTHERS**³, has held as follows:

"62. We do not know how a statement in a tweet that the answers of respondent No. 1 to the questions posed by the appellant will disclose his scam, can be said to be defamatory. We are afraid that even if a person belonging to a political party had challenged a person holding public office by stating "I will expose your scam",

³ 2022 SCC OnLine SC 1434

the same may not amount to defamation. Defamatory statement should be specific and not very vague and general. The essential ingredient of Section 499 is that the imputation made by the accused should have the potential to harm the reputation of the person against whom the imputation is made. Therefore, we are of the view that the statement made by Shri Vijender Gupta (A-5) to the effect "your answer will disclose your scam" cannot be considered to be an imputation intending to harm or knowing or having reason to believe that it will harm the reputation of respondent No. 1.

63. Unfortunately the summoning Order dated 28.11.2019 passed by the Additional Chief Metropolitan Magistrate, did not go into the contents of the tweets made by Shri Vijender Gupta. To that extent, there was no application of mind on the part of the Additional Chief Metropolitan Magistrate.

64. Though the High Court prima facie examined the tweets, it upheld the summoning order passed by the Magistrate, after simply extracting Section 499. The claim made by a person involved in politics that the answers provided by his rival in public office to the questions posed by him, will expose his scam, cannot be per se stated to be intended to harm the reputation of the person holding office. The statements such as "I will expose you", "I will expose your corrupt practices" and "I will expose the scam in which you are involved, etc." are not by themselves defamatory unless there is something more.

65. In view of the above, the appeal filed by Shri Vijender Gupta (A-5) is liable to succeed on the sole ground that the statements contained in

his tweets cannot be said to be defamatory within the meaning of Section 499 of the IPC.

66. In light of the above finding, we do not think that we need to go into other argument raised by Shri Vijender Gupta (A-5), on the basis of Section 65B of the Indian Evidence Act."

(Emphasis supplied)

Long before the aforesaid judgments, a coordinate Bench of this Court in the case of ***MRS. TARA AJAI SINGH v. R.P.SHARMA***⁴, has held as follows:

"7. On one side petitioner is a retired IAS Officer and on the other side respondent is an IPS Officer in service. Both the petitioner and respondent have held important positions in their service. It is seen from the record that petitioner and the respondent are engaged in writing letters against each other to the higher authorities. On earlier occasion the respondent initiated proceedings in Crl.P. No. 1627/2005 against the petitioner and four others on the file of this Court for the offences punishable under Sections 193 r/w 120B, 34 and 21B of IPC. This Court vide Order dated 29.03.2010 dismissed the petition with costs of Rs. 2000/- to each of the respondents therein. Thereafter, the respondent filed another complaint against the petitioner in C.C. No. 4709/2008 for the offences punishable under Sections 499 and 500 IPC. Petitioner approached this Court in Crl.P. No. 2343/2008 to quash the proceedings in C.C. No. 4709/2008. This Court vide Order dated 20.02.2009 allowed Crl.P. No. 2343/2008 and quashed the

⁴ ILR 2012 Kar 5619

proceedings in C.C. No. 4709/2008. Thereafter the respondent carried the matter to Supreme Court in Special Leave to Appeal (Crl.) 5745/2009. Before the Supreme Court the Counsel for the respondent made a submission and accordingly, the petition came to be dismissed vide Order dated 19.03.2010 as under:

Learned senior counsel appearing for the petitioner submits that in order to maintain the cordial relations between the two senior officers involved, he would not like to press this petition. The same is dismissed accordingly.

In the meanwhile the present complaint is filed before the Magistrate. In this background it is necessary to examine the rival contentions in this case.

8. The word 'defamation' is defined under Section 499 IPC and the same reads as under:

"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 expected, to defame that person."

A reading of the above definition manifestly makes it clear that the following essentials are necessary to constitute defamation.

- i. making or publishing any imputation concerning any person;***
- ii. such imputation must have been made by words either spoken or intended to be read or by signs or by visual representations;***

- iii the said imputation must have been made with an intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned.***

From the above it is clear that there must be false statement made without lawful justification. The intention to cause harm is the most essential 'sine qua non' to constitute an offence. Further the person against whom the allegations are made must have a reputation and that a damage is caused to it on account of false allegations.

9. In the instant case a reading of the averments made in the letter dated 09.02.2007 do not constitute defamation. Even if the entire remarks made in the letter are taken as true, the same are not made with an intention to cause harm to the reputation of the respondent; they are not false and no damage is caused to the reputation of respondent. From the averments made in the complaint it is seen that the respondent has read too much into the averments made in the letter. The petitioner imagined for himself something which is not contained in the letter. Therefore the petition filed by the respondent is nothing but abuse of process of law.

10. The character of a person is what a person actually is, while reputation is what neighbours and others say what he is. Section 499 IPC specifies damage to the reputation of a person. A reading of the averments made in the complaint do not specify what is the reputation of the petitioner in the estimation of his neighbours and others. Further the complaint do not specify as to how the reputation of the respondent is damaged in the estimation of others. Therefore the proceedings are liable to be quashed.

11. *Petitioner admits the letter dated 09.02.2007. A perusal of this letter specifies that it was confidential letter and addressed only to the Chief Secretary to the Government of Karnataka. It is the specific case of respondent that copies of this letter was sent to different persons and the respondent had to spend lot of time and energy to explain the real facts and truth to his colleagues and friends who questioned the respondent on the basis of false imputations published by the petitioner. These allegations in the complaint are vague, not clear, definite and specific. In support of this contention no material is placed on record.*

12. *Petitioner in his complaint filed under Section 200 Cr.PC cited one Rajashekar as the witness and he was not examined before the Magistrate. On the other hand, another IPS Officer by name Kishore Chandra was examined before the Magistrate whose name was not cited as witness in the complaint. This witness Kishore Chandra states that he has received the copy of letter dated 9.2.2007 through office channel. But this witness has not produced copy of the letter which he received nor the inward register from his office showing that he has received such letter through the office channel. There is no other evidence on record nor pleading to show that the letter dated 09.02.2007 was circulated among the colleagues of respondent and others. There is no pleading as to what is the reputation of petitioner and how it is damaged."*

(Emphasis supplied)

If the complaint so registered is considered on the touchstone of the principles laid down by the Apex Court and that of this Court in the afore-quoted judgments, what would unmistakably emerge is

that, the very complaint made against the petitioner on a suspicion that he might have generated the message, is not tenable. Permitting further proceedings in the teeth of the aforesaid facts and the law laid down by the Apex Court and that of this Court, would on the face of it become an abuse of the process of law and result in miscarriage of justice.

10. For the aforesaid reasons, I pass the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) The order of taking cognizance dated 25-03-2022, passed by the Additional Civil Judge and JMFC, Virajpet in C.C.No.676 of 2022 and all further proceedings taken thereto, stand quashed.

**Sd/-
JUDGE**

nvj
CT:MJ